



Kate Harrison
Councilmember District 4

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: October 3, 2023

Item Number: 10

Item Description: Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) and Repeal of Chapter 12.99 to Conform to State Law and Respond to Direction from the California Department of Housing and Community Development

Submitted by: Councilmembers Harrison and Robinson

RECOMMENDATION

1. Accept Policy Alternative 1 providing standards for construction of new ADUs within the front setback, as described in the Supplemental 2 submitted by the Mayor et al.;
2. Accept Policy Alternative 2. Maintain conversion of an accessory building or structure to an ADU until after three years, consistent with Council direction in July 2023;
3. Accept Policy Alternative 3. Keep Neighbor Noticing Procedures;
4. Add a 20-foot ADU height limit for units in the Hillside Overlay area, consistent with the average height allowed in the rest of the city; and
5. Defer adoption and consideration of the parking requirement for ADUs in the Hillside Overlay only as specified in TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS pending the Fire Department's completion of an evacuation study specific to ADUs.

BACKGROUND

The proposed recommendations build upon consensus with respect to building height and noticing offered as Alternative Policy proposals 1 and 3 at the September 19, 2023 Council meeting. Policy Alternative 2, while not universally accepted at the meeting, is a reasonable measure to avoid a loophole that would undermine years of community, Planning Department, Commission, and Council work to craft thoughtful ADU setback and other regulations. A 20-foot building height for ADUs, providing up to two story construction which helps maximize living area while minimizing building footprint and potentially providing for larger setbacks that enhance fire safety and is consistent with policy elsewhere in the City.

Recommendation 5 defers the adoption and consideration of the parking requirement for ADUs in the Hillside Overlay, pending the Fire Department's completion of the

evacuation study now underway. The Fire Department has consistently explained that any new construction in the Hillside Overlay, and especially within the Very High Fire Zones, exacerbates fire dangers. Unfortunately, the rule limiting ADU development on streets with 26 feet or more wide, adopted by the Council before December 2020 and which had a clear nexus to evacuation safety, was determined by HCD to not be permissible under State law.

The argument that off-street parking is inherently safer than street parking warrants further study. At the time of a fire, vehicles in the hills, regardless of where they are normally parked, are likely to be utilized by their owners to evacuate. Therefore, they will contribute to congestion that could block fire engines on narrow streets. What is making the high fire district unsafe is current congestion; while street parking on narrow streets exacerbates the issue, it is a matter that has to be dealt with holistically through the Fire Department's study, likely to require red curbing of some streets in the High Fire Zone. Until that time, it is reasonable to not require parking in the Hillside Overlay consistent with Council parking policies other parts of the City.

Finally, while not part of the recommendation, given the Fire Chief's recent presentation regarding the dire threat fire danger facing the Hillside Overlay and the entire City, and especially since recent changes in state law promoting ADU construction and the ability to sell ADUs separate from the primary parcel that could increase the number of real property transactions, homeowners and the Council would do well to intervene in these transactions to maximize fire safety and disclosure benefits to buyers, including seriously considering the prescribed removal of certain species of vegetation or trees within 30 to 100 feet from properties.

The wildland section of the Berkeley Fire Code currently requires yearly inspection of properties in the City's very high fire danger zones. Assembly Bill 38 (2021) further requires sellers of property in a high or very high fire hazard severity zone to provide a disclosure notice of documentation to the buyer of the results of the Fire Department's inspection obtained in the six-month period preceding the date the seller enters into a transaction.

The Department currently takes a holistic approach and focuses on disrupting the fuel continuity through a property and from fuel on the ground to the canopy, but does not yet require the removal of any specific type of species. As the Department continues to study and further develop appropriate evacuation and preparation measures, Berkeley homeowners would do well to take voluntary measures to remove such dangerous material from their property to protect themselves, their neighbors, and the entire City.