




Office of the City Manager

CONSENT CALENDAR

November 6, 2007

To:  Honorable Mayor and Members of the City Council  
 From: Phil Kamlarz, City Manager  
 Submitted by: Debra Pryor, Fire Chief, Berkeley Fire Department  
 Subject: Adoption of Revisions to Berkeley Municipal Code 13.46 (Indoor Entertainment Events)

RECOMMENDATION

Adopt the first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.46 pertaining to Indoor Entertainment Events to coincide with 2007 California Fire Code.

CURRENT STATUS AND EFFECTS

The City Council will adopt the 2007 California Fire Code and local amendments that will take effect on January 1, 2008. Berkeley Municipal Code Chapter 13.46 - Indoor Entertainment Events Ordinance lists specific chapters and sections as codified in the 2001 California Fire Code. Chapter 13.46 has to be amended to reflect the changes adopted in the new fire code.

City staff has determined that the application of the ordinance should be modified to reduce the application of this ordinance from 150 attendees to 50 attendees and enforce a 200 person maximum occupant load during this revision to increase the safety of the attendees and participants at indoor events.

BACKGROUND

The indoor entertainment event ordinance provides regulations and procedures to ensure fire code violations are met prior to holding an indoor entertainment open to the public in residential occupancies. Residential occupancies are generally not designed or built for a high occupant load. The building and fire codes define assembly occupancies as a room designed to hold 50 or more persons. The requirements for assembly occupancies require additional fire and life safety features including multiple exits, emergency lighting, exit signs, fire alarm and sprinkler systems.

The existing indoor entertainment event ordinance is applicable to events that can reasonably expect more than 150 persons. This ordinance provides a process to ensure that the building and site can reasonably accommodate higher occupant loads.

During the past two years, there were several incidents that sponsors tried to circumvent the ordinance by reporting that less than 150 attendees would attend the event to avoid any pre-fire clearance inspections. It was discovered during fire or police responses that the event

exceeded the maximum occupant load and that fire violations had not been corrected prior to holding the event.

The policy for events held at fraternities and sororities has a maximum occupant load of 200 as established in the Greek Social Code. The maximum occupant load capacity was determined in 2002 in conjunction with the University of California Campus Fire Marshal, Berkeley Fire Department, University of California Office of Student Life, University Students Cooperative Association, and the Dwight Hillside Neighborhood group. The maximum occupant load of 200 as established for this ordinance provides a balance to hold events and the concerns of neighborhood residents.

#### RATIONALE FOR RECOMMENDATION

The revisions to the California Fire Code require an amendment to the existing ordinance. City staff is recommending modifications to the existing ordinance to increase fire and life safety.

#### FUTURE ACTION

The Berkeley Fire Department will continue to monitor sponsors of indoor entertainment events for compliance of the fire code and all applicable federal, state, and local laws.

#### FISCAL IMPACTS

The City will not occur any fiscal impact as the program and monitoring will be administered with existing staff.

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CONTACT PERSONS

Gil Dong, Assistant Fire Chief, Berkeley Fire Prevention and Office of Emergency Services  
981-5502

#### Attachments

1. Ordinance

ORDINANCE NO. -N.S.

AMENDING CHAPTER 13.46 OF THE BERKELEY MUNICIPAL CODE  
PERTAINING TO INDOOR ENTERTAINMENT EVENTS AS A RESULT OF THE  
2007 CALIFORNIA FIRE CODE.

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

**Section 1.** That Chapter Berkeley Municipal Code 13.36 is amended to read as follows:

Chapter 13.46

**INDOOR ENTERTAINMENT EVENTS**

**Sections:**

- 13.46.010 Purpose and Findings**
- 13.46.020 Applicability**
- 13.46.030 Definitions**
- 13.46.040 Regulations for Operation and Conduct of All Entertainment Events**
- 13.46.050 Regulations for Operation and Conduct of Entertainment Events Involving Service or Permitted Consumption of Alcohol**
- 13.46.060 Enforcement-Police powers**
- 13.46.070 Violation-Penalty**

**Section 13.46.010 Purpose and Findings.**

The purpose of this ordinance is to protect the health and safety of persons who attend indoor entertainment events in occupancies that are not normally used for that purpose, as well as nearby residents, from the risks of fire and associated harms, while minimizing intrusion into the right of persons who wish to sponsor or attend such events.

- A. Large indoors events at which amplified music for purposes of dancing or entertainment take place are a regular and frequent occurrence in Berkeley.
- B. Frequently such gatherings occur in buildings which, because of their occupancy category under the California Building and Fire codes do not provide the level of fire safety that assembly occupancies require, such as posted occupancy limits, ample and well-marked emergency egress for large crowds of people who are not familiar with the building, and operating smoke detectors, fire alarms, and sprinkler systems.
- C. In addition, such gatherings are frequently inadequately planned and access is inadequately controlled, leading to overcrowding, impairing emergency access and sometimes to public disturbances.
- D. Large and inadequately controlled events in buildings which are not adequately equipped for them present the risk of serious injury and property damage, as well as death, and have resulted in fires which have caused personal injury and property damage, as well as other disturbances.

**Section 13.46.020 Applicability**

- A. This chapter applies to all entertainment events that are open to the public and that draw, or can reasonably be expected to draw over 50 attendees. The provisions and requirements of this chapter are in addition to any requirements that may be

applicable under the Zoning Ordinance and any agreement or nongovernmental regulation. Any more restrictive law, agreement or nongovernmental regulations shall still apply.

- B. This chapter shall not apply to entertainment events that involve primarily persons under the age of ten (10) as participants or attendees.
- C. This chapter applies to entertainment events that take place in buildings that are classified as R-2 occupancies (fraternities, sororities, apartment houses, convents, dormitories, boarding houses, monasteries, or non-transient hotels and motels as defined under the California Building and Fire Codes, and in which entertainment events are specifically permitted by a discretionary permit issued expressly for such purposes pursuant to the Berkeley Zoning Ordinance.

#### **Section 13.46.030 Definitions**

The following definitions apply for purposes of this chapter.

- A. "Entertainment event" means any event the primary purpose of which is either an amplified live music performance or the playing of recorded music for purposes of dancing or entertainment, which takes place in a building.
- B. "Open to the public" means that any person attend even if attendance requires the payment of a fee for admission, and includes events which are limited to members of an organization or organizations and their guests, if the organization or organizations have a combined membership of 500 members, unless only an identifiable subset of less than 50 members are permitted to attend.

#### **Section 13.46.040 Regulations and Conduct**

- A. All entertainment events regulated under this chapter are prohibited in buildings that are not in compliance with provisions of the Berkeley Fire Code (BFC), as they may be amended from time to time, which relate:
  - 1. General Fire Safety Precautions BFC Chapter 3, All Sections
  - 2. Fire Resistive Construction BFC Chapter 7, All Sections
  - 3. Fire Sprinkler Systems BFC Chapter 9, Section 903
  - 4. Fire and Smoke Alarm Systems BFC Chapter 9, Section 907
  - 5. Fire Extinguishers BFC Chapter 9, Section 906
  - 6. Means of egress BFC Chapter 10, All Sections
  - 7. Control of Hazardous Fire Areas BFD Chapter 47, All Sections
- B. The sponsor(s) or person(s) responsible for any entertainment event regulated by this chapter shall control access to the entertainment event in a manner that limits attendance to a number that does not exceed the maximum occupancy applicable to the building or the room in which the event is to occur. If the building or room does not have a posted occupancy limit, no entertainment event may be permitted. Any person who wishes to sponsor an entertainment event may obtain from the Berkeley Fire Prevention, after passing a pre-fire clearance inspection, a certificate of maximum occupancy for an event in the building in which the event is to occur. Said certificate must be posted in a conspicuous place prior to the event.
- C. The maximum occupancy shall be *200 or less* as determined by the maximum floor area allowances per occupant identified in Table 1004.1.1 of the California Fire Code;
- D. Sponsors of entertainment events shall obey all applicable local, state, and federal laws.

- E. This chapter does not supersede, or exempt any person from compliance with any agreements or nongovernmental regulations that may apply to them.

**Section 13.46.050 Regulations involving service or permitted consumption of alcohol**

- A. Prior to holding any entertainment involving the service or permitted consumption of alcohol, the sponsor(s) or person or persons responsible for said event shall notify the Fire Marshal and the Chief of Police of the date and time of the entertainment event no later than 10 business days prior to the event. The sponsor(s) shall schedule a pre-fire clearance inspection at such time of notification for the event.
- B. The sponsor of any entertainment event involving the service or permitted consumption of alcohol shall provide unarmed security in an attendee/security ratio to be determined by the Chief of Police and shall establish liaison with the police department regarding security arrangements. Security personnel shall be responsible for crowd control, fire watch and evacuation of occupants. The Chief of Police, in consultation with the Fire Marshal, shall base his or her determination as to the appropriate number of security personnel solely on the following factors:
1. The physical characteristics of the building in which the event is to occur, such as access and egress and internal circulation;
  2. The number of persons that can reasonably be anticipated to attend;
  3. The type of alcohol that will be served or is likely to be consumed;
  4. The number and character of other events at which incidents requiring police intervention have occurred with which the sponsor or any person responsible for the promotion of the event has been associated.

**Section 13.46.060 Enforcement**

- A. Any peace officer or fire official of the City shall have the power to stop and to disburse the attendees of any entertainment event or special entertainment event that results in any disturbance of the peace, disorderly conduct, exceeding posted occupancy limits, or violation of this chapter or any other law.

**Section 13.46.070 Violation-Penalty**

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, or of an infraction at the discretion of the prosecutor.

Section 3. This ordinance shall take effect January 12, 2008.

Section 4. This bill shall be posted for two (2) days prior to adoption in the glass case located on the north side of the Civic Center Building at the corner of Milvia and Center Streets. Within fifteen (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.

