



Office of the City Manager

ACTION CALENDAR
April 29, 2014
(Continued from April 1, 2014)

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning and Development

Subject: Amendments to BMC Chapter 13.42: Operating Standards for Mini-Dorms

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 13.42 to change the definition of mini-dorm, expand the zones in which the mini-dorm rules apply to coincide with the zones where the City has discretionary review of additional bedrooms and define what constitutes an unruly gathering.

FISCAL IMPACTS OF RECOMMENDATION

The proposed ordinance amendments would not have a fiscal impact.

CURRENT SITUATION AND ITS EFFECTS

The City Council adopted ordinance amendments (first reading July 16, 2013, second reading September 10, 2013) regulating the addition of bedrooms in R-1 through R-3 districts inclusive. As part of the first reading the City Council referred to both the City Manager and the Planning Commission changes to Chapter 13.42 to regulate existing mini-dorms. That referral included examining a similar ordinance from San Luis Obispo and expanding the zones in which mini-dorms are regulated.

BACKGROUND

The issue of how to define and regulate properties occupied by large numbers of unrelated adults has been a concern of the Council and community for many years. In September 2013 the City Council adopted ordinance amendments that required discretionary review of the addition of five or more bedrooms on a parcel in R-1 through R-3 districts. These amendments will help slow the proliferation of properties with large numbers of bedrooms by requiring discretionary review and public notice. However, these amendments do not address existing properties. To address existing properties the City Council referred changes to Chapter 13.42 to the City Manager and the Planning Commission. Given the Planning Commission workload they are unlikely to be able to address the Council referral until the end of this calendar year. Planning staff, in conjunction with the City Attorney's Office, are proposing ordinance amendments to Chapter 13.42 to address the City Council referral.

ENVIRONMENTAL SUSTAINABILITY

The proposed amendments would have little effect on the City's environmental sustainability goals. It is unlikely that these amendments would have any effect on environmental sustainability goals relating to zero waste, food, information technology, climate change, habitat, air quality, or emissions.

RATIONALE FOR RECOMMENDATION

The proposed amendments would address three areas of concern. The first proposed change is to the definition of a mini-dorm. Staff suggests using a definition similar to that used by San Luis Obispo as suggested by the City Council referral. The new definition would use six unrelated adults over the age of eighteen in a dwelling unit as the basis for defining a mini-dorm. The current definition, which relies on a calculation of gross floor area devoted to bedrooms, is overly technical and cannot be easily computed by either neighbors or property owners. The proposed definition is easier to determine for all, can be more easily verified by lease documents and is similar to other jurisdictions including San Luis Obispo as referenced in the City Council referral.

The second area of concern is expanding the mini-dorm definition to include the areas currently subject to bedroom controls. As currently written mini-dorms operating standards only apply to the R-2 and R-2A districts. Staff proposes that the mini-dorm operating standards be applied to mini-dorms as defined regardless of the zoning district in which they occur. It would thus expand the applicability of Chapter 13.42 to the R-1, R-1A and R-3 districts in addition to the existing R-2 and R-2A districts. The operating standards and the bedroom controls will then apply to the same districts as requested in the City Council referral.

The final area of concern the proposed ordinance amendments address is problematic behavior by residents of a mini-dorm. A section is proposed to be added to Chapter 13.42 defining unruly gatherings for purposes of that Chapter. This section directly addresses behavioral problems by mini-dorm residents or their guests and encompasses behaviors that were part of the public testimony during the hearings on bedroom controls. This definition will give additional tools for code enforcement activity for problematic mini-dorms, which are intended to make enforcement easier and therefore more responsive to neighborhood complaints.

Finally, staff is proposing to add text to the remedies section of Chapter 13.42 to clarify that a potential remedy for repeated violations would be ordering the removal of bedrooms from an existing mini-dorm, as well as any other remedy available under Chapter 23B.64. This option already exists in the BMC, however, the proposed text is a clear statement of notice of the potential use of this remedy by the City in cases of flagrant violation.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Eric Angstadt, Director, Planning Department, 981-7410

Attachments:

1: Ordinance

2: Ordinance with track changes

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

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.42 REGULATING MINI-DORMS

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

Section 1. That Section 13.42.010 of the Berkeley Municipal Code Section 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 multifamily residential buildings being significantly modified by the addition of numerous bedrooms.

B. Because such modifications have been 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.

C. Because of the number of residents in such buildings and 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. 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.

E. 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 2. That Section 13.42.020.A of the Berkeley Municipal Code Section is amended to read as follows:

13.42.020. Definitions

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. 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.

Section 3. That a new Section 13.42.035 is added to the Berkeley Municipal Code to read as follows:

13.42.035 Unruly gatherings.

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

B. Any gathering of ten or more persons on any Mini-dorm in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise 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.

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 4. That Section 13.42.040 of the Berkeley Municipal Code Section 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 Chapter 1.26.

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 addition, the City may impose any remedy available under Chapter 23B.64. In order to do so, the City shall follow the procedure set forth in Chapter 23B.64. In cases where the owner of a Mini-dorm has been unwilling or unable to control the use of that Mini-dorm so as to prevent repeated violations of this Chapter, the City may require removal of bedrooms from that Mini-dorm under Chapter 23B.64.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.

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

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.42 REGULATING MINI-DORMS

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

Section 1. That Section 13.42.010 of the Berkeley Municipal Code Section 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 multifamily residential buildings being significantly modified by the addition of numerous bedrooms.

B. Because such modifications ~~have been frequently~~ are allowed as a matter of right ~~without and do not triggering~~ discretionary review, ~~there this~~ has ~~been led to~~ 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.

C. Because of the number of residents in such buildings and 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. 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.

E. 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 2. That Section 13.42.020.A of the Berkeley Municipal Code Section is amended to read as follows:

13.42.020. Definitions

A. "Mini-dorm" means any building in an R-1, R-1A, R-2, or 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. in which any Dwelling Unit in the building contains more than five Bedrooms and the Gross Floor Area of that Dwelling Unit devoted to Bedrooms is more than 60% of the total Gross Floor Area. For purposes of this subdivision, the Gross Floor Area of any room, closet or other ancillary space that can be entered only through a Bedroom shall be considered part of the Gross Floor Area of that Bedroom. 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.

Section 3. That a new Section 13.42.035 is added to the Berkeley Municipal Code to read as follows:

13.42.035 Unruly gatherings.

- A. This Section is applicable only to Mini-dorms as defined herein.
- B. Any gathering of ten or more persons on any Mini-dorm in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise 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.
- 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 4. That Section 13.42.040 of the Berkeley Municipal Code Section 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 Chapter 1.26.
- 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 addition, the City may impose any remedy available under Chapter 23B.64. In order to do so, the City shall follow the procedure set forth in Chapter 23B.64. In cases where the owner of a Mini-dorm has been unwilling or unable to control the use of that Mini-dorm so as to prevent repeated violations of this Chapter, the City may require removal of bedrooms from that Mini-dorm under Chapter 23B.64.

Section 5. Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.

