



Office of the City Manager

ACTION CALENDAR

January 26, 2016

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, Interim City Manager

Submitted by: Eric Angstadt, Director, Planning and Development Department

Subject: Amending BMC Chapter 13.42 to Adopt Additional Operating Standards for Mini-Dorms and Group Living Accommodations (GLAs)

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.42 to adopt additional operating standards for Mini-dorms and to extend these standards to all Group Living Accommodations (“GLAs”), in specified zoning districts.

SUMMARY

The proposed ordinance was originally scheduled on the March 24, 2015 council agenda. Given the amount of interest expressed at that time by many stakeholders, including students, neighbors, property owners, UC officials, advocacy groups, etc., the item was moved to September 29, 2015 in a workshop format to allow sufficient time for staff to incorporate stakeholder concerns and give stakeholder groups a dedicated time to express their concerns before Council. This workshop lasted approximately 2 hours with the workshop time allocated to public comment from a diverse set of stakeholders including students and neighborhood leaders.

Prior to the council workshop on September 29, 2015, Staff held approximately 30 separate meetings with about 16 different stakeholder groups. Staff in most cases was able to incorporate the concerns of these various stakeholders in such a manner as to not compromise the original intent of the amendments: to reduce excess use of Police, Fire and hospital emergency services, reduce inappropriate and illegal alcohol use and reduce the frequency of sexual assault. City staff continued to meet with the various stakeholders after the council workshop and additional modifications were made to the ordinance.

The modifications are summarized below.

Functional Equivalent Exemption

Section 13.42.005 (B) and (C) allowed GLAs and Mini-dorms to adopt their own “functional equivalent” protocols for complying with Chapter 13.42, which, if approved by the City, would exempt them from Section 13.42.036, which regulates entertainment events at which alcohol is served. The original provision required monitoring and

reporting of events, and would have rescinded any exemption if there were two or more nuisance violations of the ordinance during any 12 month period.

These provisions have been simplified and limited to GLAs. Under the revised provisions the “functional equivalent” protocols if approved would exempt an organization from Chapter 13.42 in its entirety (except for the exemption provisions themselves) rather than just 13.42.036. For instance, staff have already reviewed the protocols submitted by the Berkeley Student Cooperative Association and, based on the BSCA’s successful experience with them, intends to determine that they meet the criteria for the “functional equivalent” exemption under this provision, if it is adopted

Finally, rescission of an exemption under Section 13.42.005.B due to violations of Chapter 13.42 would not be permitted if the violations were remedied as provided in the “functional equivalent” protocols. The new modifications also include a definition on “Monitoring Organization” for purposes of the “functional equivalent” exemption, which include ASUC, the Intrafraternity Council, or any other organization the City determines is capable. A functional equivalent exemption could be rescinded, however, if experience shows that the adopted protocols are simply insufficient to avoid violations, even if they are enforced (e.g., if the penalties for violation are inadequate to change problematic behavior).

Obligations of Property Owners

The modifications to Section 13.42.030 require property owners to register with the City and provide contact information for themselves and any property managers. The requirement of large property owners to hire property managers is retained, but modified to exempt owners of GLAs with 15 or few residents. Owners and property managers are made responsible for violations resulting from conditions over which they have exclusive control, and residents are exempted from any penalty for violations over which they do not have control.

Noise Standard

In response to concerns about vague noise standards in Section 13.42.035, the modifications explicitly refer to the Community Noise Ordinance.

Entertainment Events

The modifications make a number of changes to Section 13.42.036, which addresses entertainment events involving alcohol. First, that Section no longer applies to events that are limited to residents of the GLA or Mini-dorm where the event takes place. Rather, this Section applies only to events involving more than 50 people that are open to the public and involve the service or availability of alcoholic beverages. Second, the “closing” times for events (10 pm on weeknights, 1 am on weekends) are no longer binding, but all music must cease by those times.

Sexual Assault

Section 13.42.036.E no longer makes any reference to UC Student Conduct Board (SCB) findings with respect to sexual assaults. UC's policy is not to report any such findings, and this subdivision never purported to require it to do so. Nevertheless, UC expressed discomfort with even being mentioned in this connection. Moreover, staff have been informed that SCB proceedings do not always necessarily comport with the minimum due process standards that the City would want if it were to rely on a SCB finding.

Section 13.42.036.E also now makes clear that a sexual assault could only be used as a basis for a nuisance determination of if it occurred in an area where an entertainment event was taking place, as opposed, for instance to a private room in another part of the building. As before, a sexual assault could be pursued as the basis for a nuisance determination only upon a written complaint so requesting by the survivor. This is not a change, but is reiterated here because so many speakers at the work session ignored this provision. New language has been added to Section 13.42.040 to make explicit that no remedy based on the occurrence of a sexual assault may adversely affect the housing situation of a survivor of sexual assault.

The proposed ordinance would amend portions of BMC Chapter 13.42 to impose additional operating standards for Mini-dorms and extend those operating standards to GLAs. These additional conditions are intended to help reduce any potential detrimental impacts from the operation of Mini-dorms and GLAs on the neighborhoods in which they are located, as well as to protect residents and guests of Mini-dorms and GLAs. The standard conditions include the designation of a "Responsible Resident" with accompanying duties, notices to surrounding neighbors, limitations on large events, and responsible alcohol management.

The following operating standards were presented at the September 29, 2015 Council workshop and remain largely intact.

The Responsible Resident

The residents shall designate a Responsible Resident who shall:

- ensure that all refuse and materials to be recycled are properly managed and collected, and that all refuse and recycling containers are returned to their appropriate locations after collection;
- establish a written regular maintenance schedule that details the tasks required to keep the property in compliance with Chapters 12.32 and 12.34, free and clear from accumulations of solid waste, overgrown vegetation, graffiti, and rodent harborage;
- respond to all complaints within 24 hours;
- keep a log of all complaints and a copy of the response to the complainant and the resolution which shall be retained for no less than 24 months and shall be made available to City staff on request; and

- report to the owner any notices from the City concerning violations of BMC Chapters 12.70 (smoking in multi-unit buildings) or 13.48 (second response ordinance).

Notices to Neighbors

The owner or property manager shall provide notice to all residents within 300 feet of the property of the existence and location of the Mini-dorm or GLA, and the contact information for the Responsible Resident(s), which shall include at least a telephone number or numbers at which the Responsible Resident (s) can be reached at any time. Such notice shall be provided at least annually on September 1st, and whenever the identity or contact information for the Responsible Resident changes.

Large Events and Gatherings

Events that are “open to the public” and draw 50 or more individuals are already subject to the regulations governing indoor entertainment events. (BMC Section 13.46.020.C.) The proposed ordinance adds specific regulations applicable to such events that involve alcoholic beverages. The intent of these regulations is to make enforcement easier and less subjective.

- For any such event , the Responsible Resident shall notify the residents of all adjacent properties no less than 48 hours prior to the gathering and provide a contact number at which he/she can be reached during the course of the gathering.
- Access to the roof (but not roof decks) shall be prohibited, except when necessary to escape a fire, if access through the roof is a permitted route for egress.
- Any gathering of 10 or more non-residents with alcohol present shall end by 10 pm Sunday through Thursday, and 1 am on Fridays and Saturdays and any day preceding a national holiday.
- Alcoholic beverages are prohibited in bedrooms occupied by a resident under the age of 21 years.
- Alcoholic beverages are prohibited in common areas where they are accessible to persons under the age of 21.
- Alcoholic beverages may not be served to any person under the age of 21 years.
- Gatherings should generally be limited to no more than 200 persons, including those in the public right of way outside it.

Noncompliance with these requirements could be deemed a nuisance. The presence of minors under the influence of alcohol at an event would create a rebuttable presumption that the alcohol-related regulations had been violated. This presumption could be rebutted, however, by a showing that alcohol service was in fact in compliance with the ordinance.

In addition, certain kinds of serious assaults, including sexual assaults, when they occur at such events, could lead to a nuisance determination applicable to the property where they occur. The theory behind this provision, which is reflected in the findings, is that all persons present at an event, and in particular the hosts, have some degree of shared

responsibility for what happens at the event, i.e., that bystanders should intervene to prevent sexual assaults. In response to concerns from some stakeholders, the ordinance provides that in the case of sexual assaults no nuisance proceedings would be taken absent a written request by the survivor. The ordinance also provides that no nuisance determination based on a sexual assault may affect the housing of the survivor of that assault. This avoids penalizing survivors who are assaulted in their own residence.

Remedies

The proposed amendments define a number of types of nuisances, which would be subject to abatement by the City, after notice and an opportunity to be heard. Generally, the process would be the typical nuisance abatement process under Chapter 23B.64, involving public hearings before the Zoning Adjustments Board and City Council. In response to concern from some stakeholders, the ordinance restates what is already the law, namely that any remedy must be proportionate to the magnitude and seriousness of the nuisance, and be directed at abating the nuisance that is determined to exist, and not other conditions.

The proposed ordinance would create a private right of action, as Chapter 23B.68 does, but would explicitly *not* create a right of action for damages against Responsible Residents.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The City may realize reduced emergency responder costs due to fewer emergency calls from GLAs, which will free up City resources to respond to other emergencies. Depending on how many GLAs adopt satisfactory “functional equivalent” protocols, there may be some increase in demand on enforcement staff and associated resources.

CURRENT SITUATION AND ITS EFFECTS

The heavy demand for student housing in Berkeley, especially in low density areas near the University of California campus, has resulted in many existing single family and multifamily residential buildings being significantly modified by the addition of numerous bedrooms.

Because prior to enactment of BMC Section 23D.32.050 (Special Provisions: Addition of Bedrooms to Parcels) many such modifications were allowed as a matter of right without triggering discretionary review, there has been a proliferation of buildings that are occupied by a far larger number of persons than was ever contemplated by the General Plan or Zoning Ordinance in those districts. In addition, there are already many pre-existing GLAs and mini-dorms, including but not limited to fraternities and sororities, in these affected areas.

Because of the number of residents in such buildings and, in many cases, the lack of on-site managers, GLAs and mini-dorms tend to impair the quiet enjoyment of the

surrounding neighborhoods by creating trash and litter, creating excess parking demand, and being the location of numerous loud and unruly parties.

It is often the case that the loud and unruly parties involve the consumption of large amounts of alcoholic beverages, which are often consumed by individuals under the age of 21 who either reside in such buildings or attend such parties. Consumption of alcohol by minors is harmful to the minors and consumption of large amounts of alcohol by individuals of all ages at these gatherings contributes to the nuisance conditions affecting the surrounding neighborhood.

Police officers and Fire Department personnel frequently have been required to respond to calls for assistance in order to disperse uncooperative participants, and provide medical assistance and transportation to hospital emergency rooms to individuals suffering from alcohol intoxication causing a drain of manpower and resources and, in some cases, leaving other areas of the city with inadequate police and fire protection.

In the last eight months, two individuals have suffered alcohol-related deaths at UC Berkeley, one of which was at a fraternity and another at an apartment. It is reported that 95% of all injuries and deaths at fraternities nationwide are alcohol or drug-related. In addition, UC Berkeley's 2014 Annual Security Report lists 33 forcible sexual offenses on campus or in the adjacent area for the year 2013, and at least nine sexual assaults were reported in the campus area in the first two months of the 2014-2015 school year. These include five individuals who allege they were drugged and sexually assaulted at one fraternity in October 2014.

It was noted in the September 29, 2015 Council workshop there were 267 calls for service for the Berkeley Fire Department (BFD) between January 2013 and August 2015), originating from the following locations:

- 125 Residence Halls
- 62 Fraternity
- 1 Sorority
- 43 House or Apartment
- 7 COOPS
- 29 Miscellaneous

Of the 267 calls for service, 175 resulted in emergency transport to the emergency room, originating from the following locations:

- 83 Residence Halls
- 38 Fraternity
- 0 Sorority
- 40 House or Apartment
- 3 COOPS

11 Miscellaneous

Most recently, there were 89 calls for service from the Berkeley Fire Department (BFD) between September 9 and October 19th, 2015, originating from the following locations

- 56 Residence Halls
- 12 Fraternities
- 19 Other
- 0 Sorority
- 0 Coops
- 2 I-House

Of the 89 calls for service, 62 resulted in emergency transport to the emergency room, originating from the following locations:

- 38 Residence Halls
- 12 Fraternities
- 11 Other
- 0 Sorority
- 0 Coops
- 1 I-House

One of the above reported transports was to Highland hospital as an alleged case of sexual assault.

An additional transport was done by the County Coroner due to a death at a fraternity in the 2900 block of Channing. While this case is still under investigation, it is strongly suspected that alcohol played a significant role in this death.

Generally, on average there are 6-7 calls for service from BFD per weekend and 4-5 emergency transports.

It should also be noted that on Halloween this past Fall semester, a significant civil disturbance took place with hundreds of young adults rioting, throwing bottles, jumping on and damaging vehicles and other property. This disturbance required police to respond with riot gear and tactics in order to restore order, and resulted in other parts of the city not having adequate police services.

Due to recent pressure by the University and the Department of Education to abate these potentially harmful conditions associated with alcohol, greater attention is being given to limit or eliminate the presence of alcohol at Greek events. While these efforts are commendable, as evidenced by recent calls for service from BPD and BFD, some fraternities continue to be challenged by the problems associated with excess alcohol consumption.

BACKGROUND

In October 2011, the Berkeley City Council created the Southside Mixed Use Residential Districts (R-SMU) in Ordinance No. 7,209-N.S, which is codified in BMC Chapter 23D.52. Section 23D.52.030 authorizes the creation of GLAs within those districts after an application and public hearing.

In February 2012, the City Council added Chapter 13.42, "Operating Standards for Mini-dorms." The Council intended that the ordinance would temper the neighborhood impacts of Mini-dorms by requiring that they have resident managers.

In June 2014, Chapter 13.42 was amended to expand the applicability of the operating conditions and increase the number of remedies available to the City. The Council added to the findings information regarding the acute impact on the South Campus neighborhood. It also amended the definition of a Mini-dorm to include residences within R-1 and R-3 districts and those that had six or more residents, not just five or more bedrooms. The ordinance also added Section 13.42.035, declaring "unruly gatherings" of ten or more people at Mini-dorms to be public nuisances.

The adoption of operating standards for Mini-dorms, intended to mitigate the nuisance of unruly gatherings in the South Campus neighborhood, did not extend to GLAs such as fraternities and sororities within R-SMU districts. The proposed ordinance would extend the operating conditions to GLAs.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The proposed ordinance would improve the City's ability to protect neighborhoods from the disturbances caused by ongoing large gatherings and unruly parties at Mini-dorms and GLAs. The ordinance also protects the public safety by minimizing opportunities for alcohol-related deaths or sexual assaults.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered a number of combinations of different operating standards, and based on meetings with a number of Co-ops, fraternities and sororities determined that an ordinance applying these conditions to all GLAs uniformly would be the fairest and most effective.

CONTACT PERSON

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Jim Hynes, Assistant to the City Manager, 981-7000

Attachments:
1: Ordinance

ORDINANCE NO. #,###-N.S.

AMENDING THE TITLE AND SECTIONS 13.42.010, 13.42.020, 13.42.030, 13.42.035 AND 13.42.040 OF THE BERKELEY MUNICIPAL CODE, ADDING NEW SECTION 13.42.036, AND RENUMBERING AND AMENDING SECTION 13.42.070, REGULATING MINI-DORMS AND GROUP LIVING ACCOMMODATIONS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the title of Chapter 13.42 of the Berkeley Municipal Code is amended to read as follows:

OPERATING STANDARDS FOR MINI-DORMS AND GROUP LIVING ACCOMMODATIONS

Section 2. That Section 13.42.070 of the Berkeley Municipal Code is renumbered as Section 13.42.005, and is amended to read as follows:

13.42.0705 Applicability.

A. This Chapter shall not apply to Community Care Facilities or Senior Congregate Housing as defined in Chapter 23F.04.

B. 1. A GLA that has adopted operating protocols that the City determines are functionally equivalent to the requirements set forth in this Chapter shall be exempt from this Chapter except as it applies to owners and/or property managers, provided that said protocols are consistently implemented and enforced.

2. Such protocols shall include provisions for monitoring and enforcement by a Monitoring Organization.

3. An exemption under this subdivision shall lapse upon written notice by the City to a GLA:

a. of two violations of Section 13.42.030 or 13.42.036 on different dates at its location during any twelve-month period from September 1st through August 30th, unless those violations were remedied as provided in the adopted protocols; or

b. that the adopted protocols, although followed and enforced, are inadequate to ensure compliance with Sections 13.42.030 and 13.42.036. In such cases, the GLA shall be given a reasonable opportunity to propose revised protocols for review by the City.

4. An exemption under this subdivision premised on monitoring and enforcement by a Monitoring Organization shall lapse if the City determines, after written notice to the Monitoring Organization that the required monitoring or enforcement has not occurred or that it has omitted to report noncompliance with the protocols.

C. This Chapter shall not apply to any apartment house that is subject to and in compliance with Section 19.40.100, Chapter 17 of the Berkeley Housing Code, section 1701.

D. This Chapter shall not apply to hotels as defined in Section 7.36.020.A.

E. This Chapter shall not apply to owner-occupied buildings.

Section 3. That Section 13.42.010 of the Berkeley Municipal Code is amended to read as follows:

13.42.010 Findings and purpose.

A. The heavy demand for student housing in Berkeley, especially in low density areas near the University of California campus, has resulted in numerous existing single family and multifamily residential buildings being significantly modified by the addition of numerous bedrooms.

B. Because Prior to the enactment of amendments to the Zoning Ordinance that regulated the addition of bedrooms in certain zoning districts such modifications have been ~~were~~ allowed as a matter of right without triggering discretionary review. As a result, there has been a proliferation of buildings that are occupied by a far larger number of persons than was ever contemplated by the General Plan or Zoning Ordinance in those districts. In addition, there are already numerous pre-existing Group Living Accommodations, including but not limited to fraternities and sororities, in these affected areas.

C. Because of the number of residents in such buildings and, in many cases, the lack of on-site managers, such buildings tend to impair the quiet enjoyment of the surrounding neighborhoods by creating trash and litter, creating excess parking demand, and being the location of numerous loud and unruly parties.

D. It is often the case that the loud and unruly parties involve the consumption of large amounts of alcoholic beverages, which often are consumed by individuals under the age of 21 who either reside in such buildings or attend such parties. Consumption of alcohol by minors is harmful to the minors and consumption of large amounts of alcohol by individuals of all ages at these gatherings contributes to the nuisance conditions affecting the surrounding neighborhood.

E. Police officers frequently have been required to make calls to a location of a party, in order to disperse uncooperative participants, causing a drain of staffing and resources and, in some cases, leaving other areas of the City with inadequate police protection.

F. The manner in which Group Living Accommodations and Mini-dorms operate, including the behavior of guests, is the collective responsibility of those who own and manage them and those who reside in them, and in particular the sponsors of events that result in large numbers of attendees. In some cases City emergency personnel responding to medical emergencies have been denied access to GLAs to provide treatment and/or transport to medical facilities. Therefore it is appropriate that owners and residents bear the consequences of any nuisances that are allowed to occur.

G. In areas most affected by the proliferation of such buildings and the resulting density and intensity of use, disturbances that would be considered minor and tolerable in less intensely inhabited areas become much more severe and intolerable because they are no longer occasional, but have become chronic.

H. The purpose of this Chapter is to remedy these and other associated problems by adopting and providing for the enforcement of operating standards for such buildings, and by defining these disturbances as a public nuisance in areas that are most affected by them.

Section 4. That Section 13.42.020 of the Berkeley Municipal Code is amended to read as follows:

13.42.020 Definitions.

The definitions set forth in this Section shall govern the application and interpretation of this Chapter.

A. "Mini-dorm" means any building in an R-1, R-1A, R-2, R-2A, or R-3 Zoning District that contains a dwelling unit that is occupied by six or more ~~unrelated~~ persons over the age of eighteen years, but is not a Group Living Accommodation as defined in Chapter 23F.04. Permitted and Legal non-conforming Sororities, Fraternities, and Student Co-ops shall not be considered Mini-Dorms, as long as they have a resident manager.

B. "Bedroom" means any Habitable Space in a Dwelling Unit or habitable Accessory Structure other than a kitchen or living room that is intended for or capable of being used for sleeping with a door that closes the room off from other common space such as living and kitchen areas that is at least 70 square feet in area, exclusive of closets and other appurtenant space, and meets Building Code standards for egress, light and ventilation. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition will be considered a bedroom for the purposes of applying this requirement.

C. Accessory Structure," "Gross Floor Area," "Dwelling Unit" and "Group Living Accommodation" (or "GLA") have the same meanings as set forth in Chapter 23F.04.

D. "Alcoholic Beverage" shall have the same meaning as Vehicle Code Section 109.

E. "Monitoring Organization" shall mean the University of California, the ASUC, the Intrafraternity Council or any other organization that the City determines is capable of providing quarterly monitoring and reporting sufficient to enable the City to determine continued compliance with practices adopted by a GLA under Section 13.42.05.B.

F. “Responsible Resident” means a person or persons, or committee, designated pursuant to Section 13.42.030.B.

Section 5. That Section 13.42.030 of the Berkeley Municipal Code is amended to read as follows:

13.42.030 Operating standards – Owners, Property Managers and Responsible Residents

~~Mini-dorms shall be operated and managed in compliance with the standards set forth in this Section.~~

A. 1. Any person who owns a GLA or Mini-Dorm shall register with the City of Berkeley as such. Registration shall include contact information for both the owner and any property manager, including the name and contact information for a natural person who can be contacted in the event of an emergency.

2. The owner of any GLA with more than 15 residents, and the owner of more than one parcel that includes a Mini-dorm, shall hire a property manager. The property manager need not be a resident of a GLA or Mini-dorm but must be available and authorized to respond to complaints about the GLA or Mini-dorm at all times. The owner or property manager shall provide all tenants with a copy of this Chapter and Chapter 13.48 at the time they begin their tenancy. For purposes of this subdivision, a person owns a Mini-dorm or GLA if he or she has a majority or controlling interest in a Mini-dorm or GLA.

3. Owners and property managers shall be liable for any violation of this Chapter resulting from a condition over which they have sole control.

B. The residents of each Mini-dorm or GLA owner or property manager shall designate a Responsible Resident manager for each Mini-dorm, who shall reside in the Mini-dorm and be responsible for:

1. ensuring that all refuse and materials to be recycled are properly managed and collected, and that all refuse and recycling containers are returned to their appropriate locations after collection;

2. establishing a written regular maintenance schedule that details the tasks required to keep the property in compliance with Chapters 12.32 and 12.34, free and clear from accumulations of solid waste, overgrown vegetation, graffiti, and rodent harborage. A copy of the maintenance schedule shall be made available to City staff on request; and

3. responding to all complaints regarding the Mini-dorm or GLA within 24 hours; and keeping a log of all complaints, the response to the complaint and the resolution of the complaint; and retaining the complaint log for no less than 24 months. The complaint log shall be made available to City staff on request; and

4. promptly notifying the owner and property manager (if any) of any notices under Chapters 12.70 or 13.48. ensuring that no violations of Chapter 13.48 or Chapter 23B.64 occur at the Mini-dorm

The Responsible Resident shall not be responsible for any of the foregoing tasks that are the sole responsibility of the owner or property manager.

BC. The owner or property manager shall provide notice to all residents within 300 feet of a Mini-dorm of:

1. the existence and location of the Mini-dorm or GLA; and
2. the contact information for the Responsible Resident manager(s), which shall include at least a telephone number or numbers, or e-mail address or addresses at which the Responsible Resident manager(s) can be reached at any time; and-
3. the name and contact information for the property manager (if any) and the owner and the phone numbers at which they can be reached at any time.

Such notice shall be provided at least annually by September 1st during the month of January, and whenever the identity or contact information for the Responsible Resident manager, property manager or owner changes.

D. For any event subject to Section 13.42.036, the Responsible Resident shall notify at least one of the residents of each confronting or abutting property no less than 48 hours prior to the event and provide a contact number at which a Responsible Resident can be reached during the entire course of the event. Such notification may be in any form reasonably calculated to provide actual notice.

Section 6. That Section 13.42.035 of the Berkeley Municipal Code is amended to read as follows:

13.42.035 Nuisances~~Unruly gatherings~~

~~A. This Section is applicable only to Mini-dorms as defined herein.~~

~~B. Any occurrence at a gathering of ten or more persons on any Mini-dorm or GLA in a manner which that constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise under Section 13.40.030 or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions, constitutes a public nuisance.~~

B. It shall be a public nuisance for any resident of a GLA or Mini-dorm where an event is taking place to refuse access to, or interfere with access by, Fire Department personnel responding to an emergency call or investigating a situation.

C. Notwithstanding any provision of Chapter 13.48 to the contrary, a public nuisance as defined in this Section shall be subject to the remedies set forth in Section 13.42.040.

Section 7. That a new Section 13.42.036 is added to the Berkeley Municipal Code to read as follows:

13.42.036 Entertainment events involving service or availability of Alcoholic Beverages

This Section applies to entertainment events that are open to the public as defined in Section 13.46.030.A.& B that: (1) draw, or can reasonably be expected to draw over 50 attendees; (2) involve the service or availability of Alcoholic Beverages at any Mini-dorm or GLA; and (3) are not limited to the residents of that GLA or Mini-dorm.

A. The following actions during events subject to this Section may be deemed a public nuisance:

1. use of or entry upon the roof except for purposes of escaping a fire when entry upon the roof is required for legal egress. For purposes of this paragraph, "roof" does not include decks or balconies, wherever located, that were legally constructed and are in compliance with all applicable safety requirements;

2. service or availability of Alcoholic Beverages in Bedrooms occupied by residents under the age of 21 years;

3. service or availability of Alcoholic Beverages in common areas where they are accessible to persons under the age of 21, unless service or availability is controlled in a manner that does not allow service or availability to persons under 21 years of age;

4. service to or availability of Alcoholic Beverages to persons under the age of 21.

B. Events subject to this Section should be kept to a manageable size, generally under 200 persons total, and should not be allowed to take place in any part of the public right of way.

C. Events subject to this Section should end by 10:00 p.m. Sunday through Thursday, and by 1:00 a.m. on Fridays, Saturdays and days preceding national holidays. Regardless of whether such an event ends by those times, no live music may be performed, or recorded music played, after those times.

D. The presence of a minor who is under the influence of alcohol at an event subject to this Section shall create a rebuttable presumption that the event is not being conducted in compliance with the provisions of this Section relating to service and availability of Alcoholic Beverages.

E. If a resident or guest at a Mini-dorm or GLA is convicted of or enters a plea of no contest to violation of any of Penal Code Sections 220, 243.4, 244, 244.5, 245, 261, 261.5, 261.9, 273.5, 286, 288(a), or 289, or any other felony assault, or felony sexual assault, and the crime was committed in an area where an event subject to this Section is taking place, then the Mini-dorm or GLA at which the violation occurred may be deemed a nuisance. However, nuisance proceedings under this subdivision based on a

report of a sexual assault by a survivor shall not be conducted if the survivor of a sexual assault does not initiate such proceedings with a written complaint to the City.

F. This Section does not apply to regularly scheduled meetings and/or meals involving non-residents if such meetings or meals involve only members or alumni of the entity that owns or operates the Mini-dorm or GLA and their parents or guardians, even if such meetings or meals include the service or availability of Alcoholic Beverages, as long as such service or availability is limited to persons of 21 years of age or more.

G. Notwithstanding any provision of Chapter 13.48 to the contrary, a public nuisance as defined in this Section shall be subject to the remedies set forth in Section 13.42.040.

Section 8. That Section 13.42.040 of the Berkeley Municipal Code is amended to read as follows:

13.42.040 Remedies.

A. This Chapter may be enforced as set forth in Chapters 1.20 and 1.28.

B. Violation of any provision of this Chapter is hereby declared to be a public nuisance subject to abatement under Chapters 1.24, 1.26 and 23B.64.

C. In any enforcement action, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

D. In cases where the owner of a Mini-dorm or GLA has been unwilling or unable to control the use of that Mini-dorm or GLA so as to prevent repeated violations of this Chapter, the City may require removal of bedrooms from that Mini-dorm or GLA or require changes in the use of rooms used as bedrooms to their original non-bedroom uses under Chapter 23B.64.

E. 1. In determining the appropriate remedy, if any, for a public nuisance under this Chapter, the City shall consider factors such as the severity and impact of the nuisance, whether it was an isolated event that is not likely to recur and whether it was preventable. Remedies for public nuisance should be reasonably designed to address the nuisance that the City determines occurred.

2. Nuisance determinations, and remedies for nuisances, applicable to Mini-dorms shall apply only to the unit or units involved in or causing the nuisance, and remedies shall be designed to affect residents of other units as little as feasible. No remedy based on the occurrence of a sexual assault may adversely affect the housing situation of a survivor of sexual assault.

3. No remedy may be imposed on a GLA or Mini-dorm for actions or failure to take actions exclusively within the authority of the landlord or property manager.

F. Nothing in this Chapter is intended to create a monetary remedy against any Responsible Resident.

G. Any resident of the City may bring a private action for injunctive relief to prevent or remedy a public nuisance as defined in this Chapter. No action may be brought under this subdivision unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute. Notwithstanding subdivision (F), in any action prosecuted under this Section a prevailing plaintiff may recover reasonable attorneys' fees.

Section 9. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

