

ORDINANCE NO. 7,004–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 can 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. They 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 2. This ordinance shall take effect January 12, 2008.

Section 3. This bill shall be posted for two (2) days prior to adoption in the display 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.

At a regular meeting of the Council of the City of Berkeley held on November 6, 2007, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

