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CONSENT CALENDAR

April 25, 2017

To: Honorable Mayor and Members of the City Council
 From: Councilmember Kriss Worthington
 Subject: Amendments to Group Living Accommodations (GLA) Ordinance (No. 7445-NS)

RECOMMENDATION

That the Berkeley City Council respond to student concerns voiced by student leaders in the ASUC, by revising the GLA Ordinance to respond to the worsening housing crisis in Berkeley and promote a fair and equal treatment of students. Specifically, we recommend the removal of BMC 13.42.040D, which currently allows the city to remove bedrooms, the addition of a student non-discrimination clause, the amendment of 13.42.005B(3)a to allow three violations instead of two, and the amendment of 13.42.036C to ensure consistency with the Community Noise Ordinance.

BACKGROUND

In light of the Berkeley housing crisis, the ASUC has been vocal in its opposition to the Group Living Accommodations (GLA) Ordinance. To address concerns raised by community members that the Ordinance unfairly disadvantages and pushes students out of student housing, the Berkeley City Council proposes that the GLA Ordinance be revised. Taking student suggestions into consideration, we propose the following revisions:

We propose the withdrawal of section 13.42.040D, which allows the city to remove bedrooms. Allowing the city to remove bedrooms would exacerbate the housing crisis, as student housing opportunities would decrease at a time when we should be seeking solutions to the lack of available housing. Additionally, such a provision does not exist in laws like the Second Response Ordinance.

We propose the addition of a student non-discrimination clause, in line with the Second Response Ordinance, which states: "This chapter shall not be enforced in a manner which targets property housing students. Nothing in this section shall preclude the City from setting priorities in the use of its resources by enforcing this chapter against the events that are the most disruptive or against properties at which disruptive events are held most often or on the basis of other similar legitimate factors." This addition ensures that students and other Berkeley residents will receive equal treatment.

Furthermore, we recommend that 13.42.005B(3)a should be amended to allow three violations within a twelve-month period instead of two. Such an amendment would be a step towards increasing access to housing for all residents of Berkeley.

We propose the amendment of 13.42.036C to allow the playing of recorded music after the times listed (10 PM from Sundays-Thursdays and 1 AM from Fridays-Saturdays or preceding national holidays) in order to comply with the Community Noise Ordinance (BMC 13.40). We should seek to ensure a consistency

throughout the Berkeley Municipal Code, and these noise restrictions placed by the GLA Ordinance fail to exist in the Community Noise Ordinance.

In the face of Berkeley's worsening housing crisis, we recommend that these revisions be made to the GLA Ordinance. These select proposals from the ASUC are the ones that the Berkeley City Council feels most comfortable advocating for. Other components of their recommendations likely require more complicated analysis and a longer time frame to evaluate, thusly we seek to address in this City Council item the more minor modifications that can be accomplished most expeditiously.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Consistent with our environmental standards.

CONTACT PERSON

Councilmember Kriss Worthington

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ORDINANCE NO. 7,455–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:

13.42.005 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 ~~three~~ ~~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. Prior to the enactment of amendments to the Zoning Ordinance that regulated the addition of bedrooms in certain zoning districts such modifications 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 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 Interrafraternity Council, ~~Pan Hellenic 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

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 shall designate a Responsible Resident, who shall 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. ensuring that all vehicles at each Mini-dorm or GLA are utilizing off-street parking in approved spaces in compliance with Section 23D.12.080; and

3. 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

4. responding to all complaints regarding the Mini-dorm or GLA within 24 hours; 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. The logs shall be made available to Berkeley residents residing within 300 feet of a mini-dorm or GLA within 10 days of a request. Any Berkeley residents residing within 300 feet of a mini-dorm or GLA may submit to the City a written request for a copy of the Responsible Resident's log and City staff shall within 10 days of receipt of such request ask for a copy of the Responsible Resident's log on behalf of the requesting resident; and

5. promptly notifying the owner and property manager (if any) of any notices under Chapters 12.70 or 13.48.

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

C. The owner or property manager shall provide notice to all residents within 300 feet of:

1. the existence and location of the Mini-dorm or GLA;

2. the contact information for the Responsible Resident , which shall include at least a telephone number or numbers, or e-mail address or addresses at which the Responsible Resident 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, and whenever the identity or contact information for the Responsible Resident, 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

A. Any occurrence at a Mini-dorm or GLA 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. Nuisance proceedings under this subdivision based on a report of a sexual assault by a survivor shall only be conducted if the survivor of the sexual assault initiates such proceedings with a written complaint to the City and explicitly consents to such proceedings.

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. This chapter shall not be enforced in a manner which targets property housing students. Nothing in this section shall preclude the City from setting priorities in the use of its resources by enforcing this chapter against the events that are the most disruptive or against properties at which disruptive events are held most often or on the basis of other similar legitimate factors." This addition ensures that students and other Berkeley residents will receive equal treatment.~~

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.

At a regular meeting of the Council of the City of Berkeley held on January 26, 2016, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Arreguin, Capitelli, Droste, Maio, Moore, Wengraf and Bates.

Noes: Worthington.

Absent: Anderson

