

Councilmember Sophie Hahn
City of Berkeley, District 5

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: September 19, 2023

Item Number: 17

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 Guidance from the California Department of Housing and Community Development

Submitted by: Mayor Arreguin and Councilmembers Wengraf and Hahn

Recommending that ADU Policy Alternatives 1, 2 and 3, as proposed in Staff's Supplemental 1 filing, be adopted and submitting AC Transit bus schedules to the record.

With respect to Policy Alternative 1, addressing ADUs sited within front setbacks, slightly amended language is proposed for adoption, as provided by the City Attorney's Office. The amended language is for clarity of drafting and does not change the operation of the Policy Alternative. Policy Alternatives 2 and 3, which restore policies previously adopted by the City Council on conversion of non-conforming Accessory Buildings and Structures and Neighborhood Noticing, are recommended for adoption as presented in the Staff's Supplemental 1 Report.

AC Transit Schedules for lines 7, 65, and 67, which serve areas in the Hillside Overlay, are submitted to demonstrate limited weekday headways and non-existent hours of operation nights, weekends, and holidays, as referenced in Section (C)(2) of the Ordinance Findings.

Also included is documentation to support use of Public Resources Code definition of Transit.

Policy Alternative 1:

ADUs are an important way to bring gentle density into residential neighborhoods. Laws passed at the state level enable the production of ADUs through conversions, additions, and new-build. One element of these laws allows ADUs to be placed within a front setback if an 800 square foot ADU cannot be accommodated elsewhere on the parcel.

This opens the entire front setback - not just a small portion that may be needed to achieve 800 square feet - for siting of the ADU, including the potential to site the ADU directly on the front lot line.

This is [what happened at the 2915 Harper Street location](#) in South Berkeley.

An ADU was placed directly at the front lot line because other areas of the parcel could not accommodate an 800 square foot ADU. The outcome at Harper Street has been a significant concern for the community and some Councilmembers.

Policy Alternative 1 (page 28 of Staff's Supplemental 1 Report) proposes an objective standard that fixes the Harper Street "problem" while still complying with State law. This Policy Alternative allows intrusions into the front setback in a graduated manner, with siting of an ADU at the front lot line available only as a last resort.

- **Step 1:** If an 800 square foot ADU cannot be accommodated on the parcel, an ADU may be sited in the existing front setback but must still maintain a reduced 10-foot setback.
- **Step 2:** If an 800 square foot ADU cannot be sited within the reduced 10-foot setback, a 5 foot, further-reduced setback is allowed.
- **Step 3:** If a 5-foot setback precludes an 800 square foot ADU, the ADU may be sited at the front lot line.

Staff's language was simplified by the City Attorney's office, and their more succinct version is proposed here for adoption, with identical effect:

Section 23.306.030 (A)(4)

Front Setback, New Construction. An ADU shall not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet. [Should an ADU require area within the front setback, the ADU shall maintain a minimum 10-foot setback from the front lot line, unless such setback would preclude an ADU of 800 square feet. If a 10-foot setback would preclude an ADU of 800 square feet, the ADU shall maintain a 5-foot setback from the front lot line. If a 5-foot setback would preclude an ADU of 800 square feet, the ADU may be sited up to the front lot line.](#)

This easily implemented objective standard balances the need to allow ADUs to occupy area within a front setback while still preserving as much of a front setback as possible.

The graduated reduced front setback alternative has the same effect as all setbacks – the buildable area on the parcel will be a different shape from what would be possible with other or no setbacks. The purpose, as with all setbacks, is to mitigate impacts on the

public right of way and on adjacent parcels and to conform more closely with the normal expectation that in Berkeley's residential areas, a front setback will exist.

Policy Alternative 2:

Policy Alternative 2 addresses the circumstance of an ADU converted from a non-conforming Accessory Building or Structure such as a shed or garage. It re-introduces a concept already included in Berkeley's ADU Ordinance, which staff has proposed to eliminate in the main staff report.

By limiting conversion of non-conforming Accessory Buildings and Structures to structures at least 3 years old, Council previously closed a loophole whereby a new Accessory Building or Structure that would not comply with ADU standards is constructed and immediately converted into a non-conforming ADU, thereby circumventing ADU requirements. Staff's main report eliminates this currently existing requirement and proposes reinstating it as a "Policy Alternative."

Nothing in State ADU Laws nor in the State Department of Housing and Community Development (HCD) ADU handbook precludes or addresses this loophole-closing measure, which does not preclude or constrain construction of a legally conforming ADU.

This supplemental recommends reinstating the existing measure to close this loophole, using language provided in the Staff Supplemental 1, Policy Alternative 2.

Policy Alternative 3:

Additionally, Berkeley's existing ADU code includes a neighbor noticing requirement that includes adjacent, confronting, and abutting properties. Staff's recommendation removes these noticing requirements and proposes them as Policy Alternative 3. This Supplemental recommends adoption of Policy Alternative 3, as presented by staff in their Supplemental 1 Report, to maintain the currently existing requirement of notice to owners and tenants of adjacent, confronting, and abutting properties. Staff has already updated the City's noticing document to ensure neighbors understand that notice is a courtesy and does not imply any right to contest or appeal an ADU permit.

Documentation to Further Support Staff's Recommendation to use the Public Resources Code Definition of Transit:

The definition of public transit used in Public Resources Code Section 21155 and 21064.3 is consistent with the state laws and regulations for ADU construction in California and has become the standard definition for recently passed housing legislation. It is also the definition being proposed by staff in the City of Berkeley's "Missing Middle" legislation. The following state laws that support development of ADUs use the Public Resources Code definition:

[SB 9](#), Atkins. Housing development: approvals. (2021-2022)

[SB 897](#), Wieckowski. Accessory dwelling units: junior accessory dwelling units. (2021-2022)

[AB 2221](#), Quirk-Silva. Accessory dwelling units. (2021-2022)

[AB 68](#), Quirk-Silva. Department of Housing and Community Development: California Statewide Housing Plan: annual reports. (2021-2022)

7 Monday through Friday except holidays To El Cerrito Del Norte BART

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AC TRANSIT SCHEDULE

EFFECTIVE:

August 6, 2023

Emeryville

Emeryville Amtrak
Hollis St.

Berkeley

Ashby Ave.
College Ave.
UC Berkeley
Downtown Berkeley BART
Shattuck Avenue
The Circle

Kensington

Arlington Avenue

El Cerrito

Arlington Blvd.
Barrett Avenue
El Cerrito del Norte BART

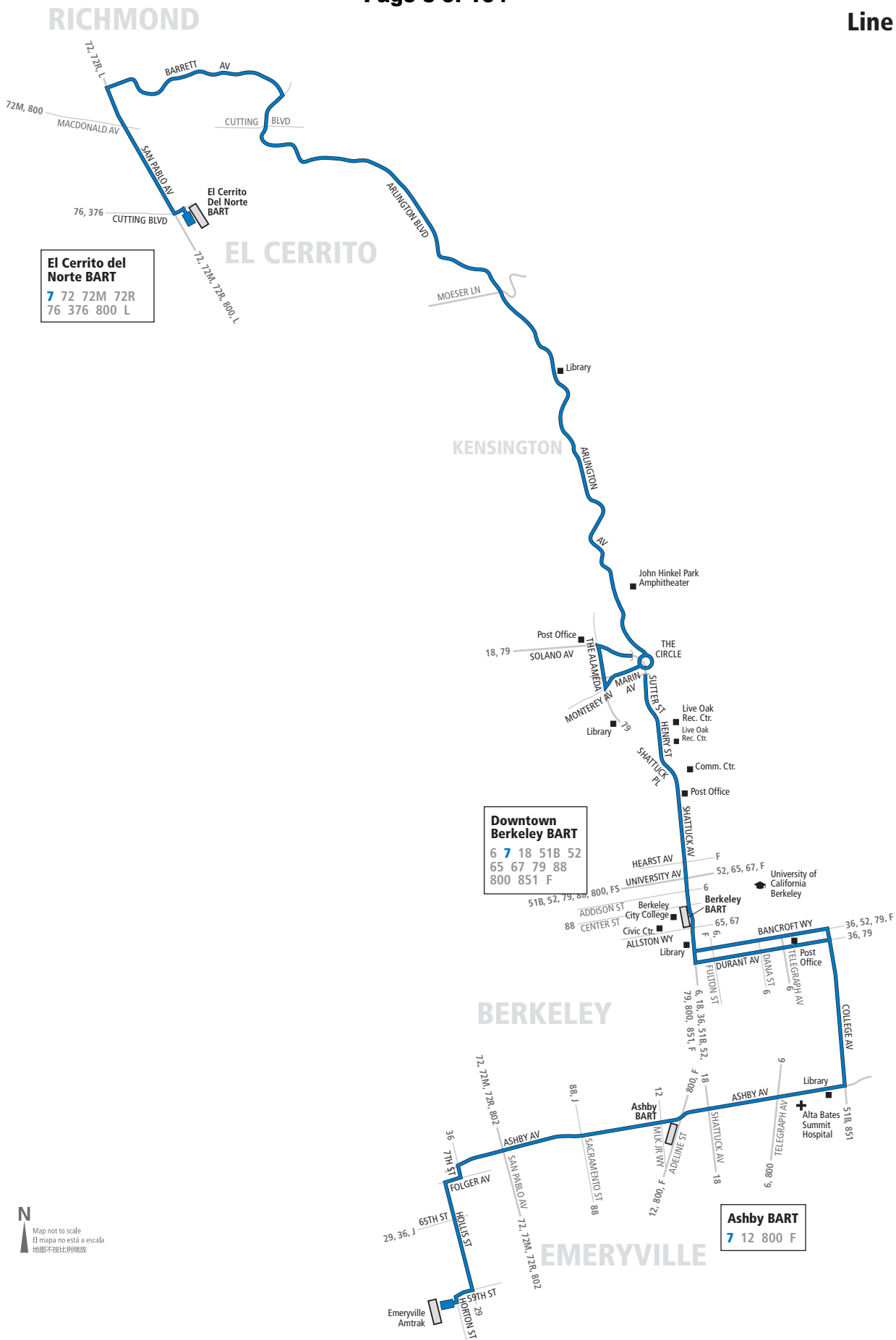
Every day

7 Monday through Friday except holidays To Emeryville Amtrak

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 Map not to scale
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65 Monday through Friday except holidays To Senior Ave. loop

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| 1:15p | 1:29p | — | 1:37p |
| 1:55p | 2:09p | 2:18p | |
| 2:35p | 2:50p | — | 2:58p |
| 3:15p | 3:30p | 3:38p | |
| 3:55p | 4:10p | — | 4:18p |
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| 5:55p | 6:10p | 6:18p | |
| 6:35p | 6:50p | — | 6:58p |
| 7:15p | 7:29p | 7:37p | |

65 Monday through Friday except holidays To Downtown Berkeley

| Lawrence Hall of Science | Grizzly Peak Blvd. & Senior Ave. | Euclid Ave. & Grizzly Peak Blvd. | Allston Way & Shattuck Ave. |
|--------------------------|----------------------------------|----------------------------------|-----------------------------|
| 7:35a | — | 7:47a | 8:04a |
| — | 8:15a | 8:27a | 8:44a |
| 8:55a | — | 9:07a | 9:24a |
| — | 9:35a | 9:47a | 10:06a |
| 10:15a | — | 10:28a | 10:47a |
| — | 10:56a | 11:08a | 11:27a |
| 11:36a | — | 11:49a | 12:08p |
| — | 12:16p | 12:28p | 12:47p |
| 12:58p | — | 1:11p | 1:30p |
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| 2:18p | — | 2:31p | 2:50p |
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| 7:37p | — | 7:48p | 8:05p |

65

AC TRANSIT SCHEDULE

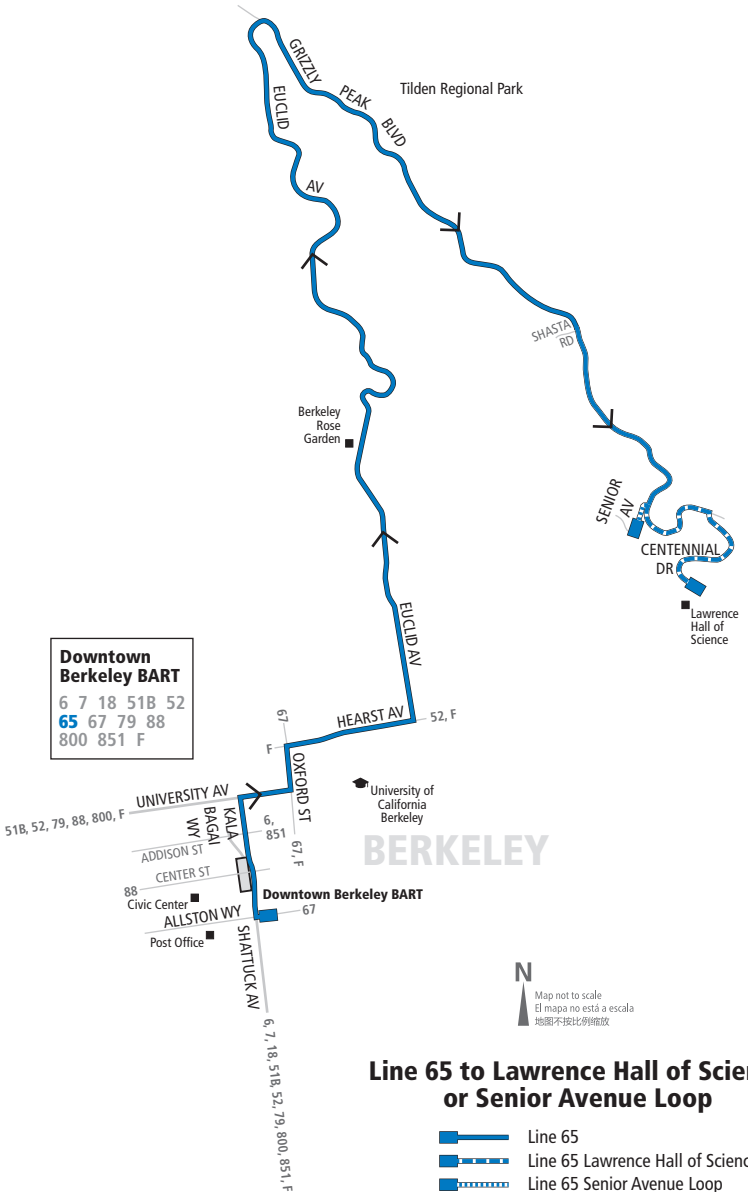
EFFECTIVE:
August 6, 2023

Berkeley

- Downtown Berkeley BART
- Hearst Avenue
- Euclid Avenue
- Grizzly Peak Blvd.
- Lawrence Hall of Science
- Senior Avenue
- Campus Drive

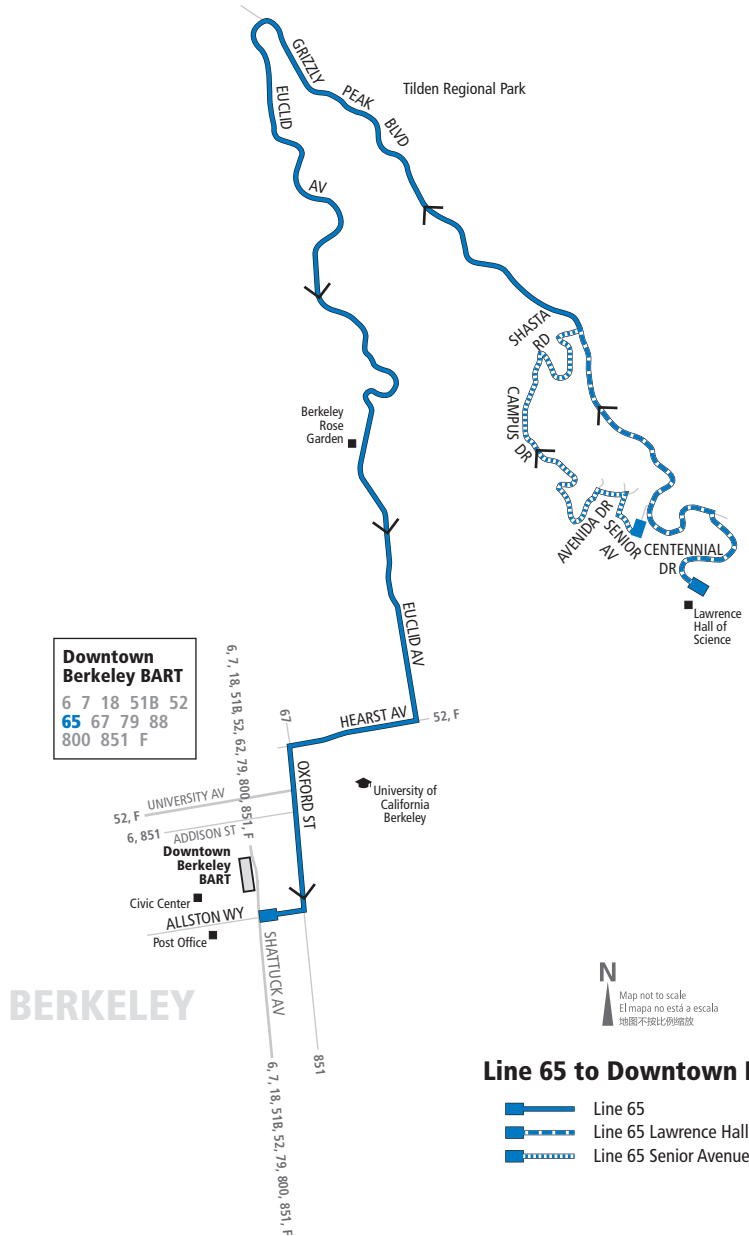
Monday through Friday except
holidays

Line 65



Line 65 to Lawrence Hall of Science or Senior Avenue Loop

-  Line 65
-  Line 65 Lawrence Hall of Science
-  Line 65 Senior Avenue Loop



Line 65 to Downtown Berkeley

-  Line 65
-  Line 65 Lawrence Hall of Science
-  Line 65 Senior Avenue Loop

67 Monday through Friday except holidays To Downtown Berkeley

| Spruce St. & Grizzly Peak Blvd. | Kenyon Ave. & Trinity Ave. | Vassar Ave. & Spruce St. | Allston Way & Shattuck Ave. |
|---------------------------------|----------------------------|--------------------------|-----------------------------|
| 7:35a | 7:37a | 7:41a | 7:56a |
| 8:05a | 8:07a | 8:11a | 8:26a |
| 8:35a | 8:37a | 8:41a | 8:56a |
| 9:05a | 9:07a | 9:11a | 9:26a |
| 9:35a | 9:37a | 9:41a | 9:56a |
| 10:05a | 10:07a | 10:11a | 10:26a |
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| 11:05a | 11:07a | 11:11a | 11:26a |
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| 7:05p | 7:07p | 7:11p | 7:26p |

67 Monday through Friday except holidays To Spruce St. & Grizzly Peak Blvd.

| Allston Way & Shattuck Ave. | Spruce St. & Grizzly Peak Blvd. |
|-----------------------------|---------------------------------|
| 8:12a | 8:22a |
| 8:42a | 8:53a |
| 9:12a | 9:23a |
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67

AC TRANSIT SCHEDULE

EFFECTIVE:

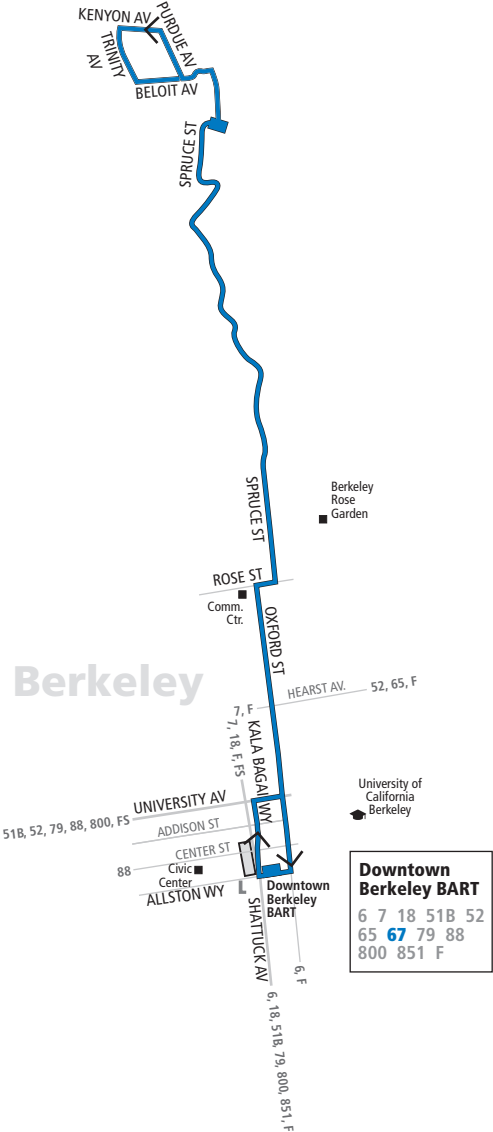
December 5, 2021

Berkeley

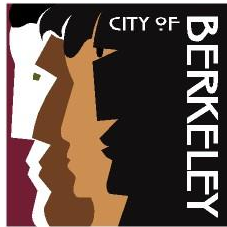
Downtown Berkeley BART
Oxford Street
Spruce Street
Beloit Avenue

Monday through Friday except
holidays

Line 67



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Rashi Kesarwani
Councilmember District 1

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: September 19, 2023

Item Number: #17

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 Guidance from the California Department of Housing and Community Development

Submitted by: Rashi Kesarwani

This supplemental item recommends rejecting the three policy alternatives outlined in Supplemental 1 due to the undue burden placed on homeowners seeking to create Accessory Dwelling Units (ADUs) and the additional administrative complexity for City staff.

Further, recommend pausing parking requirement for Hillside Overlay specified in TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS and TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T) pending: 1) preparation of a written analysis from the City Attorney's Office for the City Council's consideration specifying the legal risk, 2) additional City of Berkeley Planning and Development Department consultation with California Housing and Community Development Department (HCD), and 3) Fire Department completion of an evacuation study specific to ADUs, as requested by HCD in its enforcement letter dated Oct. 17, 2022.



Rashi Kesarwani
Councilmember, District 1

ACTION CALENDAR
September 19, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Supplemental 2 Recommendations on Policy Alternatives and Parking in Hillside Overlay District for Accessory Dwelling Units (ADUs)

RECOMMENDATION

Recommend Council reject the three policy alternatives outlined in Supplemental 1 *Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) and Repeal of Chapter 12.99 to Conform to State Law and Respond to Guidance from the California Department of Housing and Community Development* (pgs. 28-29 of 57) due to the undue burden placed on homeowners seeking to create ADUs and the additional administrative complexity for City staff:

- Reject Policy Alternative 1. Additional prescriptive standards for New Construction ADUs within the front setback (Section 8 of the Recommended Draft Ordinance)
- Reject Policy Alternative 2. Converted ADUs: Maintain time limit based on when the accessory building or structure was created (Section 8 of Recommended Draft Ordinance)
- Reject Policy Alternative 3. Keep Neighbor Noticing Procedures as-is except removing noticing to owner(s) of subject property (Section 8 of Recommended Draft Ordinance)

Further, recommend pausing parking requirement for Hillside Overlay specified in TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS and TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T) pending: 1) preparation of a written analysis from the City Attorney's Office for the City Council's consideration specifying the legal risk, 2) additional City of Berkeley Planning and

Development Department consultation with California Housing and Community Development Department (HCD), and 3) Fire Department completion of an evacuation study specific to ADUs, as requested by HCD in its enforcement letter dated Oct. 17, 2022 and as described below.

CURRENT SITUATION AND ITS EFFECTS

The City Council adopted ADU Ordinance Nos. 7,797-N.S. and 7,799-N.S. on Feb. 8, 2022. In a letter dated Oct. 17, 2022¹, HCD provided written findings to the City of Berkeley Planning and Development Department that Ordinance No. 7,799-N.S. (Wildfire Hazard Evacuation Risk Mitigation Ordinance) did not comply with state ADU law—Government Code Section 65852.2. The state HCD writes in part:

Section 12.99 – *Wildfire Hazard Evacuation Risk Mitigation Ordinance* – To restrict ADUs and Junior Accessory Dwelling Units (JADUs) in the Hillside Overlay District, the Ordinance relies on a local agency’s ability to designate areas where ADUs may be permitted based on the impact on traffic flow and public safety per Government Code 65852.2, subdivision (a)(1)(A). The Ordinance provides general information regarding the Hillside Overlay District and its topography and location within Berkeley’s Very High Fire Hazard Severity Zone (VHFHSZ). In addition, the Ordinance refers to a study published by UC Berkeley, and upon further communication by HCD with the City on March 4, 2022, the City provided information regarding a traffic simulation study (Developing Transportation Response Strategies for Wildfire Evacuations via an Empirically Supported Traffic Simulation of Berkeley, California, Wong, 2021) conducted within the Hillside Overlay District.

However, while HCD is sympathetic to concerns about fire safety and the need to ensure adequate evacuation in the event of a fire, the City has not adequately demonstrated that new ADUs will actually impact public safety in the VHFHSZ. The traffic simulation study is not specific to ADUs and JADUs, and therefore its information and conclusions do not adequately justify the restriction of ADUs in the Hillside Overlay District per Government Code 65852.2, subdivision (a)(1)(A). Specifically, the City relies on the study, which looks at total vehicular use, to conclude that additional ADUs will create an evacuation hazard. **This study, however, does not provide data on how many lots are likely to add ADUs or what specific impact new ADUs might have on evacuations. Moreover, the City does not account for the potential for ADUs to be excluded from requiring a parking space given the availability of public transit in the Hillside Overlay District. HCD is aware that AC Transit serves the Berkeley**

¹ City Manager, Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) and Repeal of Chapter 12.99 to Conform to State Law and Respond to Guidance from the California Department of Housing and Community Development, <https://berkeleyca.gov/city-council-regular-meeting-eagenda-september-19-2023>, Regular City Council Meeting Item #17, Sept. 19, 2023, pgs. 71-73 of 88

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E-Mail: rkesarwani@cityofberkeley.info

Hills location, exempting many, if not all, potential lots from parking space requirements for new ADUs (emphasis added).

Furthermore, even if the City would provide adequate justification for this restriction on ADUs under this subdivision, the City may not justify such a restriction on ADUs that fall under subdivision (e), as local development standards (such as an area restriction based on VHFHSZ designation) provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e). In summary, the City must remove these restrictions and permit applications pursuant to Government Code 65852.2, subdivisions (a) and (e).

This aforementioned section of the HCD enforcement letter references state ADU law, Government Code Section 65852.2, which states in part:

(d) Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply:

(1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances:

(A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

The entire City of Berkeley is within one-half mile walking distance of public transit, and the plain language of the state Government Code Section 65852.2(d)(1)(A) indicates that it is generally not legally allowable to require off-street parking for ADUs anywhere in the City of Berkeley. It is unclear why the ordinance—as proposed in Supplemental 1—requires off-street parking in the Hillside Overlay District without: 1) providing a written legal analysis, inclusive of consultation with HCD, to the City Council for the basis for violating the plain language of Government Code Section 65852.2 above and 2) completion of an evacuation study specific to ADUs, as described in the HCD Oct. 17, 2022 enforcement letter.

The staff report *Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) and Repeal of Chapter 12.99 to Conform to State Law and Respond to Guidance from the California Department of Housing and Community Development* provides the following information: “Staff revised the requirements to use the Public Resource Code (PRC) Section 21155 definition of a major public transit or high-quality transit corridor, instead of subdivision (d)(1)4 and (j)(11)5 of Government Code Section 65852.2, as proposed in the July 25th recommended draft ordinance. This change relies on a different interpretation of the definition of “public transit” in Government Code 65852.2, supported by the use of the phrase “including, but not limited to,” which may allow for use of the PRC definition in the parking context, in

addition to the height context. **Staff are unclear whether or not HCD would support this interpretation” (emphasis added).**

In fact, the *HCD ADU Handbook* (updated July 2022)² appears to be clear on this point, as shown in Exhibit 1. Public transit is defined as any location where an individual may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the general public. The handbook is silent about the availability of “major public transit or high-quality transit corridor” for the purposes of imposing parking requirements for ADUs.

Exhibit 1: HCD ADU Handbook Clearly States that a Local Agency Cannot Impose Off-Street Parking Requirements Within One-Half Mile Walking Distance of Public Transit, As Defined

C) Parking Requirements

- **Are certain ADUs exempt from parking requirements?**

Yes. A local agency shall not impose ADU parking standards for any of the following ADUs, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10):

- (1) ADUs located within one-half mile walking distance of public transit.
- (2) ADUs located within an architecturally and historically significant historic district.
- (3) ADUs that are part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the ADU.
- (5) When there is a car share vehicle located within one block of the ADU.

Note: For the purposes of State ADU Law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the Coastal Zone.

Because of the lack of clarity as to whether the proposed change in parking requirements for ADUs in certain areas of the Hillside Overlay District is legally allowable pursuant to state law, it is recommended that this action is paused until more written legal analysis can be provided, inclusive of consultation with HCD, and an evacuation study specific to ADUs in the hills can be conducted. One of the primary goals of adopting a revised ordinance is to comply with state law, as described in the HCD enforcement letter dated Oct. 17, 2022. It is therefore

² California Department of Housing and Community Development, Accessory Dwelling Unit Handbook, <https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf>, Updated July 2022

reasonable for the City Council to receive more information about whether the proposed ordinance is creating new legal risk.

RATIONALE FOR RECOMMENDATION

Reject Policy Alternative 1. Additional prescriptive standards for New Construction ADUs within the front setback (Section 23.306.030 Development Standards, p. 12 of 57). Additional prescriptive standards for the front setback create unnecessary burdens for homeowners who are likely creating an ADU in the front yard due to insufficient space or other constraints in the backyard. The proposed ordinance language is adequate:

4. Front Setback, New Construction. An ADU shall not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet.

Reject Policy Alternative 2. Converted ADUs: Maintain time limit based on when the accessory building or structure was created (Section 23.306.030 Development Standards, p. 12 of 57). A time limit of three years for a homeowner to submit an ADU application for a legally established accessory building or accessory structure would place an unreasonable burden on a homeowner who may be in immediate need of the additional living space or rental income associated with an ADU. The proposed ordinance language is adequate:

3. Accessory Building or Accessory Structure Conversion. An ADU converted from a legally established accessory building or accessory structure is allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure, provided that the ADU meets fire and safety standards set forth in the California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing accessory building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.

Reject Policy Alternative 3. Keep Neighbor Noticing Procedures as-is except removing noticing to owner(s) of subject property (23.306.040 Permit Procedures, p. 14-15 of 57). Planning staff reported in the May 3, 2023 Planning Commission agenda packet³ that the neighbor noticing requirement is burdensome to staff and frustrates neighbors who may be unaware that ADUs are *not* subject to a public review process. Specifically, staff reported the following in the Planning Commission packet: “ADU permits are building permits, and cannot be printed out or shared online with members of the public (unlike zoning permits). For neighbors

³ Planning Commission Agenda, Item #11 Public Hearing: Accessory Dwelling Unit Amendments, https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-05-03%20PC_Agenda%20Packet.pdf, May 3, 2023, p. 72 of 147

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interested in seeing proposed ADU plans, this means that they must visit the Permit Service Center in-person and look at the plans accompanied by a staff member. Additionally, ADU permits are non-discretionary permits, so members of the public ultimately do not have a means of providing feedback on or appealing a proposed ADU. Staff have found there is often an expectation from public posting or receiving notice of a proposed ADU that there is a public review process involved, and there is not.” The current neighbor noticing requirement, including neighbors visiting the Permit Service Center in-person to view plans with staff—for ADUs that are not subject to a public review process—is using valuable staff time that could go toward more productive uses, such as processing permit applications in a timely manner. Further, the cost of materials, postage, and staff time is significant for a homeowner: a fee of \$460. The proposed ordinance language strikes an appropriate balance—recommended by the Planning Commission—to limit notification to only occupants on the subject property. The proposed language is adequate:

B. Noticing.

- 1. Scope and Timing of Notice. Notice of an ADU application shall be mailed to all occupants of the subject property, excepting the property owner(s), within ten working days of submission of the building permit to the City.*
- 2. Content of Notice. Notice shall provide the address of the project and include allowable hours of construction, a link to the City’s ADU webpage identifying permit and construction resources, and contact information for a Rent Board Housing Counselor.*
- 3. Mailing Fees. The applicant shall be responsible for the cost of materials, postage, and staff time necessary to process and mail the notices.*

Recommend Pausing Parking Requirement for Hillside Overlay Specified in TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS and TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T) Pending Additional Written Legal Analysis, Consultation with HCD, and Evacuation Study Specific to ADUs in Hillside Overlay. In its enforcement letter to the City of Berkeley Planning and Development Department dated Oct. 17, 2022, HCD provided clear interpretation of state ADU law as it relates to parking: “...the City does not account for the potential for ADUs to be excluded from requiring a parking space given the availability of public transit in the Hillside Overlay District. HCD is aware that AC Transit serves the Berkeley Hills location, exempting many, if not all, potential lots from parking space requirements for new ADUs.”

The HCD interpretation that parking requirements cannot be required for parcels located near public transit (regardless of the frequency of such public transit) derives from Government Code Section 65852.2(d)(1)(a):

(d) Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply:

(1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances:

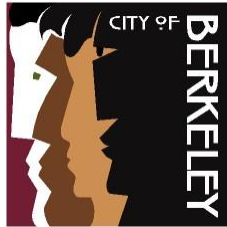
(A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

Additional information is respectfully requested before adoption of ordinance provisions which may be found to be in continued violation of state ADU law.

CONTACT PERSON

Councilmember Rashi Kesarwani, District 1

(510) 981-7110



Office of the City Manager

REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: September 19, 2023

Item Number: 17

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 Guidance from the California Department of Housing and Community Development (*Continued from July 25, 2023*)

Submitted by: Jordan Klein, Director, Planning and Development

Planning & Development staff are submitting revised materials for City Council's consideration:

1. A revised recommended draft ordinance (Attachment 1);
2. A revised policy alternatives attachment related to: New Construction ADUs within the front setback; Time limit for accessory structure conversions; and Neighbor Noticing Procedure (Attachment 2); and
3. A revised table outlining the sources of proposed ADU ordinance amendments (Attachment 3).
4. A report from the Berkeley Fire Department regarding the impact of Zoning on wildfire risk within the Hillside Overlay (Attachment 4).

Revisions to the Recommended Draft Ordinance

Staff propose revisions to the recommended ADU ordinance, and are providing additional reference materials, based on further discussions with City Councilmembers, Building and Safety staff, and Fire Department staff. The revisions since the July 25, 2023 version of the ordinance are highlighted in the supplemental recommended draft

ordinance in grey (Attachment 1). Additional revisions from the materials published on September 7, 2023 are as follows:

1. *Sections 1 and 2 – General and Specific Findings.* Staff added information to the general and specific findings sections.
2. *Section 6 - Building Separation Measurement.* Staff revised the definition of building separation measurement to remove the term “neighboring” to increase clarity.
3. *Section 8 - Table 23.306-2: Building Height, Maximum, Detached, New Construction, outside the Hillside Overlay.* Staff revised the measurement to clarify that the maximum height for all detached new construction ADUs outside of the Hillside Overlay will remain 20 feet.
4. *Section 8 – Table 23.306-2: Building Separation for Detached ADU.* Staff revised the minimum building separation distance for ADUs within the Hillside Overlay from 5 feet to 8 feet based on Fire Department recommendation, with an exception where an 8-foot separation would preclude an ADU of 800 square feet, in which case the minimum building separation is reduced to 5 feet.
5. *Section 8 – Table 23.306-3: ADU Building Height – Detached New Construction.* Staff revised the header of Table 23.306-3 to clarify that distance to public transit is measured as within or not within one-half mile *walking* distance of a major transit stop or high-quality transit corridor as defined by California Public Resources Code 21155.
6. *Section 8 – Attached ADU, New Construction Height.* Staff simplified the language for new construction attached ADUs to allow for a height up to 25 feet with a Zoning Certificate.
7. *Section 10 – Table 23.322-1: Required Off Street Parking in Residential Districts.* Staff revised the parking requirements for ADUs within the Hillside Overlay to clarify that distance to public transit is measured as within or not within one-half mile *walking* distance of a major transit stop or high-quality transit corridor.

Policy Alternatives

Staff revised the policy alternatives document (*Attachment 2*) since the materials published on September 7, 2023 to remove an alternative related to building separation, which was incorporated into the revised recommended draft ordinance.

ORDINANCE NO. -N.S.

REPEAL OF THE WILDFIRE HAZARD EVACUATION RISK MITIGATION ORDINANCE (BMC 12.99), AND AMENDMENTS TO THE RULES OF MEASUREMENT (BMC 23.106), ACCESSORY DWELLING UNIT (ADU) ORDINANCE (BMC 23.306), PARKING AND LOADING (BMC 23.322), EXEMPTIONS TO NONCONFORMING USES, STRUCTURES, AND BUILDINGS (BMC 23.324.060), AND DEFINED TERMS (BMC 23.502.020) RELATING TO ADUS

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

Section 1. General Findings

- A. California Government Code Sections 65852.1, 65852.2 and 65852.22 provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use.
 - 1. California Government Code Section 65852.2(d)(1)(A) and (j)(11) finds that a local agency shall not impose any parking standards for an accessory dwelling unit where the accessory dwelling unit is located within one half-mile walking distance of public transit.
 - 2. California Government Code Section 65852.2(c)(2)(D)(ii) uses the proximity of parcels to major transit stops and high quality transit corridors as defined in Section 21155 of the California Public Resources Code.
- B. Accessory dwelling units are statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h).
- C. Policy H-18 of the City of Berkeley's 2023-2031 Housing Element encourages the addition of accessory dwelling units on properties with single-family and multi-unit homes.
- D. On October 17, 2022, the City received a letter from the State Department of Housing and Community Development (HCD) stating that the City's current ADU ordinances (BMC Sections 23.306 and 12.99, the "Ordinances") do not comply with Government Code Section 65852.2.
 - 1. HCD found a discrepancy between the definition of "Efficiency Kitchen" contained within Ordinance No. 7,797-N.S. (Chapter 23.306) and Government Code §65852.22(a)(6)(A) and requested that the City remove the sink requirement from its zoning definition, as well as the reference to a working refrigerator in the definition of a "Junior Accessory Dwelling Unit."
 - 2. Regarding Ordinance No. 7,799-N.S (Chapter 12.99), HCD found that the City did not make adequate findings with respect to ADU and Junior ADU

development impacts on traffic flow and public safety when the City adopted limitations on ADU and Junior ADU development in the Hillside Overlay zoning district.

- E. In light of the HCD's letter, Policy H-18 of the City of Berkeley's 2023-2031 Housing Element, and Government Code Sections 65852.1, 65852.2 and 65852.22, the Planning Commission held a public hearing on May 3, 2023, to consider proposed amendments to Title 23 relating to ADUs. The Commission unanimously recommended staff's proposal with three modifications, which were incorporated with modifications into the proposed amendments: (1) Regulating bay window and balcony projections using setback requirements; (2) Revising Neighbor Noticing requirements to subject property tenants; (3) Permitting ADUs to reach maximum allowable height without requiring an Administrative Use Permit.

Section 2. Specific Findings

- A. The intent of Berkeley's Hillside Overlay zone, as set forth in BMC 23.210.020, is to protect the safety and health of residents in an area comprised of Berkeley's Very-High Fire Hazard Severity Zones and Wildland-Urban Interface (WUI) Fire Areas. The Hillside Overlay has unique conditions, including limited transit access, steep topography, proximity to forested wild land, and vegetation that create a high risk of wildfires, earthquakes, and landslides. These hazards put residents of the Hillside Overlay at greater risk than residents of other parts of the City.
1. On December 10, 2019, the City adopted a Hazard Mitigation Plan that identifies Earthquake and Wildland-Urban Interface Fire as "Likely" and "Catastrophic" events.
 2. The earthquake risk in the Hillside Overlay is exceptionally high because the Hayward Fault bisects the Hillside Overlay, traversing the full length of these zones, with violent (Level 9 of 10) shaking predicted in the US Geologic Services Hayward Fault earthquake scenario (HayWired).
 3. The 2014 Working Group on California Earthquake Probabilities calculated that there is a 33 percent likelihood of a large (magnitude 6.7 or greater) earthquake occurring on the Hayward Fault within three decades. On March 9, 2015, a report published by the U.S. Geological Survey found that the Bay Area has a 72 percent chance of having at least a magnitude 6.7 earthquake in the same time period.
 4. The risk of a wind-driven wildfire is also very high within the Hillside Overlay because of the City's unique topography, which is flat along the San Francisco Bay in the west but turns into steeper, sloped terrain approaching 1,000 feet in elevation along the City's eastern edge, as well as strong winds that develop in the late spring and early fall. Vegetation/wildland fires tend to burn more intensely and spread faster

when burning uphill and up-canyon, unless they are wind-driven, which can then cause intense and rapid burning downhill.

5. The high fire risk within the Hillside Overlay is demonstrated by Berkeley's history of catastrophic wildfires. Wildfires that occurred in Berkeley in 1905, 1923, 1946, 1970 and 1991 resulted in loss of injury, loss of life, extensive damage and destruction of property and enormous economic impacts. The two most notable are:
 - i. In 1923, a wildfire swept out of Tilden Park through Berkeley, ultimately destroying approximately 600 homes, as well as churches, schools, libraries, and student living quarters. At that time, the population of Berkeley was 52,000. One thousand residents were displaced or left homeless. The fire traveled across the then sparsely populated ridge line to what is now Tunnel Road and down to the intersection of Shattuck and Hearst in the downtown.
 - ii. In 1991, the Tunnel Fire burned over 1,500 acres, claiming 25 lives and destroying approximately 3,000 structures in southeast Berkeley and Oakland. Had the wind direction not shifted, many more people could have died, and more of Berkeley would have been destroyed.
 6. The number of large wind-driven wildfires will only continue to grow as the climate changes. According to CalFIRE, 14 of the 20 most destructive California wildfires ever recorded have occurred in the past 10 years. In the 67 years between 1932 and 1999, 572,000 acres burned in California. In the 20 years from 2000 to 2020, over 4,000,000 acres have burned.
- B. Structure Separation Distance (SSD) is related to the number of structures per acre. These are two measurements that play a key role in affecting the speed of a fire's spread. According to recognized industry models from the National Institute of Standards and Technology (NIST), California Department of Forestry and Fire Protection (CAL FIRE), and Insurance Institute for Business & Home Safety (IBHS), the closer together two structures are situated, and the higher the number of structures per acre, the higher the likelihood that a fire will rapidly spread between structures, creating a risk of a large-scale urban conflagration.
1. SSD is categorized into three risk profiles; Low Density with an SSD of greater than 50 feet, Moderate Density with an SSD of 25 feet to 50 feet, and High Density with an SSD of less than 25 feet.
 2. The majority of the Hillside Overlay is in the highest risk category with less than 25 feet SSD between structures. Over 3,000 structures in the Hillside Overlay have less than 11 feet of separation and over 1,700 structures have less than 5.5 feet SSD. High-density communities with closely spaced structures create a high risk of rapid, uncontrolled fire spread.

3. The structural density of a Wildland Urban Interface is categorized into one of seven risk profiles with the highest-density communities having 8 housing units per acre (HU/ac), and being 320 times denser than the lowest-density WUI areas, which have 0.02 HU/ac (1 HU on 40 acres). Almost the entire Hillside Overlay is in one of the two highest risk categories with between 4 and 6 structures per acre.
 4. As more open space on a parcel is filled with structures, fire can spread along features including primary structures, auxiliary structures, fences, wood piles, decks, and vehicles. This fuel agglomeration may have an impact on structure-to-structure fire spread during an urban, wind-driven conflagration.
 5. On June 10, 2021, a study published by UC Berkeley researchers concluded that continued development in the wildland-urban interface will make California's supply of housing more vulnerable, undermine state efforts to curb carbon emissions, further degrade the state's wildland habitats, and create fiscal challenges for state and local governments in the event of post-disaster recovery.
- C. Due to the risk of earthquakes, fires, and other hazards, it is essential that emergency responders have ready accessibility to injured persons and damaged property, and that residents be able to evacuate quickly and efficiently. Nonetheless, conditions within the Hillside Overlay combine to compromise emergency access egress and accessibility for emergency responders.
1. A majority of streets in the Hillside Overlay are less than 26 feet in width, and include conditions such as steep slopes, sharp curves and acute-angled corners. This increases the chance that, in the event that a large-scale evacuation is initiated, residents will become trapped in clogged exiting traffic and succumb to smoke, heat and fire, as seen in recent wildfires.
 2. The majority of transit within the Hillside Overlay does not meet the definition of major transit stops and high quality transit corridors as defined in Section 21155. Bus service (AC Transit Lines 7, 65 and 67) runs at headways of 30 minutes or longer, with limited or no service on evenings, weekends and holidays. The lack of available transit exacerbates the hazardous conditions that currently exist with respect to traffic flow and public safety in the likely event of a catastrophic wildfire or earthquake.
 3. Increased vehicle density will add to these risks, as the Hillside Overlay does not have the capacity to have additional vehicles parked on the street without jeopardizing access and ingress during emergencies. On August 10, 2021, a study published by UC Berkeley researchers concluded that in the best-case scenario, if each household evacuated from the Berkeley hills with one vehicle, estimated evacuation time would be two hours and 245 vehicles would be exposed to immediate fire danger. However, if each household evacuated with 1.7 vehicles,

evacuation time would increase to three hours and 782 vehicles would be exposed to immediate fire danger.

- D. All of these conditions necessitate reasonable limitations on development, including on ADUs, within the Hillside Overlay in order to reduce exposure to hazardous conditions.

Section 3. That Berkeley Municipal Code Chapter 12.99 is hereby repealed.

Section 4. That Berkeley Municipal Code 23.106.020(B) is amended to read:

B. *Exclusions.* The lot coverage calculation excludes:

1. Uncovered porches, landings and stairs;
2. Uncovered decks, except that a deck on the roof of a building or accessory structure or over an enclosed space or paved ground area is included in the lot coverage calculation; and
3. The area of the roof of a subterranean structure, when such a structure is not more than 3 feet above finished grade.

4. The area of any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 5. That Berkeley Municipal Code 23.106.030(D) is amended to read:

D. *Excluded Areas.* The following areas are excluded from gross floor area calculation:

1. Covered or uncovered areas used for off-street parking or loading spaces.
2. Driveways ramps between floors and maneuvering aisles of a multi-level parking garage.
3. Mechanical, electrical, and telephone equipment rooms below finished grade.
4. Areas which qualify as usable open space.
5. Arcades, porticoes, and similar open areas for non-residential uses which are:
 - (a) Located at or near street level;
 - (b) Accessible to the general public; and
 - (c) Are not designed or used as sales, display, storage, service, or production areas.

6. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 6. That Berkeley Municipal Code 23.106.080(A) is amended to read:

A. *Measurement.* Building separation is measured as the distance between the surface of a main building's or ADU's outer wall and the outer wall surface of the closest ~~neighboring main~~ building.

Section 7. That Berkeley Municipal Code 23.106.090(A)(1) through (3) is amended to read:

A. *Average Building Height.*

1. Average Building Height: The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the addition) to the roof features shown in Table 23.106-1: Average Building Height Measurement. See [Figure 23.106-4: Average Building Height.](#)

~~2. Figure 23.106-4: Average Building Height.~~

2. Dormers are not included in the average building height calculation.

3. Attached accessory dwelling units are not included in the average building height calculation.

Section 8. That Berkeley Municipal Code 23.306 is amended to read:

Sections:

23.306.010– Purposes

23.306.020– Applicability ~~and Definitions~~

23.306.030– ~~Development Standards~~ Permit Procedures

23.306.040– Permit Procedures ~~Development Standards~~

~~23.306.050– Deed Restrictions~~

~~23.306.060– Neighbor Noticing~~

~~23.306.070– Rooftop Decks and Balconies~~

23.306.010 Purposes.

~~The purposes of this Chapter are to~~ This Chapter establishes accessory dwelling unit (ADU) and junior accessory dwelling unit (Junior ADU) standards that:

- A. Implement California Government Code Section 65852.1, 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.

- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.

~~F. Reduce potential impacts of new development in Very High Fire Hazard Severity Zones and Wildland Urban Interface Fire Areas as designated in the BMC Chapter 19.48 and as may be amended from time to time, and the Hillside Overlay District (HOD) due to unique conditions and hazards within these areas that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety consistent with Government Code 65852.2, subdivision (a)(1)(A), which allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."~~

23.306.020 Applicability and Definitions.

A. The provisions of this chapter apply to zoning districts where residential uses are permitted, on lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.

~~B. For purposes of this Chapter the Hillside Overlay District (HOD) includes all lots within Berkeley's designated Very High Fire Hazard Severity Zones and Wildland Urban Interface Fire Areas that are zoned R-1H (Single Family Residential—Hillside Overlay), R-2H (Restricted Two Family Residential—Hillside Overlay), R-2AH (Restricted Multiple Family Residential—Hillside Overlay), or ES-R (Environmental Safety Residential).~~

B. Number of ADUs and JADUs Permitted Per Lot. See Table 23.306-1—ADU and Junior ADU Maximum Number of Units per Lot. ~~Except as expressly modified by Chapter 12.99, the following number of ADUs and JADUs shall be the maximum number of accessory units permitted on lots subject to this Chapter.~~

C. Density Exemption. ADUs and Junior ADUs are not included in the minimum or maximum density established by the underlying zoning district.

TABLE 23.306-1—ADU AND JUNIOR ADU MAXIMUM NUMBER OF UNITS PER LOT

| <u>Use, Primary</u> | <u>ADU and Junior ADU, Maximum Per Lot</u> |
|--|---|
| <u>Single Family Dwelling, one unit on lot</u> | <u>1 ADU and 1 Junior ADU, both are permitted</u> |
| <u>Single Family Dwelling, more than one unit on lot</u> | <u>1 ADU</u> |
| <u>Duplex or Multi-Family Dwelling</u> | <u>2 detached ADUs and at least one interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot</u> |

| | |
|----------------------------|-------|
| Group Living Accommodation | 1 ADU |
|----------------------------|-------|

- ~~1. Lot with one Single Family Dwelling: One ADU and/or one JADU.~~
- ~~2. Lot with more than one Single Family Dwelling: One ADU.~~
- ~~3. Lot with a Duplex or Multiple Family Dwelling, either:

 - ~~(a) Up to two detached ADUs; or~~
 - ~~(b) At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot.~~~~
- ~~4. Lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory: One ADU~~

23.306.030 Permit Procedures.

- ~~A. Zoning Certificate. An application for an ADU or JADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including Development Standards, Deed Restrictions, and Neighborhood Noticing.~~
- ~~1. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a Building Permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.~~
 - ~~2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code Section 65852.2(e)(1).~~
 - ~~3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or JADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.~~

23.306.0340 Development Standards.

A. *Basic Standards.* See Table 23.306-21: ADU ~~and JADU~~ Development Standards.

TABLE 23.306-21. ADU ~~AND JADU~~ DEVELOPMENT STANDARDS

| <u>Basic Standards</u> | | <u>Supplemental Standards</u> |
|---------------------------|-------------|-------------------------------|
| Gross Floor Area, Maximum | | <u>23.306.030(A)(1);</u> |
| Studio or 1 bedroom | 850 sq. ft. | <u>23.306.030(A)(2);</u> |

| | | |
|--|--|---|
| <u>2+ bedrooms</u> | <u>1,000 sq. ft.</u> | <u>23.306.030(A)(3)</u> |
| <u>Building Height, Maximum</u> | | |
| <u>Conversion</u> | <u>Same as existing structure</u> | <u>23.306.030(A)(1); 23.306.030(A)(3)</u> |
| <u>Detached New Construction, outside the Hillside Overlay</u> | <u>20 ft.</u> | |
| <u>Detached, New Construction, within the Hillside Overlay</u> | <u>See Table 23.306-3</u> | |
| <u>Attached, New Construction</u> | <u>25 ft.</u> | <u>23.306.030(A)(5); 23.306.030(A)(8)</u> |
| <u>Lot Line Setbacks, Minimum</u> | | |
| <u>Front of Interior Lot</u> | <u>Same as underlying district</u> | <u>23.306.030(A)(3);</u> |
| <u>Front of Through Lot</u> | <u>Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer</u> | <u>23.306.030(A)(4); 23.306.030(A)(6)</u> |
| <u>Rear</u> | <u>4 ft.</u> | |
| <u>Interior Side</u> | <u>4 ft.</u> | |
| <u>Street Side</u> | <u>4 ft.</u> | |
| <u>Building Separation for Detached ADU, Minimum</u> | | |
| <u>Outside the Hillside Overlay</u> | <u>5 ft.</u> | |
| <u>Within the Hillside Overlay</u> | <u>8 ft.</u> | <u>23.306.030(A)(7)</u> |
| <u>Required Off-Street Parking Spaces</u> | <u>See 23.322.030– Required Parking Spaces</u> | |

TABLE 23.306-3. ADU BUILDING HEIGHT – DETACHED NEW CONSTRUCTION

| <u>Lot Consists of Existing Or Proposed:</u> | <u>Within 0.5 mile walking distance of a major transit stop or a high quality transit corridor [1]</u> | <u>Not within 0.5 mile walking distance of a major transit stop or a high quality transit corridor [1]</u> |
|---|---|--|
| <u>Single-Family Dwelling(s), one or more unit on a lot, one or more stories</u> | <u>18 ft., with additional 2 ft. if needed to align roof pitch of ADU with the existing roof pitch of the primary dwelling(s)</u> | <u>16 ft.</u> |
| <u>Duplex or Multi-Family Dwelling, single-story</u> | | <u>16 ft.</u> |
| <u>Duplex or Multi-Family Dwelling, multistory</u> | | <u>18 ft.</u> |
| <u>Note:</u> | | |
| <u>[1] Major transit stop or a high-quality transit corridor as defined in Public Resources Code Section 21155.</u> | | |

1. Existing Building Conversion. An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development

standards for maximum gross floor area in Table 23.306-2. ADU Development Standards is allowed a physical addition of no more than 150 square feet. The addition must comply with maximum height and setback requirements.

2. Duplex or Multi-Family Dwelling Conversion. Interior ADU(s) must be created entirely through non-habitable residential portions of the existing main building that are not within the living space of a dwelling unit (e.g. basement, attic, garages, storage room).
3. Accessory Building or Accessory Structure Conversion. An ADU converted from a legally established accessory building or accessory structure is allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure, provided that the ADU meets fire and safety standards set forth in the California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing accessory building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.
4. Front Setback, New Construction. An ADU shall not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet.
5. Attached ADU. An ADU shall be considered attached if sharing a common wall with a primary dwelling.
6. Detached ADU Setback Exceptions. If there is a lesser setback allowed in 23.304.060-Accessory Buildings and Enclosed Accessory Structures for a comparable accessory building or accessory structure in the underlying zoning district, that setback shall apply.
7. Building Separation for Detached ADU. A minimum 8-foot separation is required within the Hillside Overlay, except where such separation would preclude an ADU of 800 square feet, in which case the minimum building separation shall be reduced to 5 feet.
- 1-8. Attached ADU, New Construction Height. Attached ADUs with height up to 25 ft. allowed with a Zoning Certificate.

| | ADU¹ | JADU |
|--|------------------------|-------------|
| Maximum Size Outside of HOD² | | 500-sf |
| Studio or 1 bedroom | 850-sf | N/A |
| 2+ bedrooms | 1000-sf | |
| Maximum Size Within HOD | 800-sf | 500-sf |
| Maximum Height Outside of HOD | 20 ft. | N/A |
| Maximum Height Within HOD | 16 ft. | |

| | ADU ⁴ | JADU |
|--|--|-------------------|
| Front Yard Setback | Same as underlying district | |
| Rear Setback | 4 ft ³ | |
| Side Setback | 4 ft ³ | |
| Required Off-Street Parking Outside of HOD | None ⁴ | |
| Required Off-Street Parking Within HOD | The lesser of 1 space per bedroom or ADU ^{5, 6} | None ⁶ |

~~[1] An ADU converted from an Accessory Building or Accessory Structure legally established at least three years prior to submission of an ADU application that does not comply with the Maximum Height, Size, and/or Rear and Side Setback requirements is allowed to maintain non-conformity to the same dimensions of the existing Accessory Building or Accessory Structure, provided that the existing side and rear setbacks are sufficient for fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing Accessory Building or Accessory Structure shall comply with the development standards in this table.~~

~~[2] An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for Maximum Size in this table is allowed a physical addition of no more than 150 square feet. The addition must comply with Maximum Height and Setback requirements in this table.~~

~~[3] If there is a lesser setback allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district, that setback shall apply.~~

~~[4] Replacement parking is not required. Replacement of off-street parking for the Main Building is allowed and does not need to comply with Parking Maximums (BMC 23.322.070) nor Parking Layout and Design (BMC 23.322.080).~~

~~[5] No off-street parking shall be required for ADUs that satisfy the criteria defined in subdivision (d) of California Government Code section 65852.2 or any successor provision thereto.~~

~~[6] If an applicant provides off-street parking for an ADU or a JADU in the HOD, parking shall be allowed in any configuration on the lot, including within the front yard setback.~~

B. Junior ADUs.

1. Basic Standards. A Junior ADU shall be contained entirely within an existing or proposed single family dwelling or its attached garage, and have no more than 500 square feet in floor area.

2. Shared Sanitation Facility. If a Junior ADU shares a sanitary facility with a single-family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.

3. Junior ADU Floor Area. The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single family dwelling.

~~B. Projections.~~

C.

~~—Except as limited by Paragraph B.2 of this Section, architectural features (Outside of the Hillside Overlay.~~

1. ~~Attached ADU.~~ Chimneys, ~~w~~Water ~~h~~Heater ~~e~~Enclosures, ~~f~~Flues, ~~h~~Heating and ~~c~~Cooling ~~e~~Equipment, ~~e~~Eaves, ~~c~~Cornices, ~~c~~Canopies, ~~a~~Awnings, ~~bay windows, and balconies~~) may project two feet into the required front and side setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows and balconies may not project into a required rear ADU setback.

2. Within the Hillside Overlay. No projections shall be allowed within ~~a~~the required setback ~~on lots that are within the Hillside Overlay District.~~

~~C.D. Rooftop Decks within the Hillside Overlay.~~ Roofs on ADUs within the Hillside Overlay may not be designed, converted, or used as usable open space.

23.306.0450 Permit Procedures ~~Deed Restrictions.~~

A. Zoning Certificate. An application for an ADU or Junior ADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including development standards, deed restrictions, and neighborhood noticing.

1. If an application to create an ADU or Junior ADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a building permit shall not be issued for the ADU or Junior ADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired. See 23.404.060(A) Post-Decision Provisions (Effective Dates).

2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or Junior ADU that complies with the requirements of Government Code Section 65852.2(e)(1).

3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or Junior ADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.

B. Noticing.

1. Scope and Timing of Notice. Notice of an ADU application shall be mailed to all occupants of ~~owners and tenants of the subject, adjacent, confronting and abutting properties~~ the subject property, excepting the property owner(s), within

ten working days of submission of the building permit application to the ~~Planning Department~~City.

2. ~~Content of Notice.~~ Notice shall provide the address of the project and include allowable hours of construction, a link to the City's ADU webpage identifying permit and construction resources, and contact information for a Rent Board Housing Counselor.

~~4.3.~~ Mailing Fees. The applicant shall be responsible for the cost of materials, postage, and staff time necessary to process and mail the notices.

~~D.C.~~ Deed Restriction. The property owner shall file a deed restriction with the Alameda County Recorder which states:

1. The Junior ADU shall not be sold separately from the main building;
2. The ADU shall not be sold separately from the main building unless the conditions of BMC 23.306.0450(D) ADUs Developed by a Qualified Nonprofit Developer ~~B~~ are met;
3. The ADU and/or Junior ADU shall not be rented for a term that is shorter than 30 days; and
4. If the property includes a Junior ADU, the Junior ADU, or the Single Family Dwelling in which the Junior ADU is located, shall be owner-occupied.

~~E.D.~~ ADUs Developed by a Qualified Nonprofit Developer. An ADU built or developed by a "qualified nonprofit corporation" may be sold or conveyed separately from the ~~m~~Main ~~b~~Building to a "qualified buyer," as such terms are defined in subdivision (b) of Section 65852.26 of the California Government Code. The ADU must be held pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:

1. Delineation of all areas of the property that are for the exclusive use of a cotenant;
2. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;
3. Procedures for dispute resolution among cotenants before resorting to legal action;
4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;

6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence; and
7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility.

~~23.306.060—Neighbor Noticing.~~

~~A. *Scope and Timing of Notice.* Notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department.~~

~~B. *Content of Notice.* Notice shall provide the address of the project, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.~~

~~C. *Mailing Fees.* The applicant shall be responsible for the cost of materials, postage and staff time necessary to process and mail notices.~~

~~23.306.070—Rooftop Decks and Balconies.~~

~~A. *Notwithstanding any provisions of this Title to the contrary, roofs on lots within the Hillside Overlay District may not be designed, converted or used as Usable Open Space.*~~

Section 9. That Berkeley Municipal Code 23.322.020(C) is amended to read:

C. Changes of Use.

1. *Commercial Districts.* In the Commercial Districts, off-street parking is required for a change in use only when the structure is expanded to include new floor area.
2. *Manufacturing and R-SMU Districts.*
 - (a) In the Manufacturing and R-SMU districts, off-street parking is required for a change in use only when:
 - i. The structure is expanded to include new floor area; and/or
 - ii. The use is changed to one with a numerical parking standard greater than the district minimum.

(b) If the new use is changed to one with a higher numerical parking standard than the district minimum, the new use must provide the incremental difference between the two numerical parking standards. A higher numerical parking standard may be reduced to the district minimum as provided in Section 23.322.050(~~A~~)(~~2~~) (Change of Use).

(c) As used in this section, the “district minimum” parking requirement is:

- iii. 2 spaces per 1,000 square feet of floor area in the Manufacturing Districts; and
- iv. 1 space per 1,000 square feet of floor area in the R-SMU district.

3. *All Other Residential Districts.* In all Residential Districts except for R-SMU, off-street parking spaces are required for all changes in use.

D. *Location Exemption.* Off-street parking spaces are not required for new uses or buildings, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2.

Section 10. That the section named; Residential Uses; in Berkeley Municipal Code Table 23.322-1, Required Off Street Parking in Residential Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read:

TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

| Land Use | Number of Required Off-street Parking Spaces |
|--|--|
| Residential Uses | |
| Accessory Dwelling Unit | <p><u>Junior ADU: None required</u> <u>ADU outside of Hillside Overlay: None required</u> <u>ADU within Hillside Overlay: 1 per ADU unless the parcel is located within 0.5 mile walking distance of a major transit stop or a high-quality transit corridor as defined in Public Resources Code Section 21155. See Chapter 23.306</u></p> |
| Dwellings, including Group Living Accommodations | <p><u>R-3, R-4, and R-5 Districts (1-9 units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit.</u> <u>R-3, R-4, and R-5 District (10 or more units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per 1,000 sq. ft. of gross floor area</u> <u>All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit</u> <u>All Other Locations: None required</u></p> |

| Land Use | Number of Required Off-street Parking Spaces |
|---|---|
| Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing | <u>If located on a roadway less than 26 feet. in width in the Hillside Overlay:</u> 1 per each 5 residents, plus 1 for manager. <u>All Other Locations:</u> None required. |
| Rental of Rooms | <u>If located on a roadway less than 26 feet. in width in the Hillside Overlay:</u> 1 per each two roomers <u>All Other Locations:</u> None required |

Section 11. That Berkeley Municipal Code Table 23.322-2 is amended to read:

TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

| Land Use | Required Parking Spaces |
|---|---|
| Residential Uses | |
| Accessory Dwelling Unit | See Chapter 23.306 None required |
| Dwellings, including Group Living Accommodations | <u>If located on a roadway less than 26 feet. in width in the Hillside Overlay:</u> 1 per unit <u>All Other Locations:</u> None required |
| Hotel, Residential | None required |
| Mixed-Use Residential (residential use only) | None required |
| Senior Congregate Housing | None required |
| Non-Residential Uses | |
| All non-residential uses except uses listed below | <u>C-DMU District:</u> 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts:</u> 2 per 1,000 sq. ft. |
| Hospital | 1 per each 4 beds plus 1 per each 3 employees |
| Library | <u>C-DMU District:</u> 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts:</u> 1 per 500 sq. ft. of publicly accessible floor area |
| Nursing Home | 1 per 3 employees |
| Medical Practitioners | <u>C-DMU District:</u> 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts:</u> 1 per 300 sq. ft. |

| Land Use | Required Parking Spaces |
|---|---|
| Hotels, Tourist | <u>C-DMU District</u> : 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts</u> : 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Motels, Tourist | <u>C-DMU District</u> : 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts</u> : 1 per guest/sleeping room plus 1 for owner or manager [1] <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Large Vehicle Sales and Rental | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-SA District</u> : 1 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Small Vehicle Sales and Service | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-SA District</u> : 1 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Manufacturing | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-W District</u> : 1 per 1,000 sq. ft [1] <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Wholesale Trade | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-W District</u> : 1 per 1,000 sq. ft <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Live/Work | If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |
| <u>Notes:</u> [1] Spaces must be on the same lot as building it serves | |

Section 12. That the section named; Residential Uses; in Table 23.322-4, Required Off Street Parking in Manufacturing Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read:

TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

| Land Use | Required Parking Spaces |
|----------------------------|--|
| Residential Uses | |
| Accessory Dwelling Unit | See Chapter 23.306 <u>None required</u> |
| Dwellings | None required |
| Group Living Accommodation | None required |

Section 13. That Berkeley Municipal Code 23.322.080 is amended to read:

23.322.080– Parking Layout and Design

A. *Traffic Engineering Requirements.*

1. All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City of Berkeley’s Traffic Engineering requirements.
2. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible, and safe parking areas, and are adequately integrated with Berkeley’s overall street pattern and traffic flows.

B. *Dimensional Standards.* Dimensional requirements and standards for off-street parking spaces, driveways, and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and ZAB.

C. *Access Orientation in Non-Residential Districts.* Access to new parking areas in a Non-Residential District that serve commercial uses shall be oriented in such a way as to minimize the use of streets serving primarily residential uses.

D. Residential Parking Lots in Non-Residential Districts. Parking lots in a non-residential district used exclusively for residential parking must comply with standards in Section 23.322.080 that apply in Residential Districts.

~~D.E.~~ *Placement--Residential Districts.*

1. *Side Setback Areas.*

- (a) One new off-street parking space in a required side setback area, where none exists, is allowed by right.
- (b) The space must be constructed of a permeable surface unless the Public Works Department or Office of Transportation determines it is infeasible.
- (c) The space must be screened as required by 23.322.080.IG (Screening).
- (d) The location of the space shall minimize impact on usable open space.

2. *Other Setback Areas.* No portion of an off-street parking space may be located in a required front, street side, or rear setback area unless:

- (a) The parking space location is authorized by Chapter 23.306 (Accessory Dwelling Units); or

(b) The Zoning Officer approves an AUP, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.

3. *Multifamily Buildings.*

(a) An off-street parking space may not be located closer than 10 feet in horizontal distance from a door or a window of a building with three or more dwelling units where the space is on the same or approximately the same level as the building.

(b) For the purposes of this section, a window whose bottom edge or point is more than 6 feet in vertical height from the level of the subject off-street parking space is not considered on the same or approximately the same level.

(c) The Zoning Officer may approve an AUP to grant an exception to this requirement.

E.F. *Placement--Non-Residential Districts.*

1. *Where Prohibited.* Except when otherwise allowed by this chapter, ground-level off-street parking spaces are not permitted within 20 feet of the lot's street frontage unless the parking is entirely within a building with walls.

2. *Corner Lots.* For a corner lot, the ZAB may approve a Use Permit to allow the parking within 20 feet of the street frontage facing the secondary street.

3. *C-W District.*

(a) Off-street automobile parking in the C-W district is not permitted between the front lot line and a main structure within a designated node.

(b) Outside of a designated node, off-street automobile parking may be allowed between the front lot line and a main structure with a Use Permit or AUP. If the project requires ZAB approval, a Use Permit is required. An AUP is required for all other projects.

(c) To approve the AUP or Use Permit, the review authority must find that one or more of the following is true:

- i. Parking in the rear or on the side of the property is impractical because of the lot's depth and/or width.
- ii. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses.
- iii. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location.

- iv. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front lot line.

G. Placement--ADU.

- 1. On a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU is allowed in any configuration on the lot, including within the front setback; or
- 2. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback.

F.H. Grade Change. This subsection applies to off-street parking spaces in all districts, except for parking decks in Residential Districts.

- 1. The difference in elevation between a parking space and the finished grade on adjacent areas of the lot may not exceed 5 feet at any point.
- 2. Where there is a difference in elevation between a parking space and adjacent finished grade, the parking space shall be setback from a lot line as shown in Table 23.322-7.

TABLE 23.322-7. REQUIRED SETBACKS FOR PARKING SPACES WITH ADJACENT GRADE CHANGES

| DIFFERENCE IN ELEVATION | MINIMUM SETBACK |
|--|-----------------|
| Parking space lower than finished grade | |
| 3 to 5 ft | 4 ft. |
| Less than 3 ft | No min. setback |
| Parking space higher than finished grade | 6 ft. |

G.I. Screening.

- 1. Table 23.322-8 shows required parking space screening. Screening must effectively screen parked vehicles from view from buildings and uses on adjacent, abutting, and confronting lots. Screening may not interfere with pedestrian safety.

TABLE 23.322-8. REQUIRED PARKING SPACE SCREENING

| DISTRICTS | WHEN REQUIRED | REQUIRED SCREENING FEATURE | SCREENING FEATURE HEIGHT |
|---------------------------|---|--|--------------------------|
| All Residential Districts | 2 or more parking spaces, or any parking space partly | Continuous view-obscuring wood fence, masonry wall, or evergreen hedge which | 4 ft. min and 6 ft. max. |

| | | | |
|--|---|--|---|
| | or entirely within a required rear setback area | may be broken only for access driveways and walkways | |
| All Commercial and Manufacturing Districts | 2 or more parking spaces | Wall, fence, or evergreen shrubbery hedge in a landscape strip | Parking adjacent to public right-of-way or front lot line: 3 ft. min. and 4 ft. max. Parking adjacent to rear or side lot line: 4 ft. min and 6 ft. max. |

2. In the C-W, M, MM, MU-LI districts, screening and landscape buffers are not required for any portion of a parking lot adjacent to Third Street (Southern Pacific Railroad).

H.J. Landscape Buffers.

1. All paved areas for off-street parking spaces, driveways, and any other vehicle-related paving must be separated from adjacent lot lines and the public right-of-way by a landscaped strip as shown in Table 23.322-9.

TABLE 23.322-9. REQUIRED LANDSCAPE BUFFERS

| DISTRICT/NUMBER OF SPACES | MINIMUM WIDTH OF LANDSCAPE STRIP | |
|--|--|---|
| | AREAS ADJACENT TO SIDE OR REAR LOT LINES | AREAS ADJACENT TO PUBLIC RIGHT-OF-WAY OR FRONT LOT LINE |
| Residential Districts | | |
| 1-3 spaces | 2 ft. | 2 ft. |
| 4 spaces or more | 4 ft. [1] | 4 ft. [1] |
| Commercial and Manufacturing Districts | | |
| 1 space | None required | None required |
| 2-3 spaces | 2 ft. | 3 ft. |
| 4 spaces or more | 4 ft. [1] | 4 ft. [1] |

Note:

[1] Calculated as average width along the full length of landscape strip.

2. In all districts, this landscape buffer requirement does not apply to driveways that serve two adjacent lots when adjacent to a side lot line.
3. In the Residential Districts, this landscape buffer requirement also does not apply to pedestrian walkways that are separated from such areas by a landscaped strip at least two feet wide.

~~H.K.~~ K. *Paved Setback Areas.* In Residential Districts, the total area of pavement devoted to off-street parking spaces, driveways, and other vehicle-related paving may not exceed 50 percent of any required setback area that runs parallel to and abuts a street.

~~J.L.~~ L. *Driveway Width.*

1. A driveway may not exceed 20 feet in width at any lot line abutting a street or one-half of the width of the street frontage of the lot, whichever is less.
2. In a Non-Residential district, the Zoning Officer may modify this requirement with an AUP.

~~K.M.~~ M. *Driveway Separation.* On a single lot in a Residential District, driveways must be spaced at least 75 feet from one another, as measured along any continuous lot line abutting a street.

~~L.N.~~ N. *Tandem Parking.* Tandem spaces that provide required off-street parking require an AUP, except when allowed by right by Chapter 23.306 (Accessory Dwelling Units).

~~M. Residential Parking Lots in Non-Residential Districts. Parking lots in a non-residential district used exclusively for residential parking must comply with standards in this section that apply in Residential Districts.~~

~~N.O.~~ O. *Carports.* A carport shall meet the minimum horizontal and vertical dimensions specified by the City's Traffic Engineer to be used for one or more legal parking spaces required under this chapter.

Section 14. That Berkeley Municipal Code is amended to add a new Section 23.324.060(C) to read:

C. Accessory Dwelling Units. The following alterations of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate:

1. New windows, doors, or other openings to a portion of a building or structure within a minimum required setback.
2. New windows, doors, or other openings to a portion of a building or structure exceeding the height limit.

Section 15. That Berkeley Municipal Code 23.502.020(A)(4) is amended to read:

4. Accessory Dwelling Unit (ADU). An attached or detached secondary dwelling unit that is located on the samea lot as a proposed or existing single family dwelling, duplex, multi-family dwelling use, or group living accommodation ~~in a zoning district where residential uses are permitted~~ and provides independent living

facilities for one or more persons. An ADU must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: Exterior or independent access to the ADU, living and sleeping quarters, a full kitchen, and a full bathroom. An ADU also includes the following: (a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code, or (b) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

~~—Junior Accessory Dwelling Unit (Junior ADU). A unit that is contained entirely within the walls of an existing or proposed single family dwelling, or a single family dwelling unit's attached garage. A Junior ADU must include a separate exterior entrance and, at minimum, an efficiency kitchen with a working refrigerator. A Junior ADU may include separate sanitation facilities or may share sanitary facilities with a single family dwelling. The property owner must reside in either the Single Family Dwelling or the JADU.~~

~~(a) with a proposed or existing Single Family Dwelling, Duplex, Multi-Family Dwelling Use or Group Living Accommodation. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: 1) exterior or independent access to the Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:~~

~~(b)(a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.~~

Section 16. That Berkeley Municipal Code 23.502.020(A)(8) is amended to read:

8. *Addition, Residential.* The creation of any new portion of a main building which results in a vertical or horizontal extension of the building, or results in additional residential gross floor area to an existing main building, as long as such new gross floor area does not exceed 15 percent of the lot area or 600 square feet, whichever is less. For purposes of this definition gross floor area does not include:
 - (a) Additions of gross floor area devoted to required off-street parking spaces, creation of mezzanines or lofts within the building's shell;
 - (b) Making previously unusable attics into habitable floor area (except where new areas with vertical clearance of 6 feet or greater are created through expansions of the building shell);
 - (c) Excavations of earth within the existing building footprint (i.e. expansion of existing basements or new basements), or

(d) Replacement of existing floor area that was lawfully constructed and is located entirely within the addition's shell.

~~(d)~~(e) The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.

Section 17. That Berkeley Municipal Code 23.502.020(A)(9) is amended to read:

9. *Addition, Major Residential.*

(a) A residential addition greater than 15 percent of the lot area or 600 square feet. Floor area from all residential additions since October 31, 1991, with the exception of:

i. Additions that are entirely subsumed within previously existing floor area; and

ii. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.

(b) The floor area of subsequent stories where the addition does not exceed the district residential addition height limit, shall count towards the calculation of gross floor area for the purposes of this definition.

(c) Any new floor area, except as exempted under (9)(a), shall be treated as a new major residential addition for the purpose of permit processing, when the cumulative square footage exceeds 15 percent of the lot area or 600 square feet, whichever is less.

Section 18. That Berkeley Municipal Code 23.502.020(E)(1) is amended to read:

1. *Efficiency Kitchen.* A ~~kitchen that includes a sink, a~~ cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.

Section 19. That Berkeley Municipal Code 23.502.020(J) is amended to read:

J. *"J" Terms.*

~~*Junior Accessory Dwelling Unit (JADU).* A unit that is contained entirely within the walls of a Single Family Dwelling. A JADU must include a separate exterior entrance and an Efficiency Kitchen with a working refrigerator. A JADU may include separate sanitation facilities or may share sanitary facilities with a Single~~

~~Family Dwelling. The property owner must reside in either the Single Family Dwelling or the JADU.~~

Section 20. That Berkeley Municipal Code 23.502.020(N)(1) is amended to read:

N. "N" Terms.

1. *New Construction.* Construction of a new main building or accessory dwelling unit.

Section 18. Severability.

If any provision or clause of this Ordinance or any application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this Ordinance. To this end the provisions and applications of this Ordinance are severable, and the Council of the City of Berkeley hereby declares that it would have passed this Ordinance and each provision or clause without regard to whether any other portion of this Ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 19.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 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.

ADU POLICY ALTERNATIVES

Policy Alternative 1. Additional prescriptive standards for New Construction ADUs within the front setback (*Section 8 of the Recommended Draft Ordinance*)

4. *Front Setback, New Construction.* An ADU shall ~~not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet.~~ comply with the same front setback that is required for the underlying district, unless the requirement would preclude an ADU of no more than 800 square feet on the parcel. Should an ADU require area—either partially or fully—within the front setback, then the ADU shall maintain a minimum 10-foot setback from the front lot line, unless such reduced setback would preclude an ADU of no more than 800 square feet on the parcel. If a 10-foot setback would preclude an ADU of 800 square feet, the ADU shall maintain a 5-foot setback from the front lot line. If a 5-foot setback from the front lot line would preclude an ADU of 800 square feet on the parcel, the ADU may be sited up to the front lot line.

Policy Alternative 2. Converted ADUs: Maintain time limit based on when the accessory building or structure was created (*Section 8 of Recommended Draft Ordinance*)

23.306.030 Development Standards.

3. *Accessory Building or Accessory Structure Conversion.* An ADU converted from an ~~an legally established~~ accessory building or accessory structure legally established at least three years prior to submission of an ADU application that does not comply with the maximum height, size, and/or rear and side setback requirements is allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure, provided that the ADU meets fire and safety standards set forth in the California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing accessory building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.

Policy Alternative 3. Keep Neighbor Noticing Procedures as-is except removing noticing to owner(s) of subject property (*Section 8 of Recommended Draft Ordinance*)

23.306.040 Permit Procedures

- B. Neighbor Noticing.

1. *Scope and Timing of Notice.* Notice of an ADU application shall be mailed to tenants of the subject property, and all occupants owners and tenants of the subject adjacent, confronting and abutting properties, y, excepting the property owner(s), within ten working days of submission of the building permit to the Planning Department~~City~~.
2. *Content of Notice.* Notice shall provide the address of the project, ~~and include~~ allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact identifying permit and construction resources, and contact information for a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.
3. *Mailing Fees.* The applicant shall be responsible for the cost of materials, postage, and staff time necessary to process and mail ~~the~~ notices.

Key

Black Text: Recommended Draft Ordinance dated September 19, 2023

Red Text: Policy Alternative

Table 1. Current and Proposed ADU Ordinances and Source Comparison

| Section/ Standard | Current ordinance (BMC Ch. 23.306) | July 2023 Recommended Ordinance | September 2023 Recommended Ordinance (Ordinance Section(s)) | Source(s) for September 2023 Recommendation |
|--|---|--|--|--|
| Ch. 12.99 Wildfire Hazard Evacuation Risk Mitigation Ordinance | No more than one ADU or JADU shall be permitted per lot in the HOD. | Repeal and remove references | No change from July 2023. (Sections 3, 8) | HCD Letter dated October 17, 2022 (pg. 2) |
| Lot coverage and gross floor area calculations | Not specified. | Exempt up to 800 sf from lot coverage and gross floor area calculations associated with ADU | No change from July 2023. (Sections 4, 5, 16, 17) | State law. GOV 65852.2(c)(2)(C) |
| Building separation measurement definition | A. <i>Measurement.</i> Building separation is measured as the distance between the surface of a main building's outer wall and the outer wall surface of the closest neighboring main building. | Not included | Revised to include ADUs and changed "neighboring main building" to "building." (Section 6) | Staff recommendation based on Fire, Building and Safety. |
| ADU building height calculations | Not specified. | Specify that attached ADUs are not included in <u>average</u> building height calculations. | No change from July 2023. (Section 7) | Staff recommendation |
| Density exemption | Not specified. | Exclude ADUs and Junior ADUs from density established by the underlying zoning district | No change from July 2023. (Section 8) | State law. GOV 65852.2(a)(10) |
| Quantity of ADU– Single Family Dwellings | 1 ADU <u>or</u> 1 Junior ADU | 1 ADU <u>and</u> 1 Junior ADU citywide | No change from July 2023. (Section 8) | HCD Letter dated October 17, 2022 (pg. 3) |
| Quantity of ADU– Duplex or Multi-Family Dwellings | a. Up to two detached ADUs; <u>or</u> b. At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot. | 2 detached ADUs <u>and</u> at least 1 interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot. | No change from July 2023. (Section 8) | HCD ADU Handbook dated July 2022 (pg. 20) |

| Section/ Standard | Current ordinance (BMC Ch. 23.306) | July 2023 Recommended Ordinance | September 2023 Recommended Ordinance (Ordinance Section(s)) | Source(s) for September 2023 Recommendation |
|--|---|--|---|---|
| Gross floor area, maximum | Outside of HOD: <ul style="list-style-type: none"> - Studio or 1-bed: 850 sf - 2+ bed: 1000 sf - Junior ADU: 500 sf Within HOD: <ul style="list-style-type: none"> - ADU: 800 sf - Junior ADU: 500 sf | Citywide: <ul style="list-style-type: none"> - Studio or 1-bed: 850 sf - 2+ bed: 1000 sf - Junior ADU: 500 sf | No change from July 2023. (Section 8) | HCD Letter dated October 17, 2022 (pg. 2) in combination with state law. GOV 65852.2(c)(2)(B); GOV 65852.22(i)(1) |
| Building height, maximum | Outside of HOD: 20 ft. Within HOD: 16 ft. | Citywide: Attached: 25 ft. Detached: 20 ft. | Maintain maximum building height outside of the Hillside Overlay: 20 ft. Revised requirements within the Hillside Overlay to match state law and reflect that the distance to public transit is measured as 0.5 mile walking distance of a major transit stop or high-quality transit corridor. <i>See Tables 23.306-2 and 230.306-3.</i> (Section 8) | State law. GOV 65852.2(c)(2)(D) |
| Building separation for detached ADU, minimum | Not specified. | 3-foot | Outside the Hillside Overlay: 5-foot Within the Hillside Overlay: 8-foot (Section 8) | Staff recommendation based on Fire, Building and Safety |
| Accessory Building or Accessory Structure Conversion | <ul style="list-style-type: none"> - Must be legally established at least three years prior to submission of an ADU - Allowed to maintain nonconforming Maximum Height, Size, and/or Rear and Side Setback to the same dimensions of the existing Accessory Building or Accessory Structure - Existing side and rear setbacks meet fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. | No change from current ordinance | Allowed to maintain non-conformity to the same location and dimensions of the existing legal nonconforming accessory building or accessory structure, without minimum time limits based on when the structure was created. (Section 8) <i>See Policy Alternative 2</i> | Location and dimensions - State law GOV 65852.2(a)(D)(vii) No limits based on when the structure was created - HCD ADU Handbook dated July 2022 (pg. 21) |
| Lot line setbacks, minimum | <i>Front:</i> Same as underlying zoning district <i>Rear:</i> 4 ft. <i>Side:</i> 4 ft. | <i>Front (no change):</i> Same as underlying zoning district | Added supplemental standard: (Section 8) | Staff recommendation based on state law. GOV 65852.2(c)(2)(C) |

| Section/ Standard | Current ordinance (BMC Ch. 23.306) | July 2023 Recommended Ordinance | September 2023 Recommended Ordinance (Ordinance Section(s)) | Source(s) for September 2023 Recommendation |
|--|--|--|--|--|
| | Exception: If there is a lesser setback allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district, that setback shall apply. | <i>Front of Through Lot:</i> Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer <i>Rear (no change):</i> 4 ft. <i>Interior side (no change):</i> 4 ft. <i>Street side:</i> 4 ft. | Clarified (4) <i>Front Setback, New Construction.</i> An ADU shall not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet. <i>See Policy Alternative 1</i> | |
| Attached ADU, standard | Not specified. | Less than 3-foot building separation | Sharing common wall (Section 8) | Staff recommendation based on state law GOV 65852.2(c)(2)(D)(iv) |
| Attached ADU, New Construction Height | An ADU proposed as an addition with a maximum height exceeding 14 ft. requires an AUP. | Attached ADUs with height greater than 14 ft. and up to 25 ft. allowed with a Zoning Certificate. | Simplified to remove “with height greater than 14 ft. and” (Section 8) | State law GOV 65852.2(c)(2)(D) |
| Junior ADUs Shared Sanitation Facilities | Not specified. | If a Junior ADU shares a sanitary facility with a single-family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required. | No change from July 2023. (Section 8) | Staff recommendation based on state law GOV 65852.22(i)(1) |
| Projections | Architectural features may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows may not project into a setback. Bay windows and balconies shall not project into a setback. No projections shall be allowed within the required setbacks on lots that are within the Hillside Overlay District. | Added bay windows and balconies may not project into a required rear ADU setback. | No change from July 2023. (Section 8) | Planning Commission recommendation, May 2023 |
| Noticing, Scope | Mail to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department. | Mail to all tenants of subject property, excluding property owner(s). | Revised Header to read “Noticing” instead of “Neighbor Noticing” and “tenant” to read “occupant” (Section 8) <i>See Policy Alternative 3</i> | Staff recommendation based on Planning Commission recommendation, May 2023, while addressing implementation concerns |

| Section/ Standard | Current ordinance (BMC Ch. 23.306) | July 2023 Recommended Ordinance | September 2023 Recommended Ordinance (Ordinance Section(s)) | Source(s) for September 2023 Recommendation |
|---|---|---|---|---|
| Off-Street Parking requirement, minimum | <p>JADU: None. Outside of HOD: None. Within HOD: The lesser of 1 space per bedroom or ADU.</p> <p>No off-street parking shall be required for ADUs that satisfy the criteria defined in subdivision (d) of California Government Code section 65852.2 or any successor provision thereto.</p> | <p>JADU: None Outside of HOD: None Within HOD: 1 per ADU unless satisfies the criteria in subdivision (d) of Government Code Section 65852.2.</p> | <p>JADU: None Outside of HOD: None Within HOD: 1 per ADU unless the parcel is located with 0.5 mile <u>walking distance</u> of a major transit stop or a high-quality transit corridor as defined in Public Resource Code Section 21155. (Section 10)</p> | <p>State law GOV 65852.2(c)(2)(D)(ii); GOV 65852.2(d)(1), PUB. RES. 21155</p> |
| Replacement Parking requirement | <p>Replacement parking is not required. Replacement of off-street parking for the Main Building is allowed and does not need to comply with Parking Maximums (BMC 23.322.070) nor Parking Layout and Design (BMC 23.322.080).</p> | <p>No change from current ordinance.</p> | <p>No change from July 2023. (Section 13)</p> | <p>State law GOV 65852.2(a)(1)(D)(xi)</p> |
| Parking Placement for ADUs | <p>If an applicant provides off-street parking for an ADU or a JADU in the HOD, parking shall be allowed in any configuration on the lot, including within the front yard setback.</p> | <ol style="list-style-type: none"> 1. On a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU is allowed in any configuration on the lot, including within the front setback; or 2. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback. | <p>No change from July 2023. (Section 13)</p> | <p>Staff recommendation based on state law GOV 65852.2(a)(1)(D)(xi)</p> |
| Alterations of lawful nonconforming existing structures | <p>Not specified.</p> | <p>The following alterations are permitted with a Zoning Certificate:</p> | <p>No change from July 2023. (Section 14)</p> | <p>Staff recommendation</p> |

| Section/ Standard | Current ordinance (BMC Ch. 23.306) | July 2023 Recommended Ordinance | September 2023 Recommended Ordinance (Ordinance Section(s)) | Source(s) for September 2023 Recommendation |
|-------------------------------------|---------------------------------------|---|---|---|
| or buildings to ADUs | | <ol style="list-style-type: none"> 1. New windows, doors, or other openings to a portion of a building or structure within a minimum required setback. 2. New windows, doors, or other openings to a portion of a building or structure exceeding the height limit. | | |
| "Junior ADU", definition | Requires a working refrigerator | Removes this requirement | No change from July 2023. (Section 15) | HCD Letter dated October 17, 2022 (pg. 1) |
| "Efficiency Kitchen", definition | Requires a sink | Removes this requirement | No change from July 2023. (Section 18) | HCD Letter dated October 17, 2022 (pg. 1) |



September 13, 2023

Re: Wildfire Risk Associated with Additional Density in the Very High Fire Danger Severity Zone

I. Introduction

The Berkeley Fire Department is extremely concerned about any intensification of structures, population and vehicles in Berkeley’s Very High Fire Hazard Severity Fire Zones 2 and 3 (“Fire Zones”). Berkeley has a history of catastrophic wildfires, and has all of the conditions for future wildfires that could devastate not just the burned area, but the rest of the city. In addition, because the Fire Zones have been transformed by humans from an open grassland/oak woodland to an urban forest, the transportation network in the Fire Zones is undersized and will constrain both a large-scale evacuation of residents and emergency response. The Department lacks sufficient staffing and facilities to meet this risk, as documented in the recent Standards of Coverage and Community Risk Assessment.

At the same time, the Berkeley Fire Department understands that certain increases in density within the City, including within the Fire Zones, may be mandated by the State. The Fire Department is deeply concerned about the potential impacts increasing density could have to life and property within the Fire Zones, and strongly recommends that the City mitigate the impacts of intensification of structures, people, or vehicles to the greatest extent possible.

The Fire Department is particularly concerned about the structure density per acre and separation between structures within the Fire Zones. While many factors contribute to potential loss of life and property in a wildfire, these two factors are key factors contributing to fire spread. As a general matter, the higher the number of structures per acre and the shorter the distance between structures, the greater the risk of rapid structure-to-structure ignition. Distances of less than 25 feet between structures pose an extreme risk of structure-to-structure ignition, which could lead to a catastrophic loss of life and property.

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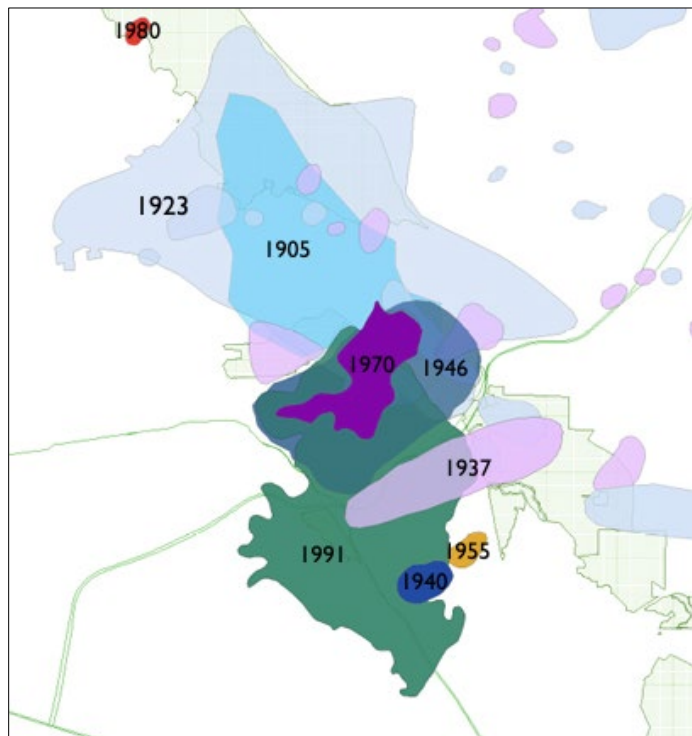
For these reasons, the Fire Department recommends that, in Berkeley’s Hillside Overlay areas, which correspond with Berkeley’s [Very High Fire Hazard Severity Zones 2 and 3](#), separation between structures on and across parcels should be increased to at least 25 feet. The Fire Department understands, however, that a 25-foot separation is not practicable at this time, given that the current zoning within the Hillside Overlay provides for a separation of approximately 8 feet (i.e., 4-foot side setbacks on each parcel, resulting in 8 feet separations between structures). In light of this constraint, the Fire Department recommends that the City Council, in considering proposals to amend the Zoning Ordinance with respect to Accessory Dwelling Units (“ADUs”), adopt a bare minimum 8-foot separation between main buildings and ADUs in the Hillside Overlay areas. While other changes to the Zoning Ordinance are not under consideration at this time, the Fire Department intends to work with the Planning Department in the future to potentially impose larger setbacks both across and within parcels in the Hillside Overlay based on new research conducted by the National Institute of Standards and Technology (NIST), California Department of Forestry and Fire Protection (CAL FIRE), and Insurance Institute for Business & Home Safety (IBHS), showing that maintaining a robust separation between structures is key to mitigating the risk of rapid structure-to-structure ignition during a wildfire.

II. Background

A. Berkeley’s Wildfire History

Berkeley has long faced an elevated risk of wildfires, having faced significant wildfires in [1905](#), [1923](#), [1946](#), [1970](#), and [1991](#)ⁱ. The below chart shows the locations of these fires within the City, which generally correspond with the City’s Very High Fire Danger Severity Zones.

Far from receding with time, the risk of catastrophic wildfire is growing due to changing conditions driven by climate change and development within the Bay Area. These growing risks demand new approaches in risk management and careful consideration of any policy changes that impact density, especially in the Fire Zones.





B. Berkeley’s Unique Geographical Landscape and Its Impact on Fire Risk

Berkeley’s unique geography contains both urban areas as well as an area known as the wildland-urban interface.

Several sections of Berkeley are very urban to a degree typical of the largest metropolitan cities for population densities and traffic. The following tableⁱⁱ displays population density per square mile. Of the top 51 largest cities in California, Berkeley is the second most densely populated city per square mile.

California Cities: Population Density per Square Mile

| Rank by Population | Rank by Density | City | Population | Size (Square Miles) | Population per Square Mile |
|--------------------|-----------------|------------------|----------------|---------------------|----------------------------|
| 4 | 1 | San Francisco | 873,965 | 46.91 | 18,630.68 |
| 51 | 2 | Berkeley | 124,321 | 10.43 | 11,919.56 |
| 13 | 3 | Santa Ana | 310,227 | 27.34 | 11,347.00 |
| 31 | 4 | Garden Grove | 171,949 | 17.96 | 9,574.00 |
| 7 | 5 | Long Beach | 466,742 | 50.71 | 9,204.14 |
| 1 | 6 | Los Angeles | 3,898,747 | 469.49 | 8,304.22 |
| 8 | 7 | Oakland | 440,646 | 55.93 | 7,878.53 |
| 22 | 8 | Oxnard | 202,063 | 26.53 | 7,616.40 |
| 23 | 9 | Huntington Beach | 198,711 | 27 | 7,359.67 |
| 46 | 10 | Santa Clara | 127,151 | 18.28 | 6,955.74 |
| 33 | 11 | Salinas | 163,542 | 23.52 | 6,953.32 |
| 36 | 12 | Sunnyvale | 155,805 | 22.08 | 7,056.39 |
| 40 | 13 | Torrance | 147,067 | 20.52 | 7,167.01 |
| 10 | 14 | Anaheim | 346,824 | 50.27 | 6,899.22 |



| Rank by Population | Rank by Density | City | Population | Size (Square Miles) | Population per Square Mile |
|--------------------|-----------------|------------------|------------|---------------------|----------------------------|
| 37 | 15 | Pomona | 151,713 | 22.99 | 6,599.09 |
| 41 | 16 | Fullerton | 143,617 | 22.42 | 6,405.75 |
| 24 | 17 | Glendale | 196,543 | 30.48 | 6,448.26 |
| 44 | 18 | Pasadena | 138,699 | 22.96 | 6,040.90 |
| 19 | 19 | Modesto | 218,464 | 43.05 | 5,074.66 |
| 3 | 20 | San Jose | 1,013,240 | 178.26 | 5,684.06 |
| 43 | 21 | Orange | 139,911 | 25.67 | 5,450.37 |
| 15 | 22 | Chula Vista | 275,487 | 49.64 | 5,549.70 |
| 6 | 23 | Sacramento | 524,943 | 98.61 | 5,323.43 |
| 11 | 24 | Stockton | 320,804 | 62.21 | 5,156.79 |
| 21 | 25 | Fontana | 208,393 | 43.07 | 4,838.47 |
| 5 | 26 | Fresno | 542,107 | 115.18 | 4,706.61 |
| 14 | 27 | Irvine | 307,670 | 65.61 | 4,689.38 |
| 25 | 28 | Santa Rosa | 178,127 | 42.53 | 4,188.27 |
| 28 | 29 | Rancho Cucamonga | 174,453 | 40.11 | 4,349.36 |
| 17 | 30 | Santa Clarita | 228,673 | 70.75 | 3,232.13 |
| 2 | 31 | San Diego | 1,386,932 | 325.88 | 4,255.96 |
| 29 | 32 | Oceanside | 174,068 | 41.27 | 4,217.79 |
| 26 | 33 | Elk Grove | 176,124 | 41.99 | 4,194.43 |
| 38 | 34 | Escondido | 151,038 | 37.35 | 4,043.86 |

- 4 -

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| Rank by Population | Rank by Density | City | Population | Size (Square Miles) | Population per Square Mile |
|--------------------|-----------------|----------------|------------|---------------------|----------------------------|
| 20 | 35 | Moreno Valley | 208,634 | 51.33 | 4,064.56 |
| 50 | 36 | Concord | 125,410 | 30.55 | 4,105.07 |
| 35 | 37 | Corona | 157,136 | 39.94 | 3,934.30 |
| 39 | 38 | Roseville | 147,773 | 44.08 | 3,352.38 |
| 49 | 39 | Vallejo | 126,090 | 30.42 | 4,144.97 |
| 42 | 40 | Visalia | 141,384 | 37.94 | 3,726.52 |
| 12 | 41 | Riverside | 314,998 | 81.23 | 3,877.85 |
| 18 | 42 | San Bernardino | 222,101 | 62.13 | 3,574.78 |
| 34 | 43 | Hayward | 162,954 | 45.82 | 3,556.39 |
| 27 | 44 | Ontario | 175,265 | 49.97 | 3,507.40 |
| 48 | 45 | Simi Valley | 126,356 | 41.55 | 3,041.06 |
| 16 | 46 | Fremont | 230,504 | 78.31 | 2,943.48 |
| 9 | 47 | Bakersfield | 403,455 | 149.78 | 2,693.65 |
| 47 | 48 | Thousand Oaks | 126,966 | 55.26 | 2,297.61 |
| 30 | 49 | Lancaster | 173,516 | 94.27 | 1,840.63 |
| 45 | 50 | Victorville | 134,810 | 73.71 | 1,828.92 |
| 32 | 51 | Palmdale | 169,450 | 106.06 | 1,597.68 |

C. Defining the Wildland Urban Interface (“WUI”) Within the City of Berkeley

Even though the flatlands of Berkeley are very urbanized, the City also contains an area known as the wildland-urban interface, or the “WUI.” The standard conceptual definition of the WUI, which has been adopted by federal and state-level authorities, describes it as the geographical area where human development, including structures and infrastructure, meets or blends with undeveloped wildlands. WUI communities are further categorized as interface, intermix, or occluded based on factors like housing density, wildland coverage, and population density.

- 5 -



Establishing a consistent operational definition has proven challenging. Typically, WUI areas are defined based on three main factors: human presence (measured by housing or population density), wildland vegetation coverage, and proximity to wildlands (often determined by buffer distances). In 2001, an official Federal WUI definition was introduced, mainly focusing on human presence, but lacking quantitative descriptions of wildland vegetation and proximity. The Healthy Forests Restoration Act (HFRA) of 2003 expanded this definition to include "at-risk communities" and specified the extension of WUI boundaries. Risk factors, such as fire behavior potential, values at risk, and infrastructure, are considered, but risk quantification remains unspecified.

Not all WUI communities share the same fire risk level, and risk assessment is left to local jurisdictions. While historical WUI fire losses have occurred within defined boundaries, examples like the Coffey Park neighborhood in Santa Rosa, CA, which was destroyed in the 2017 Tubbs Fire, demonstrate that hazardous conditions can extend beyond the designated WUI, emphasizing the need for broader wildfire risk management. Similar losses from structure-to-structure fire spread have been observed in various large-loss WUI fire events, whether or not the locations were officially designated as WUI.

While the WUI in Berkeley cannot be precisely defined, it roughly correlates with the area to the north and east of the University of California at Berkeley, including the Berkeley Hills and La Loma Park neighborhoods and other areas that border Tilden Regional Park and the Claremont Canyon Regional Preserve. These areas are in close proximity to wildlands, have a high number of structures per acre, narrow structure separation distances, steep topography, significant vegetation coverage, and narrow, winding roads. For these reasons, these areas are designated as Very High Fire Hazard Severity Zones. The City Council has also recognized that these areas pose an especially high degree of fire risk by creating the [Hillside Overlay Zone](#), which sets forth special Zoning rules for areas of the City with the highest fire hazards.

D. Weather Conditions, Topography, and Vegetation Pose Extreme Risks to People and Property in the Berkeley WUI

It is well-known that weather elements, including temperature, relative humidity, wind, and lightning, affect vegetation/wildland fire potential and behavior. Wind can be the most significant weather factor influencing vegetation/wildland fire behavior, with higher wind speeds increasing fire spread and intensity. High temperatures and low relative humidity also influence fire potential and behavior by drying out vegetative fuels, allowing such fuels to burn more readily and intensely. In Berkeley, weather conditions conducive to vegetation/wildland fires primarily occur during the summer and fall months, as strong winds develop, producing higher temperatures and lower humidity.



The City's topography also contributes to the fire risk in Berkeley's WUI.ⁱⁱⁱ The City's topography transitions from being flat / sea level along the San Francisco Bay in the west, to steeper, sloped terrain approaching 1,000 feet in elevation in the Berkeley Hills along the City's eastern edge. The steeper, sloped terrain in the Hills can contribute to fire spread, because vegetation/wildland fires tend to burn more intensely and spread faster when burning uphill and up-canyon. However, the hot, dry "Foehn" or "Diablo" winds from the northeast that occur especially during the spring and fall, and come from the northeast, can cause rapid downhill and down-canyon fire spread and were responsible for the fires in 1923 and 1991.

The vegetation within the WUI further contributes to fire risk. In addition to decorative landscape species, vegetative fuels within the Fire Zones consist of a mix of annual grasses and weeds, manzanita/knob cone, chaparral, deciduous, eucalyptus, cyprus, and mixed conifer tree species. These types of vegetation can burn intensely and contribute to rapid fire spread under the right fuel, weather, and topographic conditions. Development has intensified these natural hazards over time. At the time of the 1923 Berkeley Fire, the Berkeley Hills were largely undeveloped, looking more like the Hills in the South Bay: open grassland, oak woodland, savanna, etc. However, many trees were planted over the course of the 20th Century as the Hills became more developed. Some of these trees are invasive and/or more flammable during a wildfire, such as the Italian Cyprus, Eucalyptus, and Acacia. Over time, these trees have altered Berkeley's natural landscape and dramatically increased the Hills' fire fuels.

E. Challenges with Large Scale Evacuation of Berkeley

Because of the above-mentioned challenges, it is especially crucial that residents within Berkeley's Fire Zones be able to evacuate as quickly and efficiently as possible. A wind-driven wildfire can spread at extraordinary speeds and [ember storms](#) can ignite spot fires far ahead of the main flame front^{iv}. During this type of weather, some normally-available firefighting tools can be ineffective or even unusable; for instance, planes and helicopters, which are ordinarily useful for firefighting, need to be grounded during high winds. When a fire builds to this magnitude and travels with extreme speed and force, firefighters' primary focus often shifts from firefighting to supporting evacuations.

We know from many of the recent wildfires that have impacted residential communities, from Paradise to Santa Rosa to Lahaina, that many people have died fleeing in their vehicles or on foot on limited evacuation routes. The narrow, winding roadways in the Berkeley Hills pose evacuation challenges in this respect. [Video](#) from the 1991 Oakland-Berkeley Hills Fire demonstrates how evacuating vehicles get backed up, forcing their occupants to choose between waiting in a line of cars or abandoning their vehicles and running for safety. Given the aging of Berkeley's population, the topography, the large number of people living in the City's Fire Zones, and the extremely limited opportunities for egress, a rapidly moving wildfire that



causes a wind-driven, structure-to-structure urban conflagration in the Berkeley Hills has the potential to result in fatalities on the same magnitude, and potentially greater, than what has been seen in recent fires in Maui and Sonoma County.

We also know from recent fires that evacuation must occur *before* a fire starts. The fires that occurred in Lahaina, Maui in 2023 are the most recent example demonstrating that under fire conditions, waiting to evacuate until after the fire starts may not provide enough time to escape, especially when roadways are under-sized for the evacuating population. The Fire Department is already aware that residents in Berkeley's WUI may not be able to evacuate as fast as a fire could spread, given both the extraordinarily fast spread of a wind-driven wildfire, as well as area's density and narrow, winding roads. Further density within this region would likely exacerbate the risk that some residents would not be able to evacuate quickly enough, leading to devastating loss of life.

III. Hazard Mitigation Requires Increasing Defensible Space

F. Methodology for Hazard Mitigation in the WUI

Over the past two decades, wildfires in wildland-urban interface (WUI) areas have become more severe, causing significant damage to communities and the economy. The National Institute of Standards and Technology (NIST), California Department of Forestry and Fire Protection (CAL FIRE), and Insurance Institute for Business & Home Safety (IBHS) collaborated to create a Hazard Mitigation Methodology (HMM) to address this issue. Published as *NIST Technical Note 2205: WUI Structure / Parcel / Community Fire Hazard Mitigation Methodology*^v, the HMM focuses on assessing and mitigating fire and ember hazards by considering the spatial relationships between fuels, exposures, and hardening at structure and parcel levels. It highlights the importance of parcel-level hardening, community hardening, and community design, and is designed for both retrofitting existing structures and new construction. The methodology is science-based, drawing from extensive field data and research, and assesses mitigation effectiveness at the parcel and community levels.

As the HMM itself notes:

"The proposed methodology is designed to augment defensible space. The strategy relies on defensible space principles specifically related to the removal and maintenance of vegetative fuel and other combustible materials. The strategy was developed over a period of 16 months through a collaborative effort between NIST, CAL FIRE, and IBHS and leverages the most current science and data together with more than ten thousand hours of pre- and post-WUI fire field data collection conducted by the collaborating agencies. Discussions with the

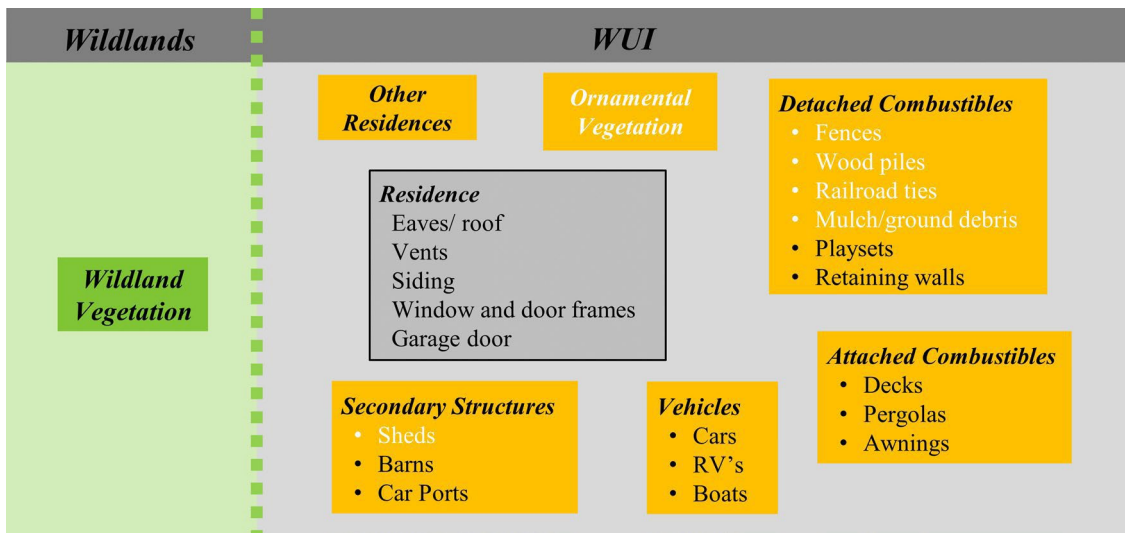


building industry were necessary to clarify and improve different implementations for retrofit solutions.” (Maranghides, et al., 2022)

G. Parcel Boundaries, Linear Features and Fuel Agglomeration Impact Defensible Space in the WUI

In the context of wildfire mitigation policy for the wildland-urban interface (WUI), there are various pathways by which structures can ignite due to ember and fire exposures. There are a multitude of combustible features that contribute to fire spread within and across parcels, including materials used, assembly, design, configuration on the parcel, and size of structures. While some features can be made noncombustible, this can be challenging with existing housing stock or vehicles, which reinforces the need for a comprehensive understanding and analysis of ignition pathways when creating or modifying zoning policy in Very High Fire Danger Severity Zones.

The figure below shows the parcel-level combustible features that can contribute to various structure ignition pathways^{vi}.



According to NIST Technical Note 2205 *“There are three technically important considerations when assessing fire spread within and across parcels. These are that:*

1. *parcel boundaries typically limit the continuity of protection between parcels,*
2. *linear features can carry fire very efficiently within and between parcels, and*
3. *fuel agglomeration has significant impact on energy release and fire spread.”*

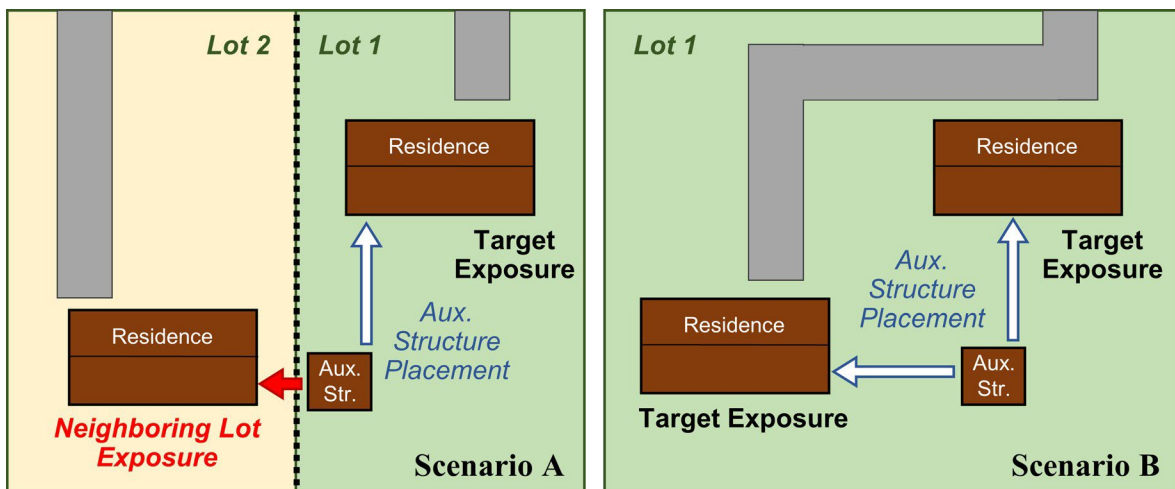
These three considerations are discussed below.



H. Parcel Boundaries

In the context of policy development for wildfire risk mitigation in the wildland-urban interface (WUI), the historical approach of building codes has focused on safeguarding residential structures from hazards within the same parcel. However, it is critical that city policy consider hazards extending beyond property lines to enhance the overall safety of communities in WUI areas.

In the figure below, courtesy of NIST Technical Note 2205, “both structures are protected by the necessary SSD when the two residences are located on the same lot, as in Scenario B. When property lines are considered as a limit of code application, the hazard imposed from the auxiliary structure to the neighboring residence in Scenario A is unmitigated.



Existing codes are parcel centric. Residential structures are similarly located in Scenario A and B; however, the parcel division in Scenario A allows placement of an auxiliary structure too close to the neighboring primary structure when the parcels are considered independently.” (Maranghides, et al., 2022)

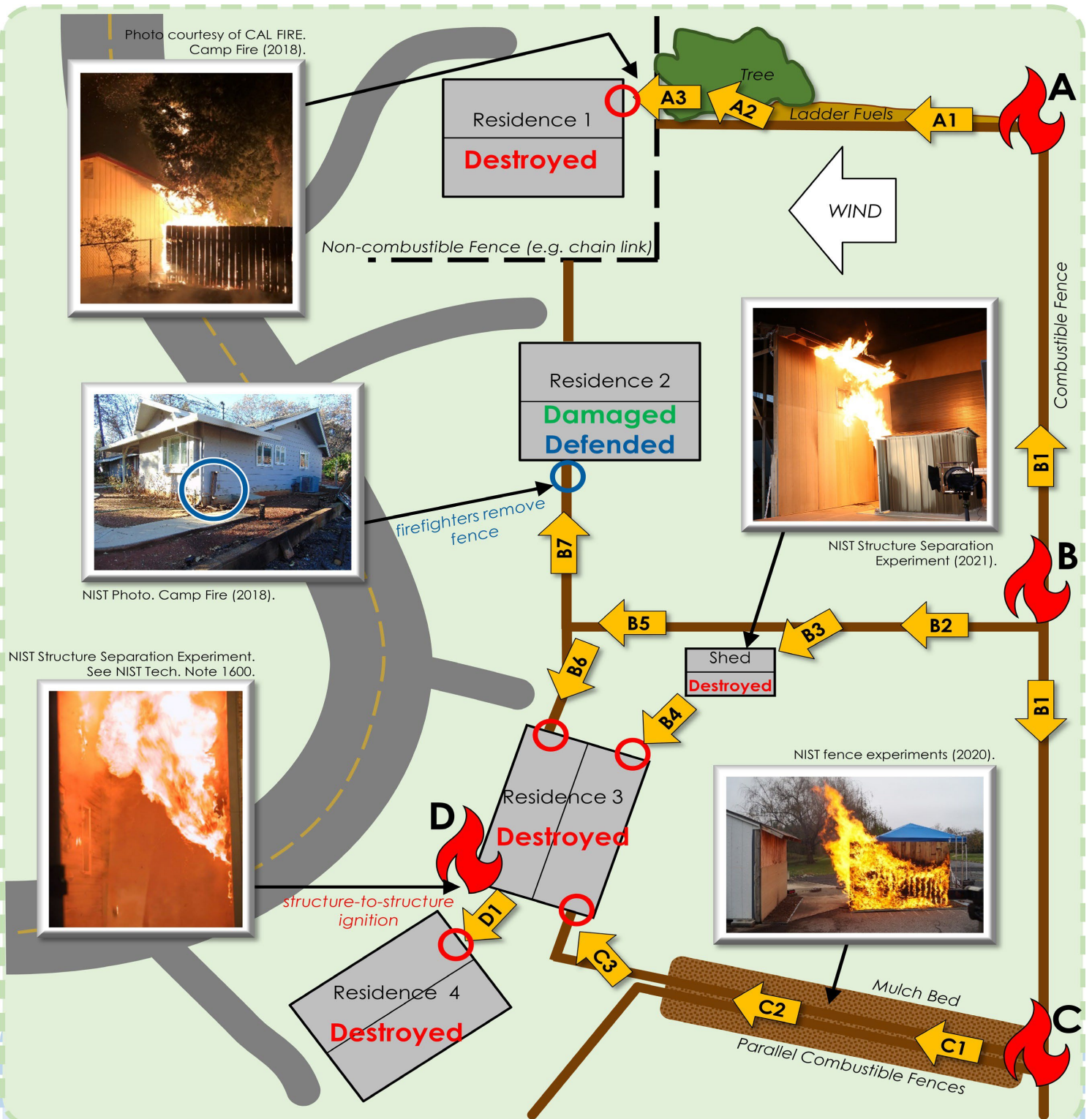
Best practices therefore dictate that Zoning ideally should consider separation distances across parcels in addition to separation distances within a parcel in order to minimize fire risk.



I. Linear Features

Fire can spread along features including primary structures, auxiliary structures, fences, wood piles, decks and vehicles. **This spread can occur both inter and intra parcel, easily transmitting fire through a neighborhood. As more open space on a parcel is filled with structures, this fuel agglomeration may have an impact on structure to structure fire spread during an urban, wind-driven conflagration.**

The figure below, courtesy of NIST 2205, “illustrates how fire can burn along linear features to spread from a single ignition point to multiple lots and impact multiple residences. For example, following ignition and fire spread pathway B shows that a single ignition on a fence line can carry fire to 6 lots and destroy (directly or indirectly) 3 residences depicted within the extent of the figure. It is also important to note that even with a partial improvement, such as removing the fence’s direct connection to Residence 3, the result is still 2 destroyed residences within the figure: Ignition B → shed → Structure 3 → Structure 4.”



Embers can bring fire into communities. Once fire has started, fire spreads along multiple pathways:

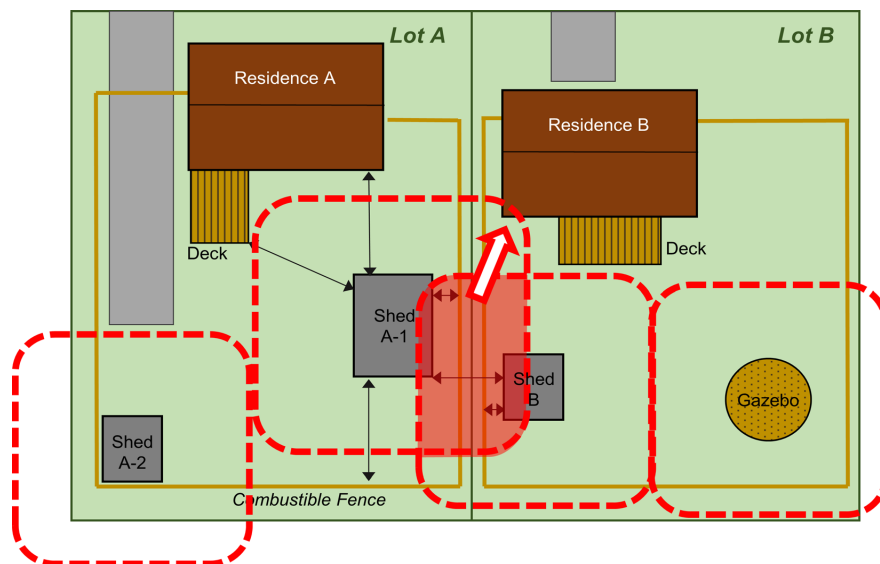
- A:** Spot fire ignites fence, burning along ladder fuels (A1) to larger vegetation (A2), and ignites Residence 1 on adjacent parcel (A3).
- B:** Fence ignition propagates fire on multiple parcels (B1, B2). Fence ignites shed (B3). Exposures from shed and fence ignite Residence 3 (B4, B6).
Fence ignites Residence 2 (B7). Defensive actions save Residence 2.
- C:** Parallel fences on adjacent parcels exponentially intensify fire exposure (C1, C2) which ignites Residence 3 (C3).
- D:** The exposure from burning Residence 3 ignites Residence 4 (D1).

J. Fuel Agglomeration

“NIST experiments have confirmed field fire observations about the role of fuel agglomeration on fire and ember exposures generated from combustibles in close proximity to one another. The figure below illustrates the intense burning and significant energy release from two fences placed 8 in (20 cm) apart. The observed increase in intensity compared to the burning of a single fence remained even when fences were spaced by 36 in (92 cm).” (Maranghides, et al., 2022)



As NIST 2205 explains, this *“illustrates how the issue of fuel agglomeration and increased exposures is particularly important in high- and moderate-density construction. The two red dashed outlines represent areas of high fire exposure potential from the sheds and illustrate the challenge from the fire exposures of high fuel loading on small parcels. The area represented by the overlapping dashed outlines represents an area of potential high energy release, and the red/white arrow illustrates the direct impact from this high energy release to the primary residence.”*



The spatial relationship between fuels can impact fire spread. In the image above, *“sheds are spaced appropriately from the residences and other fuels, except fences, on their respective lots. However, Shed A-1 is too close to Residence B, and both sheds act as an agglomerated fuel*

package along the property border. The sheds and fences will substantially increase the exposures from the red highlighted area, igniting the structures.” (Maranghides, et al., 2022)

IV. Structure Separation Distance is Critical to Limiting Fire Spread in Berkeley

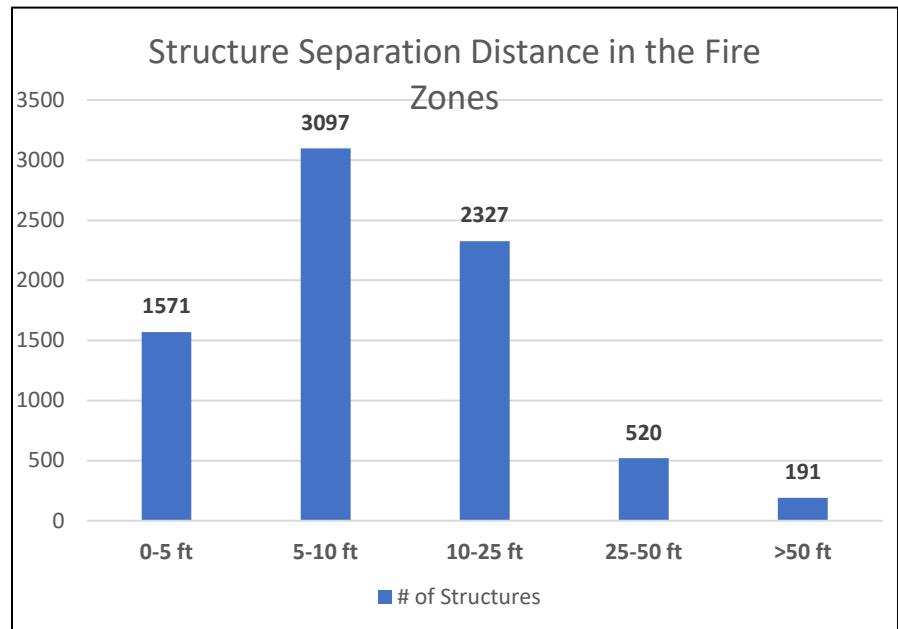
According to recognized industry practice, structure separation distance, or “SSD”, is a key metric in mitigating fire risk in WUI areas, such as those in Berkeley. There are two reasons for this. *“First, structures represent a significant density of fuels that impact fire spread and, in many cases, directly contribute to the ignition of additional structures, propagating fire throughout the community. Secondly, existing structures pose a unique challenge in hazard management—they are immobile. While they can be hardened, they cannot be readily removed or displaced like many other WUI fuels.”* (Maranghides, et al., 2022)

According to NIST 2205 there are three categories of SSD, summarized in the table below.

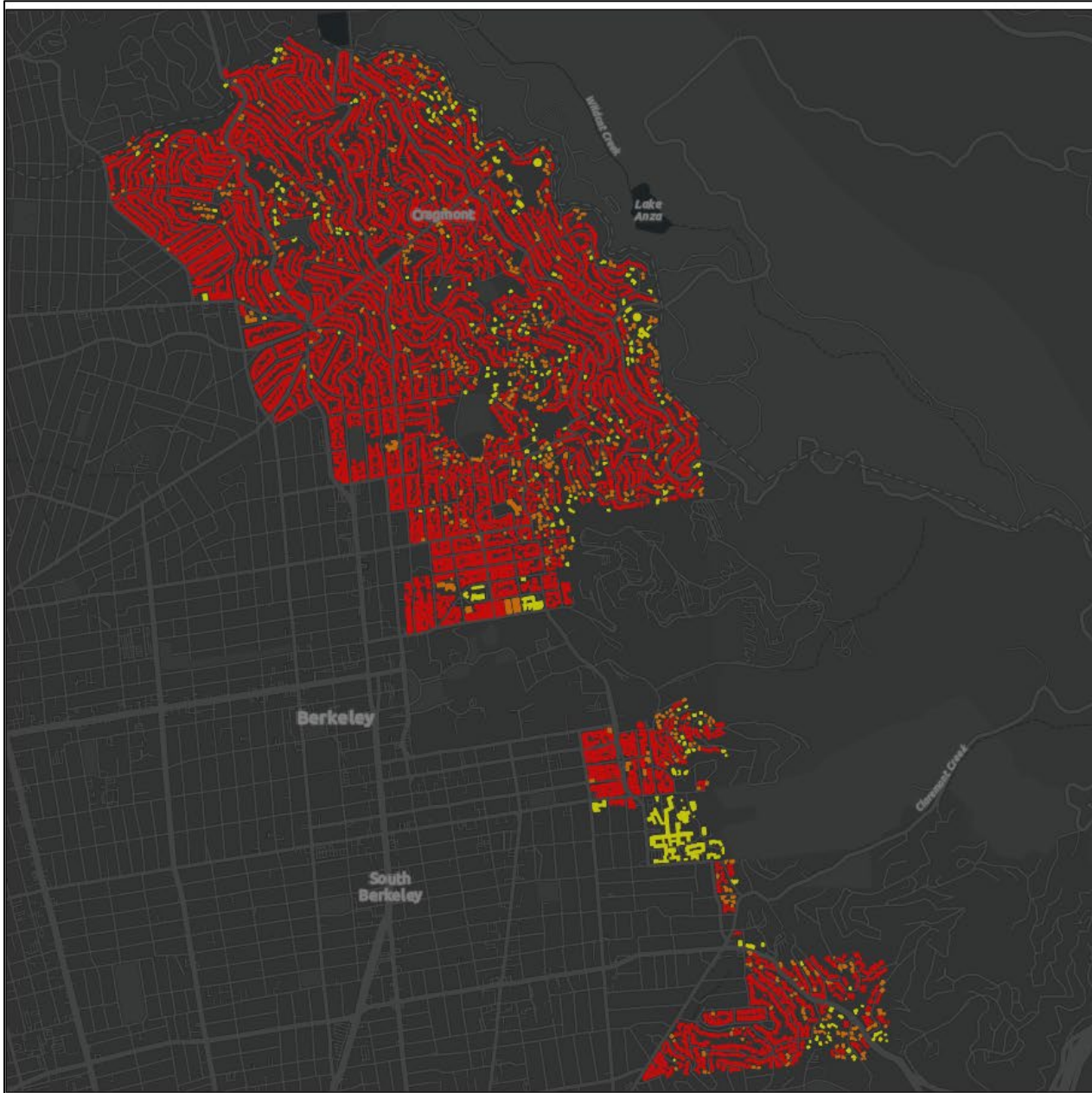
| Category | SSD | Notes |
|------------------|----------------|--|
| Low Density | >50 ft | lower potential losses from individual structure ignitions, low potential for urban conflagration |
| Moderate Density | 25 ft to 50 ft | greatest impact on structure ignition resistance by hardening for fire exposures from neighboring structures |
| High Density | < 25 ft | must not have any structures ignite, as risk of entire community loss is very high due to structure-to-structure fire spread |

Many of the structures in the Fire Zones have an SSD of < 25 feet (see table this page and map¹, next page), which places the community in the highest risk category according to research. However, the Berkeley Fire Department recommends preserving every additional foot of SSD

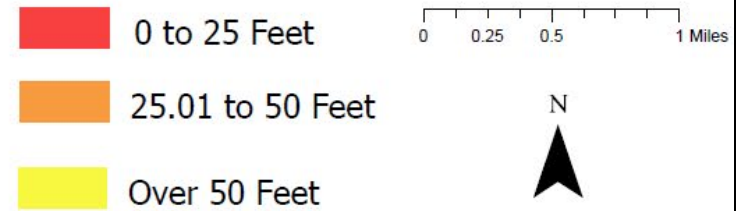
possible, as the more space between structures, the less likely structure-to-structure ignition will occur. Additional space also provides more access for firefighters to perform offensive or defensive firefighting activities such as deploying hoselines or cooling vertical and horizontal structural surfaces with water and foam/retardant.



¹ <https://berkeley.maps.arcgis.com/home/item.html?id=28897f6849bf4514bd1d7cf93ee4ea53>



Structure density in Fire Zones 2 and 3



California State Parks, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/
NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA



K. Housing Units per Acre Impact Structure-to-Structure Fire Spread in Berkeley

The structural density of a Wildland Urban Interface is categorized in to one of seven risk profiles with the highest-density communities having 8 housing units per acre (HU/ac), and being 320 times denser than the lowest-density WUI areas, which have 0.02 HU/ac (1 HU on 40 acres).

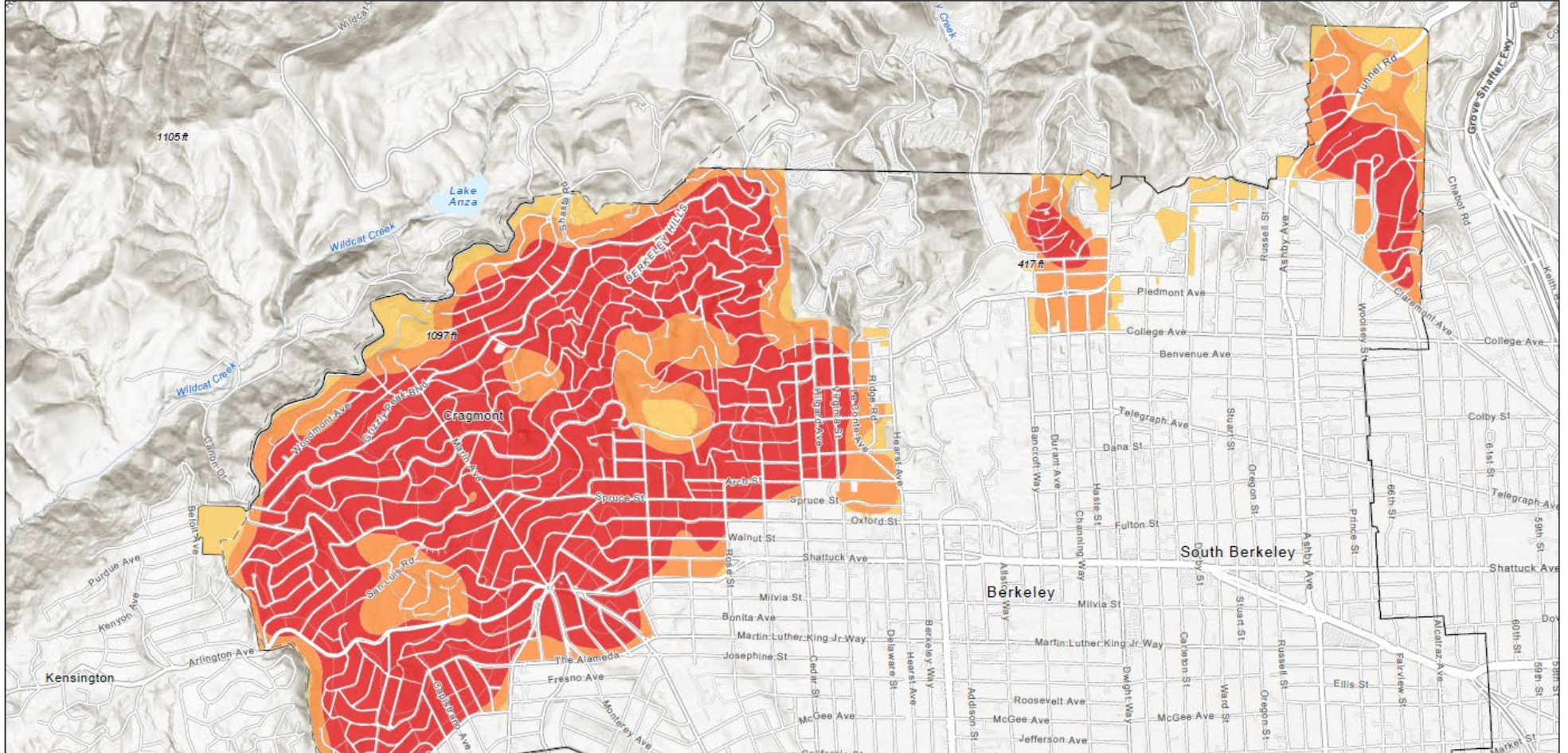
| Type | WUI Type Name | Typical Housing Density (Hu/ac) |
|------|--------------------------------------|---------------------------------|
| 1 | High Density Interface – Perimeter | 2 to 8+ |
| 2 | High Density Interface – Interior | 2 to 8+ |
| 3 | Medium Density Interface – Perimeter | <2 |
| 4 | Medium Density Interface – Interior | <2 |
| 5 | Medium Density Intermix | <2 |
| 6 | Low Density Interface | <1 |
| 7 | Medium Density Intermix | <1 |

Almost the entire Fire Zone area is in one of the two highest risk categories with between 4 and 6 structures per acre (See the map² on next page).

One factor exacerbating this problem further is that almost all homes were constructed prior to modern home hardening (fire resistive) codes were put in place, leaving homes vulnerable to ignition from embers, direct flame impingement, or radiated or convected heat.

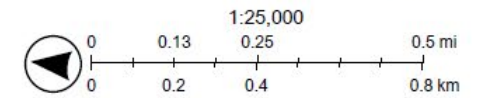
² <https://berkeley.maps.arcgis.com/apps/mapviewer/index.html?layers=50439fabd95045fba6d7319173698609>

COB Fire Zone Structure Density



9/12/2023, DensityAnalysis_Buildings_in_Fire_Zone_2_and_3_Ver 3

- LEGEND**
- > 4 - >6 per acre
 - > 2 - 4 per acre
 - > 1 - 2 per acre
 - COB Municipal Boundary



California State Parks, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA, Esri, NASA, NGA, USGS, FEMA



To illustrate the prior scientific findings and GIS information, we are including two images of Berkeley's Fire Zone which demonstrate existing conditions which can propagate rapid structure to structure fire spread.

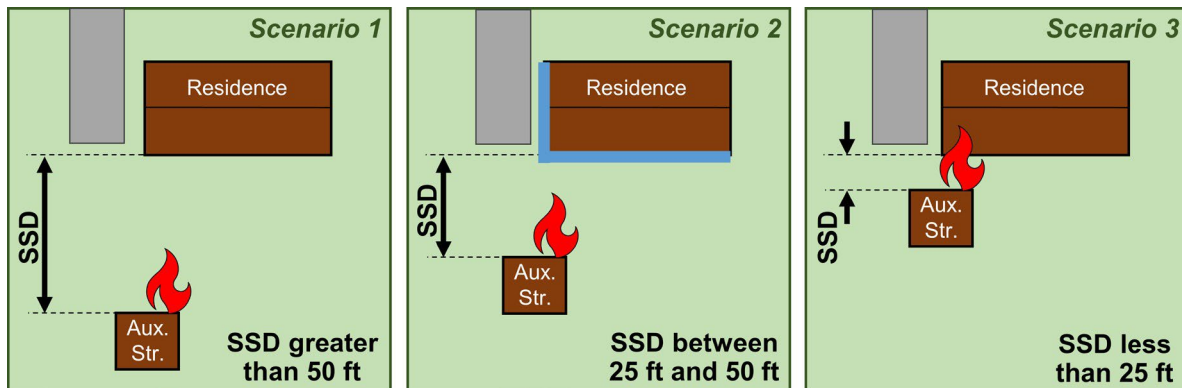


Structures in the Fire Zones have an SSD that is often less than 25 ft, an abundance of vegetation that creates an urban forest, with houses arranged along winding, narrow roadways.





In the Fire Department's view, the City must consider the role of SSD and HU/ac on structure-to-structure ignition in crafting policy that allows the intensification of the built environment in the community. As structures are moved farther apart from one another, there is a rapid decrease in heat transfer through radiation and convection. The figure below shows varying SSD and the impact it has on both fire spread and the requirements for partial home hardening against direct flame impingement, and heat transfer through radiation and convection.



"Scenario 1

This scenario represents exposure/distance combinations where the fire exposures do not reach the structure to be protected. A distance of 50 ft or greater is used in this example of auxiliary structures with floor area greater than 120 ft². Based on field observations, the residence will not experience significant fire exposures at this distance (radiation and convection) and no hardening for fire is required.

Scenario 2

This scenario represents exposure/distance combinations where the fire exposures can ignite a structure. Hardening the residence can significantly mitigate the likelihood of structure ignition. Another way to say this is that there is a "sweet spot" in the spacing between the source and the target (residential structure or other asset to be protected) where hardening will add value. To follow the example of the auxiliary structure in Scenario 1, this range in spacing is when the auxiliary structure is between 25 ft and 50 ft from the target. This distance range is a function of the source's energy content and spatial configuration. In this case, hardening the auxiliary structure (the source) would also reduce its ignition potential, and consequently, exposure to the primary structure.

Scenario 3

In many ways this is the most challenging scenario. This spacing range represents exposure/distance combinations where the very high fire exposures (e.g., direct flame contact from a fully involved residence) will ignite a structure and mitigation in the form of hardening



will have limited or no effect in reducing the ignition potential of the structure.

This represents scenarios with very high fuel densities. In the case of the auxiliary structure greater than 120 ft², this occurs when the auxiliary structure to target (residence or other asset to be protected) separation is less than 25 ft.

In this scenario, the path forward to increase the survivability (i.e., ignition resistance) of the target is to prevent the ignition of the source. For auxiliary structures this can be achieved by also applying the hazard mitigation methodology to the auxiliary structure. The best practice is to displace or remove the shed. Relying on ignition prevention of auxiliary structures enhances primary structure survivability under certain conditions, however, does not provide the same protection provided by displacement or removal.” (Maranghides, et al., 2022)

V. Berkeley Fire Department Resources Are Also Constrained, Demonstrating the Importance of Mitigating Fire Risk Through Planning Where Possible.^{vii}

The Berkeley Fire Department does not currently have staffing adequate to provide the initial response necessary for a severe wildland urban interface fire that enters the City. In the past, the Department was run with 12+ fire companies staffed with 4 firefighters each, which equaled over 180 firefighters. Today, there are 9 fire companies, staffed with 3 firefighters each, or 120 firefighters total. This reduction in force has occurred even as Berkeley’s population has grown, a fact which requires the City to have an urban firefighting force for the 21st century. The 4-person urban staffing model is standard in other communities faced with a similar density and/or significant wildfire threat, including many of Departments shown in the density comparison table (above), including but not limited to San Francisco, Santa Ana & Torrance (Orange County Fire Authority), Anaheim, Long Beach, Los Angeles, Oakland, and San Jose. In a rapidly moving wildfire scenario, every firefighter makes a difference in moving residents to safety and protecting property.

The City’s recent Standards of Coverage and Community Risk Assessment documents the need for additional firefighters to staff engines and trucks most likely to be called to wildland and high-rise building fires:

*“Citygate finds the Department’s response apparatus types to be appropriate to protect against the hazards likely to impact the City. However, fire crew staffing of three per unit is insufficient to provide the necessary “weight” of response to serious fires—especially so in mid- and high-rise buildings **and for severe wildland fires that start in the hills.***

At a minimum, four-firefighter staffing should be provided:

- *On four engines: 1, 2, 5, and 6 and on trucks 2 and 5*
- *Occasionally (on high-fire danger wildland fire days) on engines 3, 4, and 7.”*



L. Fire Services are already strained^{viii}

“The Department serves a diversity of populations, from residents to business employees and students. These populations, across a varied zoning pattern combined with topography and road design constraints, place significant restrictions on best practice-based fire and EMS response times.”

The below study, conducted by CityGate, summarizes current response times for the Fire Department. The results demonstrate that the Department is under strain.

Response Performance Summary – RY 20/21

| Response Component | Best Practice | | 90 th Percentile Performance | Performance Versus Best Practice and Current Goal |
|----------------------------|---------------|-----------|---|---|
| | Time | Reference | | |
| Call Processing / Dispatch | 1:30 | NFPA | 2:29 | + 0:59 |
| Crew Turnout | 2:00 | Citygate | 2:05 | + 0:05 |
| First-Unit Travel | 5:00 | CityGate | 5:53 | + 0:53 |
| First-Unit Call to Arrival | 7:30 | Citygate | 9:32 | + 2:02 |
| ERF Call to Arrival | 11:30 | Citygate | 18:50 | + 7:20 |

First-unit travel performance is 0:53 seconds slower than the 5:00-minute best practice goal for urban communities due to several factors: station location, terrain, and traffic congestion. As CityGate explained *“Overall, first-unit call-to-arrival and ERF call-to-arrival performance, which is a fire agency’s true customer service measure, are both significantly slower than their respective 7:30-minute and 11:30-minute best practice goals.”*

The Citygate study further explained that *“...dispatch, turnout, and travel times all need to be reduced. Dispatch time must decrease by 0:59 seconds to meet a 1:30-minutes call-processing goal, turnout time by :05 seconds to meet a 2:00-minute goal, and travel time by 0:53 seconds to meet a proposed goal of no more than 5:00 minutes for first-due units in congested urban areas. Collectively, Citygate’s recommended first-unit total response time goal is 8:30 minutes (1:30 + 2:00 + 5:00).”*

These resource issues will only be intensified by further development. As the Citygate study put it, *“the ongoing intensification of land uses, building heights, and population density will*



make several sections of the City very urban—typical of the largest metropolitan cities for building fire and rescue/EMS challenges. The cumulative effect of these projects around the City necessitates a shift in staffing and response models as well as an increase in the flexibility of emergency medical resources.”

The Fire Department is therefore already short-staffed and under-resourced, and any increase in density within high-fire risk areas could impose serious consequences for the City.

VI. Conclusion

In conclusion, Berkeley’s unique geography, the density that already exists within its Fire Zones, possible future density increases, and changing conditions resulting from climate change all result in a heightened fire risk environment. This risk is exacerbated by the Fire Department’s resource challenges, which will only make it more difficult to serve residents in the event of an emergency. As such, the Department believes there is an important role for Zoning to play in mitigating fire risk—most importantly, by ensuring as large as possible separation between structures. **This scientific data, coupled with the region’s cyclic relationship with significant fire events, are the reason that the Berkeley Fire Department strongly believes that a moratorium on any development within the Fire Zones that increases HU/ac, reduces existing non-conforming SSD, increases population, or increases the number of vehicles that will use the roadway during a wildfire should be strongly considered.**

While all of the proposals for the ADU ordinance of which the Department is aware would involve separations of less than 25 feet—creating a very high risk of structure-to-structure spread—it is still true that the shorter the separation, the higher the risk. Accordingly, with respect to the ADU ordinance, the Department recommends structure separation standards in the Hillside that are at least as large as those already authorized under the Zoning Code for other structures in the area—that is, 8 feet between structures. The City should also consider amending the general provisions of the Zoning Code at a future date to reduce the risk of structure-to-structure ignition by increasing separation requirements between all structures, both within a parcel and between adjoining parcels.

ⁱ Fire History in the East Bay Map, East Bay Regional Park District;
https://www.ebparks.org/sites/default/files/history_all_fires.pdf

ⁱⁱ City of Berkeley, Standards of Coverage and Community Risk Assessment, 2023, CityGate, LLC.

ⁱⁱⁱ City of Berkeley, Standards of Coverage and Community Risk Assessment, 2023, CityGate, LLC.

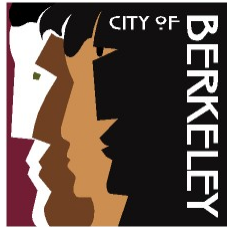
^{iv} NIST Technical Note 2205: WUI Structure/Parcel/Community Fire Hazard Mitigation Methodology;
<https://doi.org/10.6028/NIST.TN.2205>

^v NIST Technical Note 2205: <https://doi.org/10.6028/NIST.TN.2205>

^{vi} Fig. 8; NIST Technical Note 2205: WUI Structure/Parcel/Community Fire Hazard Mitigation Methodology;
<https://doi.org/10.6028/NIST.TN.2205>

^{vii} City of Berkeley, Standards of Coverage and Community Risk Assessment, 2023, CityGate, LLC.

^{viii} City of Berkeley, Standards of Coverage and Community Risk Assessment, 2023, CityGate, LLC.



Office of the City Manager

PUBLIC HEARING
September 19, 2023

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Director, Planning and Development Department
Subject: Supplemental Material: Revised Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) and Repeal of Chapter 12.99 to Conform to State Law and Respond to Guidance from the California Department of Housing and Community Development

In addition to the staff report and ordinance that were included in the July 25, 2023 City Council meeting agenda packet, staff are submitting supplemental material for City Council's consideration:

1. A revised recommended draft ordinance (Attachment 1);
2. Four policy alternatives related to: New Construction ADUs within the front setback; Building separation; Time limit for accessory structure conversions; and Neighbor Noticing Procedure (Attachment 2); and
3. A table outlining the sources of proposed ADU ordinance amendments (Attachment 3).

Revisions to the Recommended Draft Ordinance

Staff propose revisions to the recommended ADU ordinance, and are providing additional reference materials, which are based on further discussions with City Councilmembers, Building and Safety Division staff, and Fire Department staff, as well as additional staff analysis. Staff have also added General and Specific Findings (Sections 1 and 2) to the adoptive ordinance to demonstrate the rationale for making these revisions to the zoning ordinance, elaborate upon the City's lack of adequate public transit, and to reinforce the City's concern of fire and safety hazards, particularly within the Hillside Overlay. The revisions are highlighted in the revised recommended draft ordinance in grey (Attachment 1).

1. ***Building Separation Measurement.*** Staff revised the definition of building separation measurement to include ADUs and clarify that the measurement applies between a main building or ADU and the closest neighboring building.

2. *Building Height, Maximum, Detached, New Construction.* Staff revised the measurement for the maximum height of detached, new construction ADUs to match state law. SB 897 permits lots within a 0.5 mile of a major transit stop or high-quality transit corridor¹ to build up to 18 feet, with an additional 2 feet to align with the existing roof pitch of the primary dwelling. It also permits lots outside of a 0.5 mile radius of a major transit stop or high-quality transit corridor to go up to 16 feet for single family dwellings, or single-story duplexes or multi-family dwellings, and up to 18 feet for multistory duplexes or multi-family dwellings.
3. *Building Separation for Detached ADU, Minimum.* Staff revised the building separation distance from 3 ft. to 5 ft. after conferring further with the Building and Safety Division and the Fire Department.
4. *Accessory Building or Accessory Structure Conversion.* Staff revised the language in Berkeley Municipal Code (BMC) 23.306.030(A)(3) to clarify that a conversion of an existing, legally established accessory building or accessory structure is allowed provided that the converted ADU maintains the same location and dimensions and meets fire and safety standards, consistent with Government Code (GOV) 65852.2(a)(D)(vii). Staff also removed the minimum 3-year time limit based on when the structure was created, consistent with HCD guidance.²
5. *Front Setback, New Construction.* Staff revised the language in BMC 23.306.030(A)(4). This language was originally added to be compliant with AB 2221, which adds front setbacks to the list of development standards that may not preclude the construction of at least an 800 square foot ADU.³ Staff have revised the language to clarify that ADUs may not occupy front setbacks, except in the case that the front setback requirements precludes an 800 square foot ADU.
6. *Attached ADU.* Staff added BMC 23.306.030(A)(5) to establish a clear distinction between attached and detached for the purposes of ADUs, given that attached ADUs

¹ [PRC 21155\(b\)](#): For the purposes of this section, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. A project shall be considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor and if not more than 10 percent of the residential units or 100 units, whichever is less, in the project are farther than one-half mile from the stop or corridor.

² HCD ADU Handbook, July 2022. <https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf> pg. 21

³ [GOV 65852.2\(c\)\(2\)\(C\)](#): "Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards."

are now permitted a maximum height of 25 feet per SB 897. ADUs are now considered attached if sharing a common wall with a primary dwelling.

7. *ADU Noticing*. Staff revised the language for *Noticing* procedures in BMC 23.306.040(B), removing the term “Neighbor” from the header and changing the term “tenants” to “occupants.” These changes have been made to better reflect the intent of the proposed subsection: to provide a courtesy notice to all non-owner occupants of the subject property. Staff are unable to obtain tenant names or contact information from the Rent Board’s Rent Registry and rely on unit and occupant data from the County tax assessor records).
8. *Minimum Parking Required in the Hillside Overlay*. Staff revised the requirements to use the Public Resource Code (PRC) Section 21155 definition of a major public transit or high-quality transit corridor, instead of subdivision (d)(1)⁴ and (j)(11)⁵ of Government Code Section 65852.2, as proposed in the July 25th recommended draft ordinance. This change relies on a different interpretation of the definition of “public transit” in Government Code 65852.2, supported by the use of the phrase “including, but not limited to,” which may allow for use of the PRC definition in the parking context, in addition to the height context. Staff are unclear whether or not HCD would support this interpretation.

Various bus service lines throughout Berkeley that qualify as “public transit” per subdivision (d)(1) and (j)(11) of Government Code Section 65852.2 have limitations that should be considered, including no weekend service and 30 minute headways. The broader GOV 65852.2 definition exempts almost all of the HO from providing one off-street parking space per ADU (Figure 1). The PRC definition would require a significant portion of the HO to provide one off-street parking space per ADU (Figure 2).

Policy Alternatives

Staff prepared additional policy alternatives for standards and procedures where the City has discretion from state law. The policy alternatives are listed in Attachment 2. Staff have also prepared a table (Attachment 3) comparing the recommended ordinance revisions (July 2023 vs. September 2023) to their source(s)—state law, HCD guidance, HCD October 2022 letter, Planning Commission, and Planning staff.

⁴ [GOV 65852.2\(d\)](#): Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply: (1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances: (A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

⁵ [GOV 65852.2\(j\)\(11\)](#) “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

1. *Policy Alternative 1: New Construction ADUs within the front setback.* The first policy alternative proposes adding additional prescriptive standards to ensure that ADUs that require area in the front setback are sited as far from the front lot line as possible. This would both allow for as minimal encroachment possible into the front of the lot; however, it also has the potential to obscure more of the primary dwelling unit as applicants attempt to maximize space in the front setback in accordance with these additional prescriptive standards.
2. *Policy Alternative 2: Building Separation.* The second policy alternative proposes adding an additional building separation standard for Detached ADUs within the Hillside Overlay to Table 23.306-2. This standard, which would increase the building separation required in the Hillside Overlay only from 5 ft. to 8 ft., matches the existing required minimum building separation between buildings on adjacent parcels and is intended to address fire safety concerns. It also would effectively limit the allowable area where ADUs are permitted on a property and could potentially push ADUs closer to front, side, or rear lot lines.
3. *Policy Alternative 3: Converted ADUs – Time Limits.* The third policy alternative proposes maintaining the existing provision that a legally established accessory building or structure can be converted to an ADU only after three years has elapsed. Staff removed the minimum time limit in the recommended draft ordinance, consistent with HCD guidance, because the conversion of a legally established building or structure is ultimately allowed. However, state law is unclear on this issue and HCD’s interpretation is not determinative.
4. *Policy Alternative 4: Neighbor Noticing.* The fourth policy alternative proposes keeping the neighbor noticing procedures as-is, with the exception of removing owner(s) of the subject property from the list of required noticing recipients. The recommended draft ordinance reflects the Planning Commission’s recommendation to only notice “tenants” of the subject property. The Planning Commission made this recommendation to address neighbor expectation, which is explained in page 10 of the staff report published as part of the July 25, 2023 City Council Agenda packet.

Figure 1: Areas within 1/2 mile of "Public Transit"

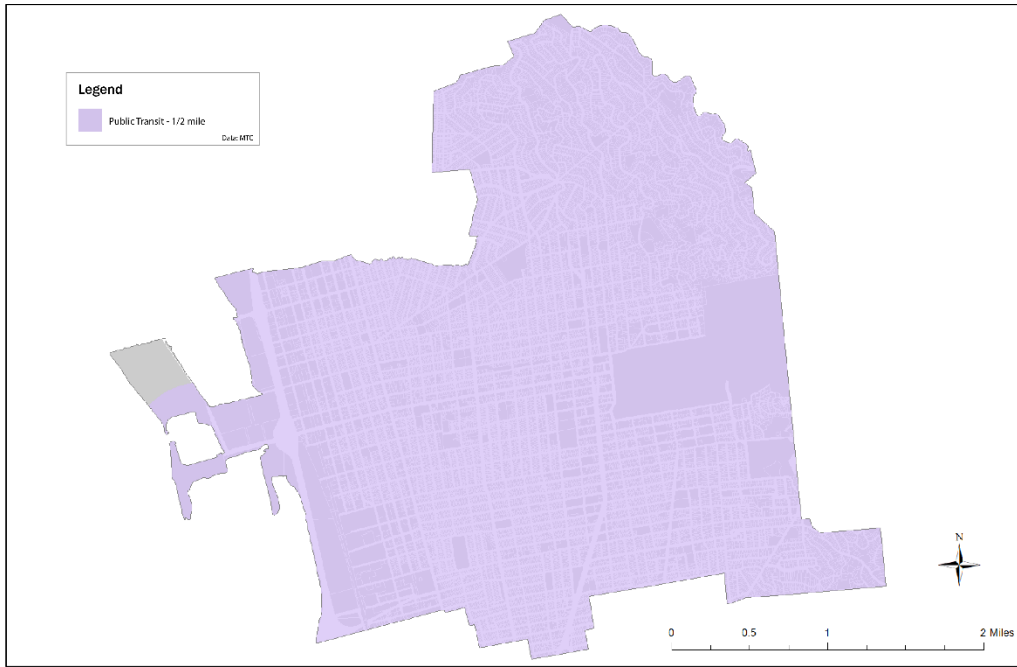


Figure 2: Areas within 1/2 mile of "Major Transit Stops" and "High Quality Transit Corridors"



ORDINANCE NO. -N.S.

REPEAL OF THE WILDFIRE HAZARD EVACUATION RISK MITIGATION ORDINANCE (BMC 12.99), AND AMENDMENTS TO THE RULES OF MEASUREMENT (BMC 23.106), ACCESSORY DWELLING UNIT (ADU) ORDINANCE (BMC 23.306), PARKING AND LOADING (BMC 23.322), EXEMPTIONS TO NONCONFORMING USES, STRUCTURES, AND BUILDINGS (BMC 23.324.060), AND DEFINED TERMS (BMC 23.502.020) RELATING TO ADUS

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

Section 1. General Findings

- A. California Government Code Sections 65852.1, 65852.2 and 65852.22 provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use.
 - 1. California Government Code Section 65852.2(d)(1)(A) and (j)(11) finds that a local agency shall not impose any parking standards for an accessory dwelling unit where the accessory dwelling unit is located within one half-mile walking distance of public transit.
 - 2. California Government Code Section 65852.2(c)(2)(D)(ii) uses the proximity of parcels to major transit stops and high quality transit corridors as defined in Section 21155 of the California Public Resources Code.
- B. Accessory dwelling units are statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h).
- C. Policy H-18 of the City of Berkeley's 2023-2031 Housing Element encourages the addition of accessory dwelling units on properties with single-family and multi-unit homes.

On May 3, 2023, the Planning Commission held a public hearing to consider proposed amendments to Title 23 relating to ADUs and unanimously recommended staff's proposal with three modifications, which were incorporated with modifications into the proposed amendments: (1) Regulating bay window and balcony projections using setback requirements; (2) Revising Neighbor Noticing requirements to subject property tenants; (3) Permitting ADUs to reach maximum allowable height without requiring an Administrative Use Permit.

Section 2. Specific Findings

- A. On October 17, 2022, the City received a letter from the State Department of Housing and Community Development (HCD) stating that the City's current ADU ordinances (BMC Sections 23.306 and 12.99, the "Ordinances") do not comply with Government Code Section 65852.2.

1. HCD found a discrepancy between the definition of “Efficiency Kitchen” contained within Ordinance No. 7,797-N.S. (Chapter 23.306) and Government Code §65852.22(a)(6)(A) and requested that the City remove the sink requirement from its zoning definition, as well as the reference to a working refrigerator in the definition of a “Junior Accessory Dwelling Unit.”
2. Regarding Ordinance No. 7,799-N.S (Chapter 12.99), HCD found that the City did not make adequate findings with respect to ADU and Junior ADU development impacts on traffic flow and public safety when the City adopted limitations on ADU and Junior ADU development in the Hillside Overlay zoning district.

B. Berkeley’s Hillside Overlay is comprised of Berkeley’s Very-High Fire Hazard Severity Zones and Wildland-Urban Interface (WUI) Fire Areas. The Hillside Overlay has unique conditions, including limited transit access, and hazards, including wildfires, earthquakes, and landslides, that put residents of the Hillside Overlay at greater risk:

1. The Hayward Fault bisects the Hillside Overlay, traversing the full length of these zones, with violent (Level 9 of 10) shaking predicted in the US Geologic Services Hayward Fault earthquake scenario (HayWired).
2. A majority of streets in the Hillside Overlay are less than 26 feet in width, and include conditions such as steep slopes, sharp curves and acute-angled corners. These factors compromise the emergency access egress and accessibility for emergency responders.

The majority of transit within the Hillside Overlay does not meet the definition of major transit stops and high quality transit corridors as defined in Section 21155. Bus service (Line 65) runs at 30-minute headways and does not offer weekend service. By applying the broader California Government Code Section 65852.2(d)(1)(A) and (j)(11) for minimum parking requirements, and increasing density and intensity in the Hillside Overlay, exacerbates the hazardous conditions that currently exist with respect to traffic flow and public safety in the likely event of a catastrophic wildfire or earthquake, necessitating reasonable limitations that reduce exposure to hazardous conditions.

3. The 2014 Working Group on California Earthquake Probabilities calculated that there is a 33-percent likelihood of a large (magnitude 6.7 or greater) earthquake occurring on the Hayward Fault within three decades. On March 9, 2015, a report published by the U.S. Geological Survey found that the Bay Area has a 72% chance of having at least a magnitude 6.7 earthquake in the same time period.

4. On December 10, 2019, the City adopted a Hazard Mitigation Plan that identifies Earthquake and Wildland-Urban Interface Fire as "Likely" and "Catastrophic" events.
5. On June 10, 2021, a study published by UC Berkeley researchers concluded that continued development in the WUI will make California's supply of housing more vulnerable, undermine state efforts to curb carbon emissions, further degrade the state's wildland habitats, and create fiscal challenges for state and local governments in the event of post-disaster recovery. Furthermore, the insurance impacts of continued development in high-risk areas of the WUI threaten to impose high costs on homeowners and destabilize the insurance industry.
6. On August 10, 2021, a study published by UC Berkeley researchers concluded that in the best-case scenario, if each household evacuated from the Berkeley hills with one vehicle, estimated evacuation time would be two hours and 245 vehicles would be exposed to immediate fire danger. However, if each household evacuated with 1.7 vehicles, evacuation time would increase to three hours and 782 vehicles would be exposed to immediate fire danger.

Section 3. That Berkeley Municipal Code Chapter 12.99 is hereby repealed.

Section 4. That Berkeley Municipal Code 23.106.020(B) is amended to read:

B. *Exclusions.* The lot coverage calculation excludes:

1. Uncovered porches, landings and stairs;
2. Uncovered decks, except that a deck on the roof of a building or accessory structure or over an enclosed space or paved ground area is included in the lot coverage calculation; and
3. The area of the roof of a subterranean structure, when such a structure is not more than 3 feet above finished grade.
4. The area of any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 5. That Berkeley Municipal Code 23.106.030(D) is amended to read:

D. *Excluded Areas.* The following areas are excluded from gross floor area calculation:

1. Covered or uncovered areas used for off-street parking or loading spaces.
2. Driveways ramps between floors and maneuvering aisles of a multi-level parking garage.
3. Mechanical, electrical, and telephone equipment rooms below finished grade.

4. Areas which qualify as usable open space.
5. Arcades, porticoes, and similar open areas for non-residential uses which are:
 - (a) Located at or near street level;
 - (b) Accessible to the general public; and
 - (c) Are not designed or used as sales, display, storage, service, or production areas.

6. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 6. That Berkeley Municipal Code 23.106.080(A) is amended to read:

A. *Measurement.* Building separation is measured as the distance between the surface of a main building or ADU's outer wall and the outer wall surface of the closest neighboring ~~main~~ building.

Section 7. That Berkeley Municipal Code 23.106.090(A)(1) through (3) is amended to read:

A. *Average Building Height.*

1. Average Building Height: The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the addition) to the roof features shown in Table 23.106-1: Average Building Height Measurement. See [Figure 23.106-4: Average Building Height.](#)

~~2. Figure 23.106-4: Average Building Height.~~

2. Dormers are not included in the average building height calculation.

3. Attached accessory dwelling units are not included in the average building height calculation.

Section 8. That Berkeley Municipal Code 23.306 is amended to read:

Sections:

23.306.010– Purposes

23.306.020– Applicability ~~and Definitions~~

23.306.030– ~~Development Standards~~ Permit Procedures

23.306.040– ~~Permit Procedures~~ Development Standards

~~23.306.050– Deed Restrictions~~

~~23.306.060— Neighbor Noticing
23.306.070— Rooftop Decks and Balconies~~

23.306.010 Purposes.

~~The purposes of this Chapter are to~~ This Chapter establishes accessory dwelling unit (ADU) and junior accessory dwelling unit (Junior ADU) standards that:

- A. Implement California Government Code Section 65852.1, 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.
- ~~F. Reduce potential impacts of new development in Very High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas as designated in the BMC Chapter 19.48 and as may be amended from time to time, and the Hillside Overlay District (HOD) due to unique conditions and hazards within these areas that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety consistent with Government Code 65852.2, subdivision (a)(1)(A), which allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."~~

23.306.020 Applicability and Definitions.

- A. The provisions of this chapter apply to zoning districts where residential uses are permitted, on lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.
- ~~B. For purposes of this Chapter the Hillside Overlay District (HOD) includes all lots within Berkeley's designated Very High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas that are zoned R-1H (Single-Family Residential—Hillside Overlay), R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), or ES-R (Environmental Safety-Residential).~~
- ~~B. Number of ADUs and JADUs Permitted Per Lot. See Table 23.306-1—ADU and Junior ADU Maximum Number of Units per Lot. Except as expressly modified by~~

Chapter ~~12.99~~, the following number of ADUs and JADUs shall be the maximum number of accessory units permitted on lots subject to this Chapter.

C. Density Exemption. ADUs and Junior ADUs are not included in the minimum or maximum density established by the underlying zoning district.

TABLE 23.306-1—ADU AND JUNIOR ADU MAXIMUM NUMBER OF UNITS PER LOT

| <u>Use, Primary</u> | <u>ADU and Junior ADU, Maximum Per Lot</u> |
|--|---|
| <u>Single Family Dwelling, one unit on lot</u> | <u>1 ADU and 1 Junior ADU, both are permitted</u> |
| <u>Single Family Dwelling, more than one unit on lot</u> | <u>1 ADU</u> |
| <u>Duplex or Multi-Family Dwelling</u> | <u>2 detached ADUs and at least one interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot</u> |
| <u>Group Living Accommodation</u> | <u>1 ADU</u> |

- ~~1. Lot with one Single Family Dwelling: One ADU and/or one JADU.~~
- ~~2. Lot with more than one Single Family Dwelling: One ADU.~~
- ~~3. Lot with a Duplex or Multiple-Family Dwelling, either:~~
 - ~~(a) Up to two detached ADUs; or~~
 - ~~(b) At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot.~~
- ~~4. Lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory: One ADU~~

23.306.030 Permit Procedures.

~~A. Zoning Certificate.~~ An application for an ADU or JADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including Development Standards, Deed Restrictions, and Neighborhood Noticing.

- ~~1. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a Building Permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.~~

- 2. ~~Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code Section 65852.2(e)(1).~~
- 3. ~~Issuance of a Zoning Certificate for the construction or conversion of an ADU or JADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.~~

23.306.0340 Development Standards.

A. *Basic Standards.* See Table 23.306-24: ADU ~~and JADU~~ Development Standards.

TABLE 23.306-24. ADU ~~AND JADU~~ DEVELOPMENT STANDARDS

| Basic Standards | | Supplemental Standards |
|--|---|---------------------------------------|
| Gross Floor Area, Maximum | | 23.306.030(A)(1); |
| <u>Studio or 1 bedroom</u> | 850 sq. ft. | 23.306.030(A)(2); |
| <u>2+ bedrooms</u> | 1,000 sq. ft. | 23.306.030(A)(3) |
| Building Height, Maximum | | |
| <u>Conversion</u> | Same as existing structure | 23.306.030(A)(1); 23.306.030(A)(3) |
| <u>Detached, New Construction</u> | See Table 23.306-3 | |
| <u>Attached, New Construction</u> | 25 ft. | 23.306.030(A)(5); 23.306.030(A)(7) |
| Lot Line Setbacks, Minimum | | |
| <u>Front of Interior Lot</u> | Same as underlying district | 23.306.030(A)(3); |
| <u>Front of Through Lot</u> | Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer | 23.306.030(A)(4); 23.306.030(A)(6) |
| <u>Rear</u> | 4 ft. | |
| <u>Interior Side</u> | 4 ft. | |
| <u>Street Side</u> | 4 ft. | |
| <u>Building Separation for Detached ADU, Minimum</u> | 5 ft. | |
| <u>Required Off-Street Parking Spaces</u> | See 23.322.030– Required Parking Spaces | |

TABLE 23.306-3. ADU BUILDING HEIGHT – DETACHED NEW CONSTRUCTION

| Lot Consists of Existing Or Proposed: | Within 0.5 mile of a major transit stop or a high quality transit corridor [1] | Not within 0.5 mile of a major transit stop or a high quality transit corridor [1] |
|---|---|---|
| Single-Family Dwelling(s), one or more unit on a lot, one or more stories | 18 ft., with additional 2 ft. if needed to align roof pitch of ADU with the existing roof | 16 ft. |

| | | |
|--|----------------------------------|--------|
| Duplex or Multi-Family Dwelling, single-story | pitch of the primary dwelling(s) | 16 ft. |
| Duplex or Multi-Family Dwelling, multistory | | 18 ft. |
| <p>Note:</p> <p>[1] Major transit stop or a high-quality transit corridor as defined in Public Resources Code Section 21155.</p> | | |

1. Existing Building Conversion. An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for maximum gross floor area in Table 23.306-2. ADU Development Standards is allowed a physical addition of no more than 150 square feet. The addition must comply with maximum height and setback requirements.
2. Duplex or Multi-Family Dwelling Conversion. Interior ADU(s) must be created entirely through non-habitable residential portions of the existing main building that are not within the living space of a dwelling unit (e.g. basement, attic, garages, storage room).
3. Accessory Building or Accessory Structure Conversion. An ADU converted from a legally established accessory building or accessory structure is allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure, provided that the ADU meets fire and safety standards set forth in the California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing accessory building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.
4. Front Setback, New Construction. An ADU shall not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet.
5. Attached ADU. An ADU shall be considered attached if sharing a common wall with a primary dwelling.
6. Detached ADU Setback Exceptions. If there is a lesser setback allowed in 23.304.060-Accessory Buildings and Enclosed Accessory Structures for a comparable accessory building or accessory structure in the underlying zoning district, that setback shall apply.
- 4-7. Attached ADU, New Construction Height. Attached ADUs with height greater than 14 ft. and up to 25 ft. allowed with a Zoning Certificate.

| | ADU ¹ | JADU |
|--|------------------|--------|
| Maximum Size Outside of HOD ² | | 500-sf |
| Studio or 1 bedroom | 850-sf | N/A |

| | ADU ¹ | JADU |
|--|---|-------------------|
| 2+ bedrooms | 1000-sf | |
| Maximum Size Within HOD | 800-sf | 500-sf |
| Maximum Height Outside of HOD | 20 ft. | N/A |
| Maximum Height Within HOD | 16 ft. | |
| Front Yard Setback | Same as underlying district | |
| Rear Setback | 4 ft ³ | |
| Side Setback | 4 ft ³ | |
| Required Off-Street Parking Outside of HOD | None ⁴ | |
| Required Off-Street Parking Within HOD | The lesser of 1 space per bedroom or ADU ^{5,6} | None ⁶ |

~~[1] An ADU converted from an Accessory Building or Accessory Structure legally established at least three years prior to submission of an ADU application that does not comply with the Maximum Height, Size, and/or Rear and Side Setback requirements is allowed to maintain non-conformity to the same dimensions of the existing Accessory Building or Accessory Structure, provided that the existing side and rear setbacks are sufficient for fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing Accessory Building or Accessory Structure shall comply with the development standards in this table.~~

~~[2] An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for Maximum Size in this table is allowed a physical addition of no more than 150 square feet. The addition must comply with Maximum Height and Setback requirements in this table.~~

~~[3] If there is a lesser setback allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district, that setback shall apply.~~

~~[4] Replacement parking is not required. Replacement of off-street parking for the Main Building is allowed and does not need to comply with Parking Maximums (BMC 23.322.070) nor Parking Layout and Design (BMC 23.322.080).~~

~~[5] No off-street parking shall be required for ADUs that satisfy the criteria defined in subdivision (d) of California Government Code section 65852.2 or any successor provision thereto.~~

~~[6] If an applicant provides off-street parking for an ADU or a JADU in the HOD, parking shall be allowed in any configuration on the lot, including within the front yard setback.~~

B. Junior ADUs.

1. Basic Standards. A Junior ADU shall be contained entirely within an existing or proposed single family dwelling or its attached garage, and have no more than 500 square feet in floor area.
2. Shared Sanitation Facility. If a Junior ADU shares a sanitary facility with a single-family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.
3. Junior ADU Floor Area. The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single family dwelling.

B. Projections.

C.

~~Except as limited by Paragraph B.2 of this Section, architectural features (Outside of the Hillside Overlay.~~

1. ~~Attached ADU.~~ Chimneys, ~~w~~Water ~~h~~Heater ~~e~~Enclosures, ~~f~~Flues, ~~h~~Heating and ~~c~~Cooling ~~e~~Equipment, ~~e~~Eaves, ~~c~~Cornices, ~~c~~Canopies, ~~a~~Awnings, ~~bay windows, and balconies~~) may project two feet into the required front and side setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows and balconies may not project into a required rear ADU setback.
2. Within the Hillside Overlay. No projections shall be allowed within ~~athe~~ required setback ~~on lots that are within the Hillside Overlay District.~~

~~C.D. Rooftop Decks within the Hillside Overlay. Roofs on ADUs within the Hillside Overlay may not be designed, converted, or used as usable open space.~~

23.306.0450 Permit Procedures ~~Deed Restrictions.~~

- A. Zoning Certificate. An application for an ADU or Junior ADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including development standards, deed restrictions, and neighborhood noticing.
 1. If an application to create an ADU or Junior ADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a building permit shall not be issued for the ADU or Junior ADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired. See 23.404.060(A) Post-Decision Provisions (Effective Dates).
 2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or Junior ADU that complies with the requirements of Government Code Section 65852.2(e)(1).

3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or Junior ADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.

B. Noticing.

1. Scope and Timing of Notice. Notice of an ADU application shall be mailed to all occupants of owners and tenants of the subject, adjacent, confronting and abutting properties the subject property, excepting the property owner(s), within ten working days of submission of the building permit application to the Planning DepartmentCity.
2. Content of Notice. Notice shall provide the address of the project and include allowable hours of construction, a link to the City's ADU webpage identifying permit and construction resources, and contact information for a Rent Board Housing Counselor.
- 4.3. Mailing Fees. The applicant shall be responsible for the cost of materials, postage, and staff time necessary to process and mail the notices.

D.C. Deed Restriction. The property owner shall file a deed restriction with the Alameda County Recorder which states:

1. The Junior ADU shall not be sold separately from the main building;
2. The ADU shall not be sold separately from the main building unless the conditions of BMC 23.306.0450(D) ADUs Developed by a Qualified Nonprofit Developer -B- are met;
3. The ADU and/or Junior ADU shall not be rented for a term that is shorter than 30 days; and
4. If the property includes a Junior ADU, the Junior ADU, or the Single Family Dwelling in which the Junior ADU is located, shall be owner-occupied.

E.D. ADUs Developed by a Qualified Nonprofit Developer. An ADU built or developed by a "qualified nonprofit corporation" may be sold or conveyed separately from the mMain bBuilding to a "qualified buyer," as such terms are defined in subdivision (b) of Section 65852.26 of the California Government Code. The ADU must be held pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:

1. Delineation of all areas of the property that are for the exclusive use of a cotenant;
2. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;

3. Procedures for dispute resolution among cotenants before resorting to legal action;
4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;
6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence; and
7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility.

~~23.306.060—Neighbor Noticing.~~

- ~~A. *Scope and Timing of Notice.* Notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department.~~
- ~~B. *Content of Notice.* Notice shall provide the address of the project, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.~~
- ~~C. *Mailing Fees.* The applicant shall be responsible for the cost of materials, postage and staff time necessary to process and mail notices.~~

~~23.306.070—Rooftop Decks and Balconies.~~

- ~~A. *Notwithstanding any provisions of this Title to the contrary, roofs on lots within the Hillside Overlay District may not be designed, converted or used as Usable Open Space.*~~

Section 9. That Berkeley Municipal Code 23.322.020(C) is amended to read:

C. Changes of Use.

1. *Commercial Districts.* In the Commercial Districts, off-street parking is required for a change in use only when the structure is expanded to include new floor area.

2. *Manufacturing and R-SMU Districts.*

(a) In the Manufacturing and R-SMU districts, off-street parking is required for a change in use only when:

- i. The structure is expanded to include new floor area; and/or
- ii. The use is changed to one with a numerical parking standard greater than the district minimum.

(b) If the new use is changed to one with a higher numerical parking standard than the district minimum, the new use must provide the incremental difference between the two numerical parking standards. A higher numerical parking standard may be reduced to the district minimum as provided in Section 23.322.050(A)(2) (Change of Use).

(c) As used in this section, the “district minimum” parking requirement is:

- iii. 2 spaces per 1,000 square feet of floor area in the Manufacturing Districts; and
- iv. 1 space per 1,000 square feet of floor area in the R-SMU district.

3. *All Other Residential Districts.* In all Residential Districts except for R-SMU, off-street parking spaces are required for all changes in use.

D. *Location Exemption.* Off-street parking spaces are not required for new uses or buildings, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2.

Section 10. That the section named; Residential Uses; in Berkeley Municipal Code Table 23.322-1, Required Off Street Parking in Residential Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read:

TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

| Land Use | Number of Required Off-street Parking Spaces |
|-------------------------|---|
| Residential Uses | |
| Accessory Dwelling Unit | <p><u>Junior ADU: None required</u> <u>ADU outside of Hillside Overlay: None required</u> <u>ADU within Hillside Overlay: 1 per ADU unless the parcel is located within 0.5 mile of a major transit stop or a high-quality transit corridor as defined in Public Resources Code Section 21155. See Chapter 23.306</u></p> |

| Land Use | Number of Required Off-street Parking Spaces |
|---|--|
| Dwellings, including Group Living Accommodations | <p><u>R-3, R-4, and R-5 Districts (1-9 units):</u> If located on a roadway less than 26 <u>feet</u> in width in the Hillside Overlay: 1 per unit.</p> <p><u>R-3, R-4, and R-5 District (10 or more units):</u> If located on a roadway less than 26 <u>feet</u> in width in the Hillside Overlay: 1 per 1,000 sq. <u>ft.</u> of gross floor area</p> <p><u>All Other Districts:</u> If located on a roadway less than 26 <u>feet</u> in width in the Hillside Overlay: 1 per unit</p> <p><u>All Other Locations:</u> None required</p> |
| Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing | <p><u>If located on a roadway less than 26 feet</u> in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager.</p> <p><u>All Other Locations:</u> None required.</p> |
| Rental of Rooms | <p><u>If located on a roadway less than 26 feet</u> in width in the Hillside Overlay: 1 per each two roomers</p> <p><u>All Other Locations:</u> None required</p> |

Section 11. That Berkeley Municipal Code Table 23.322-2 is amended to read:

TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

| Land Use | Required Parking Spaces |
|---|---|
| Residential Uses | |
| Accessory Dwelling Unit | See Chapter 23.306 None required |
| Dwellings, including Group Living Accommodations | <p><u>If located on a roadway less than 26 feet</u> in width in the Hillside Overlay: 1 per unit</p> <p><u>All Other Locations:</u> None required</p> |
| Hotel, Residential | None required |
| Mixed-Use Residential (residential use only) | None required |
| Senior Congregate Housing | None required |
| Non-Residential Uses | |
| All non-residential uses except uses listed below | <p><u>C-DMU District:</u> 1.5 per 1,000 sq. ft.</p> <p><u>All Other Commercial Districts:</u> 2 per 1,000 sq. ft.</p> |

| Land Use | Required Parking Spaces |
|---|---|
| Hospital | 1 per each 4 beds plus 1 per each 3 employees |
| Library | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 1 per 500 sq. ft. of publicly accessible floor area |
| Nursing Home | 1 per 3 employees |
| Medical Practitioners | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 1 per 300 sq. ft. |
| Hotels, Tourist | <u>C-DMU District</u> : 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts</u> : 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Motels, Tourist | <u>C-DMU District</u> : 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts</u> : 1 per guest/sleeping room plus 1 for owner or manager [1] <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Large Vehicle Sales and Rental | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-SA District</u> : 1 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Small Vehicle Sales and Service | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-SA District</u> : 1 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Manufacturing | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-W District</u> : 1 per 1,000 sq. ft [1] <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Wholesale Trade | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-W District</u> : 1 per 1,000 sq. ft <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Live/Work | If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |
| <u>Notes:</u> [1] Spaces must be on the same lot as building it serves | |

Section 12. That the section named; Residential Uses; in Table 23.322-4, Required Off Street Parking in Manufacturing Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read:

TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

| Land Use | Required Parking Spaces |
|----------------------------|--|
| Residential Uses | |
| Accessory Dwelling Unit | See Chapter 23.306 <u>None required</u> |
| Dwellings | None required |
| Group Living Accommodation | None required |

Section 13. That Berkeley Municipal Code 23.322.080 is amended to read:

23.322.080– Parking Layout and Design

A. Traffic Engineering Requirements.

1. All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City of Berkeley's Traffic Engineering requirements.
2. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible, and safe parking areas, and are adequately integrated with Berkeley's overall street pattern and traffic flows.

B. Dimensional Standards. Dimensional requirements and standards for off-street parking spaces, driveways, and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and ZAB.

C. Access Orientation in Non-Residential Districts. Access to new parking areas in a Non-Residential District that serve commercial uses shall be oriented in such a way as to minimize the use of streets serving primarily residential uses.

D. Residential Parking Lots in Non-Residential Districts. Parking lots in a non-residential district used exclusively for residential parking must comply with standards in Section 23.322.080 that apply in Residential Districts.

D.E. Placement--Residential Districts.

1. Side Setback Areas.

- (a) One new off-street parking space in a required side setback area, where none exists, is allowed by right.

- (b) The space must be constructed of a permeable surface unless the Public Works Department or Office of Transportation determines it is infeasible.
 - (c) The space must be screened as required by 23.322.080.HG (Screening).
 - (d) The location of the space shall minimize impact on usable open space.
2. *Other Setback Areas.* No portion of an off-street parking space may be located in a required front, street side, or rear setback area unless:
- (a) The parking space location is authorized by Chapter 23.306 (Accessory Dwelling Units); or
 - (b) The Zoning Officer approves an AUP, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.
3. *Multifamily Buildings.*
- (a) An off-street parking space may not be located closer than 10 feet in horizontal distance from a door or a window of a building with three or more dwelling units where the space is on the same or approximately the same level as the building.
 - (b) For the purposes of this section, a window whose bottom edge or point is more than 6 feet in vertical height from the level of the subject off-street parking space is not considered on the same or approximately the same level.
 - (c) The Zoning Officer may approve an AUP to grant an exception to this requirement.

E.F. *Placement--Non-Residential Districts.*

- 1. *Where Prohibited.* Except when otherwise allowed by this chapter, ground-level off-street parking spaces are not permitted within 20 feet of the lot's street frontage unless the parking is entirely within a building with walls.
- 2. *Corner Lots.* For a corner lot, the ZAB may approve a Use Permit to allow the parking within 20 feet of the street frontage facing the secondary street.
- 3. *C-W District.*
 - (a) Off-street automobile parking in the C-W district is not permitted between the front lot line and a main structure within a designated node.
 - (b) Outside of a designated node, off-street automobile parking may be allowed between the front lot line and a main structure with a Use Permit or AUP. If the project requires ZAB approval, a Use Permit is required. An AUP is required for all other projects.
 - (c) To approve the AUP or Use Permit, the review authority must find that one or more of the following is true:

- i. Parking in the rear or on the side of the property is impractical because of the lot's depth and/or width.
- ii. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses.
- iii. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location.
- iv. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front lot line.

G. Placement--ADU.

- 1. On a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU is allowed in any configuration on the lot, including within the front setback; or
- 2. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback.

F.H. Grade Change. This subsection applies to off-street parking spaces in all districts, except for parking decks in Residential Districts.

- 1. The difference in elevation between a parking space and the finished grade on adjacent areas of the lot may not exceed 5 feet at any point.
- 2. Where there is a difference in elevation between a parking space and adjacent finished grade, the parking space shall be setback from a lot line as shown in Table 23.322-7.

TABLE 23.322-7. REQUIRED SETBACKS FOR PARKING SPACES WITH ADJACENT GRADE CHANGES

| DIFFERENCE IN ELEVATION | MINIMUM SETBACK |
|--|-----------------|
| Parking space lower than finished grade | |
| 3 to 5 ft | 4 ft. |
| Less than 3 ft | No min. setback |
| Parking space higher than finished grade | 6 ft. |

G.I. Screening.

- 1. Table 23.322-8 shows required parking space screening. Screening must effectively screen parked vehicles from view from buildings and uses on adjacent, abutting, and confronting lots. Screening may not interfere with pedestrian safety.

TABLE 23.322-8. REQUIRED PARKING SPACE SCREENING

| DISTRICTS | WHEN REQUIRED | REQUIRED SCREENING FEATURE | SCREENING FEATURE HEIGHT |
|--|---|---|---|
| All Residential Districts | 2 or more parking spaces, or any parking space partly or entirely within a required rear setback area | Continuous view-obscuring wood fence, masonry wall, or evergreen hedge which may be broken only for access driveways and walkways | 4 ft. min and 6 ft. max. |
| All Commercial and Manufacturing Districts | 2 or more parking spaces | Wall, fence, or evergreen shrubbery hedge in a landscape strip | Parking adjacent to public right-of-way or front lot line: 3 ft. min. and 4 ft. max. Parking adjacent to rear or side lot line: 4 ft. min and 6 ft. max. |

- In the C-W, M, MM, MU-LI districts, screening and landscape buffers are not required for any portion of a parking lot adjacent to Third Street (Southern Pacific Railroad).

H.J. *Landscape Buffers.*

- All paved areas for off-street parking spaces, driveways, and any other vehicle-related paving must be separated from adjacent lot lines and the public right-of-way by a landscaped strip as shown in Table 23.322-9.

TABLE 23.322-9. REQUIRED LANDSCAPE BUFFERS

| DISTRICT/NUMBER OF SPACES | MINIMUM WIDTH OF LANDSCAPE STRIP | |
|---|--|---|
| | AREAS ADJACENT TO SIDE OR REAR LOT LINES | AREAS ADJACENT TO PUBLIC RIGHT-OF-WAY OR FRONT LOT LINE |
| Residential Districts | | |
| 1-3 spaces | 2 ft. | 2 ft. |
| 4 spaces or more | 4 ft. [1] | 4 ft. [1] |
| Commercial and Manufacturing Districts | | |
| 1 space | None required | None required |
| 2-3 spaces | 2 ft. | 3 ft. |
| 4 spaces or more | 4 ft. [1] | 4 ft. [1] |
| Note: | | |
| [1] Calculated as average width along the full length of landscape strip. | | |

2. In all districts, this landscape buffer requirement does not apply to driveways that serve two adjacent lots when adjacent to a side lot line.
3. In the Residential Districts, this landscape buffer requirement also does not apply to pedestrian walkways that are separated from such areas by a landscaped strip at least two feet wide.

~~J.K.~~ J.K. *Paved Setback Areas.* In Residential Districts, the total area of pavement devoted to off-street parking spaces, driveways, and other vehicle-related paving may not exceed 50 percent of any required setback area that runs parallel to and abuts a street.

~~J.L.~~ J.L. *Driveway Width.*

1. A driveway may not exceed 20 feet in width at any lot line abutting a street or one-half of the width of the street frontage of the lot, whichever is less.
2. In a Non-Residential district, the Zoning Officer may modify this requirement with an AUP.

~~J.M.~~ J.M. *Driveway Separation.* On a single lot in a Residential District, driveways must be spaced at least 75 feet from one another, as measured along any continuous lot line abutting a street.

~~J.N.~~ J.N. *Tandem Parking.* Tandem spaces that provide required off-street parking require an AUP, except when allowed by right by Chapter 23.306 (Accessory Dwelling Units).

~~J.O.~~ J.O. *Residential Parking Lots in Non-Residential Districts.* ~~Parking lots in a non-residential district used exclusively for residential parking must comply with standards in this section that apply in Residential Districts.~~

~~J.P.~~ J.P. *Carports.* A carport shall meet the minimum horizontal and vertical dimensions specified by the City's Traffic Engineer to be used for one or more legal parking spaces required under this chapter.

Section 14. That Berkeley Municipal Code is amended to add a new Section 23.324.060(C) to read:

C. Accessory Dwelling Units. The following alterations of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate:

1. New windows, doors, or other openings to a portion of a building or structure within a minimum required setback.
2. New windows, doors, or other openings to a portion of a building or structure exceeding the height limit.

Section 15. That Berkeley Municipal Code 23.502.020(A)(4) is amended to read:

4. *Accessory Dwelling Unit (ADU).* An attached or detached secondary dwelling unit that is located on the samea lot as a proposed or existing single family dwelling, duplex, multi-family dwelling use, or group living accommodation in a zoning district where residential uses are permitted and provides independent living facilities for one or more persons. An ADU must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: Exterior or independent access to the ADU, living and sleeping quarters, a full kitchen, and a full bathroom. An ADU also includes the following: (a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code, or (b) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Junior Accessory Dwelling Unit (Junior ADU). A unit that is contained entirely within the walls of an existing or proposed single family dwelling, or a single family dwelling unit's attached garage. A Junior ADU must include a separate exterior entrance and, at minimum, an efficiency kitchen with a working refrigerator. A Junior ADU may include separate sanitation facilities or may share sanitary facilities with a single family dwelling. The property owner must reside in either the Single Family Dwelling or the JADU.

(a) with a proposed or existing Single Family Dwelling, Duplex, Multi-Family Dwelling Use or Group Living Accommodation. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: 1) exterior or independent access to the Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

(b)(a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

Section 16. That Berkeley Municipal Code 23.502.020(A)(8) is amended to read:

8. *Addition, Residential.* The creation of any new portion of a main building which results in a vertical or horizontal extension of the building, or results in additional residential gross floor area to an existing main building, as long as such new gross floor area does not exceed 15 percent of the lot area or 600 square feet, whichever is less. For purposes of this definition gross floor area does not include:

(a) Additions of gross floor area devoted to required off-street parking spaces, creation of mezzanines or lofts within the building's shell;

- (b) Making previously unusable attics into habitable floor area (except where new areas with vertical clearance of 6 feet or greater are created through expansions of the building shell);
- (c) Excavations of earth within the existing building footprint (i.e. expansion of existing basements or new basements), or
- (d) Replacement of existing floor area that was lawfully constructed and is located entirely within the addition's shell.
- (d)(e) The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.

Section 17. That Berkeley Municipal Code 23.502.020(A)(9) is amended to read:

9. *Addition, Major Residential.*

- (a) A residential addition greater than 15 percent of the lot area or 600 square feet. Floor area from all residential additions since October 31, 1991, with the exception of:
 - i. Additions that are entirely subsumed within previously existing floor area; and
 - ii. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.
- (b) The floor area of subsequent stories where the addition does not exceed the district residential addition height limit, shall count towards the calculation of gross floor area for the purposes of this definition.
- (c) Any new floor area, except as exempted under (9)(a), shall be treated as a new major residential addition for the purpose of permit processing, when the cumulative square footage exceeds 15 percent of the lot area or 600 square feet, whichever is less.

Section 18. That Berkeley Municipal Code 23.502.020(E)(1) is amended to read:

- 1. Efficiency Kitchen. A ~~kitchen that includes a sink, a~~ cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.

Section 19. That Berkeley Municipal Code 23.502.020(J) is amended to read:

J. "J" Terms.

~~Junior Accessory Dwelling Unit (JADU). A unit that is contained entirely within the walls of a Single Family Dwelling. A JADU must include a separate exterior entrance and an Efficiency Kitchen with a working refrigerator. A JADU may include separate sanitation facilities or may share sanitary facilities with a Single Family Dwelling. The property owner must reside in either the Single Family Dwelling or the JADU.~~

Section 20. That Berkeley Municipal Code 23.502.020(N)(1) is amended to read:

N. "N" Terms.

1. *New Construction.* Construction of a new main building or accessory dwelling unit.

Section 18. Severability.

If any provision or clause of this Ordinance or any application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this Ordinance. To this end the provisions and applications of this Ordinance are severable, and the Council of the City of Berkeley hereby declares that it would have passed this Ordinance and each provision or clause without regard to whether any other portion of this Ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 19.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 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.

ADU POLICY ALTERNATIVES

Policy Alternative 1. Additional prescriptive standards for New Construction ADUs within the front setback (*Section 8 of the Recommended Draft Ordinance*)

4. Front Setback, New Construction. An ADU shall ~~not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet.~~ comply with the same front setback that is required for the underlying district, unless the requirement would preclude an ADU of no more than 800 square feet on the parcel. Should an ADU require area—either partially or fully—within the front setback, both of the following shall apply:

- (a) The ADU shall be sited no farther from the main building than the minimum required building separation.
- (b) The ADU shall maintain a minimum 10-foot setback from the front lot line, unless such reduced setback would preclude an ADU of no more than 800 square feet on the parcel. If a 10-foot setback would preclude an ADU of 800 square feet, the ADU shall maintain a 5-foot setback from the front lot line. If a 5-foot setback from the front lot line would preclude an ADU of 800 square feet on the parcel, the ADU may be sited up to the front lot line.

Policy Alternative 2. Different building separation requirements for detached ADUs within versus outside of the Hillside Overlay (*Section 8 of the Recommended Draft Ordinance*)

TABLE 23.306-2. ADU DEVELOPMENT STANDARDS

| BASIC STANDARDS | | SUPPLEMENTAL STANDARDS |
|----------------------------|---|---------------------------------------|
| Gross Floor Area, Maximum | | 23.306.030(A)(1); |
| Studio or 1 bedroom | 850 sq. ft. | 23.306.030(A)(2); |
| 2+ bedrooms | 1,000 sq. ft. | 23.306.030(A)(3) |
| Building Height, Maximum | | |
| Conversion | Same as existing structure | 23.306.030(A)(1); 23.306.030(A)(3) |
| Detached, New Construction | See Table 23.306-3 | |
| Attached, New Construction | 25 ft. | 23.306.030(A)(5); 23.306.030(A)(7) |
| Lot Line Setbacks, Minimum | | |
| Front of Interior Lot | Same as underlying district | 23.306.030(A)(3); |
| Front of Through Lot | Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer | 23.306.030(A)(4); 23.306.030(A)(6) |
| Rear | 4 ft. | |
| Interior Side | 4 ft. | |

| | | |
|--|---|--|
| Street Side | 4 ft. | |
| Building Separation for Detached ADU, Minimum | | |
| <u>In the Hillside Overlay</u> | <u>8 ft.</u> | |
| <u>All Other Locations</u> <u>Building Separation for Detached ADU, Minimum</u> | 5 ft. | |
| Required Off-Street Parking Spaces | See 23.322.030– Required Parking Spaces | |

Policy Alternative 3. Converted ADUs: Maintain time limit based on when the accessory building or structure was created (Section 8 of Recommended Draft Ordinance)

23.306.030 Development Standards.

3. *Accessory Building or Accessory Structure Conversion.* An ADU converted from ~~an legally established~~ accessory building or accessory structure legally established at least three years prior to submission of an ADU application that does not comply with the maximum height, size, and/or rear and side setback requirements is allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure, provided that the ADU meets fire and safety standards set forth in the California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing accessory building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.

Policy Alternative 4. Keep Neighbor Noticing Procedures as-is except removing noticing to owner(s) of subject property (Section 8 of Recommended Draft Ordinance)

23.306.040 Permit Procedures

B. Neighbor Noticing.

1. *Scope and Timing of Notice.* Notice of an ADU application shall be mailed to tenants of the subject property, and all occupants~~owners and tenants~~ of the subject adjacent, confronting and abutting ~~properties, y, excepting the property owner(s),~~ within ten working days of submission of the building permit to the Planning Department~~City~~.
2. *Content of Notice.* Notice shall provide the address of the project, ~~and include~~ allowable hours of construction, a link to the City’s ADU webpage, and

| |
|--|
| <p>Key Black Text: Recommended Draft Ordinance dated September 19, 2023 <u>Red Text: Policy Alternative</u></p> |
|--|

information for tenants of the subject property on how to contact identifying permit and construction resources, and contact information for a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.

3. *Mailing Fees.* The applicant shall be responsible for the cost of materials, postage, and staff time necessary to process and mail ~~the~~ notices.

Key

Black Text: Recommended Draft Ordinance dated September 19, 2023

Red Text: Policy Alternative

Table 1. Current and Proposed ADU Ordinances and Source Comparison

| Section/ Standard | Current ordinance (BMC Ch. 23.306) | July 2023 Recommended Ordinance | September 2023 Recommended Ordinance (Ordinance Section(s)) | Source(s) for September 2023 Recommendation |
|--|---|--|--|--|
| Ch. 12.99 Wildfire Hazard Evacuation Risk Mitigation Ordinance | No more than one ADU or JADU shall be permitted per lot in the HOD. | Repeal and remove references | No change from July 2023. (Sections 3, 8) | HCD Letter dated October 17, 2022 (pg. 2) |
| Lot coverage and gross floor area calculations | Not specified. | Exempt up to 800 sf from lot coverage and gross floor area calculations associated with ADU | No change from July 2023. (Sections 4, 5, 16, 17) | State law. GOV 65852.2(c)(2)(C) |
| Building separation measurement definition | A. <i>Measurement.</i> Building separation is measured as the distance between the surface of a main building's outer wall and the outer wall surface of the closest neighboring main building. | Not included | Revised to include ADUs and changed "neighboring main building" to "neighboring building." (Section 6) | Staff recommendation based on Fire, Building and Safety. |
| ADU building height calculations | Not specified. | Specify that attached ADUs are not included in <u>average</u> building height calculations. | No change from July 2023. (Section 7) | Staff recommendation |
| Density exemption | Not specified. | Exclude ADUs and Junior ADUs from density established by the underlying zoning district | No change from July 2023. (Section 8) | State law. GOV 65852.2(a)(10) |
| Quantity of ADU–Single Family Dwellings | 1 ADU <u>or</u> 1 Junior ADU | 1 ADU <u>and</u> 1 Junior ADU citywide | No change from July 2023. (Section 8) | HCD Letter dated October 17, 2022 (pg. 3) |
| Quantity of ADU–Duplex or Multi-Family Dwellings | a. Up to two detached ADUs; <u>or</u> b. At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot. | 2 detached ADUs <u>and</u> at least 1 interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot. | No change from July 2023. (Section 8) | HCD ADU Handbook dated July 2022 (pg. 20) |
| Gross floor area, maximum | Outside of HOD: - Studio or 1-bed: 850 sf - 2+ bed: 1000 sf | Citywide: - Studio or 1-bed: 850 sf - 2+ bed: 1000 sf | No change from July 2023. (Section 8) | HCD Letter dated October 17, 2022 (pg. 2) |

| Section/ Standard | Current ordinance (BMC Ch. 23.306) | July 2023 Recommended Ordinance | September 2023 Recommended Ordinance (Ordinance Section(s)) | Source(s) for September 2023 Recommendation |
|--|---|--|---|--|
| | <ul style="list-style-type: none"> - Junior ADU: 500 sf Within HOD: <ul style="list-style-type: none"> - ADU: 800 sf - Junior ADU: 500 sf | <ul style="list-style-type: none"> - Junior ADU: 500 sf | | in combination with state law. GOV 65852.2(c)(2)(B); GOV 65852.22(i)(1) |
| Building height, maximum | Outside of HOD: 20 ft. Within HOD: 16 ft. | Citywide: Attached: 25 ft. Detached: 20 ft. | Revised to match state law. <i>See Tables 23.306-2 and 230.306-3. (Section 8)</i> | State law. GOV 65852.2(c)(2)(D) |
| Building separation for detached ADU, minimum | Not specified. | 3-foot | 5-foot (Section 8) <i>See Policy Alternative 2</i> | Staff recommendation based on Fire, Building and Safety |
| Accessory Building or Accessory Structure Conversion | <ul style="list-style-type: none"> - Must be legally established at least three years prior to submission of an ADU - Allowed to maintain nonconforming Maximum Height, Size, and/or Rear and Side Setback to the same dimensions of the existing Accessory Building or Accessory Structure - Existing side and rear setbacks meet fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. | No change from current ordinance | Allowed to maintain non-conformity to the same location and dimensions of the existing legal nonconforming accessory building or accessory structure, without minimum time limits based on when the structure was created. (Section 8) <i>See Policy Alternative 3</i> | Location and dimensions - State law GOV 65852.2(a)(D)(vii) No limits based on when the structure was created - HCD ADU Handbook dated July 2022 (pg. 21) |
| Lot line setbacks, minimum | <i>Front:</i> Same as underlying zoning district <i>Rear:</i> 4 ft. <i>Side:</i> 4 ft. Exception: If there is a lesser setback allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district, that setback shall apply. | <i>Front (no change):</i> Same as underlying zoning district <i>Front of Through Lot:</i> Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer <i>Rear (no change):</i> 4 ft. <i>Interior side (no change):</i> 4 ft. <i>Street side:</i> 4 ft. | Added supplemental standard: (Section 8) (4) <i>Front Setback, New Construction.</i> An ADU shall not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet. <i>See Policy Alternative 1</i> | Staff recommendation based on state law. GOV 65852.2(c)(2)(C) |
| Attached ADU, standard | Not specified. | Less than 3-foot building separation | Sharing common wall (Section 8) 5. <i>Attached ADU.</i> An ADU shall be considered attached if sharing a common wall with a primary dwelling. | Staff recommendation based on state law GOV 65852.2(c)(2)(D)(iv) |

| Section/ Standard | Current ordinance (BMC Ch. 23.306) | July 2023 Recommended Ordinance | September 2023 Recommended Ordinance (Ordinance Section(s)) | Source(s) for September 2023 Recommendation |
|--|--|---|---|--|
| Attached ADU, New Construction Height | An ADU proposed as an addition with a maximum height exceeding 14 ft. requires an AUP. | Attached ADUs with height greater than 14 ft. and up to 25 ft. allowed with a Zoning Certificate. | No change from July 2023. (Section 8) | State law GOV 65852.2(c)(2)(D) |
| Junior ADUs Shared Sanitation Facilities | Not specified. | If a Junior ADU shares a sanitary facility with a single-family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required. | No change from July 2023. (Section 8) | Staff recommendation based on state law GOV 65852.22(i)(1) |
| Projections | Architectural features may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows may not project into a setback. Bay windows and balconies shall not project into a setback. No projections shall be allowed within the required setbacks on lots that are within the Hillside Overlay District. | Added bay windows and balconies may not project into a required rear ADU setback. | No change from July 2023. (Section 8) | Planning Commission recommendation, May 2023 |
| Noticing, Scope | Mail to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department. | Mail to all tenants of subject property, excluding property owner(s). | Revised Header to read "Noticing" instead of "Neighbor Noticing" and "tenant" to read "occupant" (Section 8) <i>See Policy Alternative 4</i> | Staff recommendation based on Planning Commission recommendation, May 2023, while addressing implementation concerns |
| Off-Street Parking requirement, minimum | JADU: None. Outside of HOD: None. Within HOD: The lesser of 1 space per bedroom or ADU. No off-street parking shall be required for ADUs that satisfy the criteria defined in subdivision (d) of California Government Code section 65852.2 or any successor provision thereto. | JADU: None Outside of HOD: None Within HOD: 1 per ADU unless satisfies the criteria in subdivision (d) of Government Code Section 65852.2. | JADU: None Outside of HOD: None Within HOD: 1 per ADU unless the parcel is located with 0.5 mile of a major transit stop or a high-quality transit corridor as defined in Public Resource Code Section 21155. (Section 10) | State law GOV 65852.2(c)(2)(D)(ii); GOV 65852.2(d)(1), PUB. RES. 21155 |
| Replacement Parking requirement | Replacement parking is not required. Replacement of off-street parking for the Main Building is allowed and does not need to comply with Parking Maximums | No change from current ordinance. | No change from July 2023. (Section 13) | State law GOV 65852.2(a)(1)(D)(xi) |

| Section/ Standard | Current ordinance (BMC Ch. 23.306) | July 2023 Recommended Ordinance | September 2023 Recommended Ordinance (Ordinance Section(s)) | Source(s) for September 2023 Recommendation |
|--|---|---|---|--|
| Parking Placement for ADUs | (BMC 23.322.070) nor Parking Layout and Design (BMC 23.322.080). If an applicant provides off-street parking for an ADU or a JADU in the HOD, parking shall be allowed in any configuration on the lot, including within the front yard setback. | <ol style="list-style-type: none"> 1. On a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU is allowed in any configuration on the lot, including within the front setback; or 2. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback. | No change from July 2023. (Section 13) | Staff recommendation based on state law GOV 65852.2(a)(1)(D)(xi) |
| Alterations of lawful nonconforming existing structures or buildings to ADUs | Not specified. | <p>The following alterations are permitted with a Zoning Certificate:</p> <ol style="list-style-type: none"> 1. New windows, doors, or other openings to a portion of a building or structure within a minimum required setback. 2. New windows, doors, or other openings to a portion of a building or structure exceeding the height limit. | No change from July 2023. (Section 14) | Staff recommendation |
| "Junior ADU", definition | Requires a working refrigerator | Removes this requirement | No change from July 2023. (Section 15) | HCD Letter dated October 17, 2022 (pg. 1) |
| "Efficiency Kitchen", definition | Requires a sink | Removes this requirement | No change from July 2023. (Section 18) | HCD Letter dated October 17, 2022 (pg. 1) |



Office of the City Manager

PUBLIC HEARING

October 3, 2023

(Continued from September 19, 2023)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Planning and Development

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

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance amending Berkeley Municipal Code (BMC) Title 23, and repealing BMC Chapter 12.99, relating to Accessory Dwelling Units and Junior Accessory Dwelling Units.

SUMMARY

Staff have prepared amendments to Title 23 (Zoning) of the BMC in response to: (a) recent changes in state laws pertaining to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (Junior ADUs) that took effect on January 1, 2023, and (b) feedback from the California Department of Housing and Community Development (HCD) finding that the City of Berkeley's current ADU Ordinance does not comply with state law.

The proposed Zoning Ordinance amendments (Attachment 1) and the repeal of Chapter 12.99 (Wildfire Hazard Evacuation Risk Mitigation Ordinance) per HCD guidance will bring the City's ADU Ordinance into compliance with current state law and address concerns raised in HCD's letter to the City, dated October 17, 2022.

FISCAL IMPACTS OF RECOMMENDATION

The proposed amendments are intended to simplify the planning review process and facilitate the development of ADUs and Junior ADUs in accordance with state law. The proposed amendments may result in a modest decrease in staffing-related expenditures due to streamlined review.

CURRENT SITUATION AND ITS EFFECTS

A local ADU ordinance supports the City's Strategic Plan goal to create affordable housing and housing support services for our most vulnerable community members. Over the past five years, Berkeley has adopted four comprehensive ADU Ordinance amendments in order to maintain compliance with changing State ADU law. Between

2018 and 2022, the City issued 528 building permits for ADUs and Junior ADUs, and entitled an average of 78 ADU permits per year.

On October 17, 2022, the City received a letter from HCD (Attachment 2) stating that it had reviewed the City's current ADU Ordinances (BMC Sections 23.306 and 12.99, the "Ordinances") and found that the Ordinances do not comply with Government Code Section 65852.2.

Efficiency Kitchen Definition

HCD found a discrepancy between the definition of "Efficiency Kitchen" contained within Ordinance No. 7,797-N.S. (Chapter 23.306) and Government Code §65852.22(a)(6)(A) and requested that the City remove the sink requirement from its zoning definition, as well as the reference to a working refrigerator in the definition of a "Junior Accessory Dwelling Unit."

Wildfire Hazard Evacuation Risk Mitigation Ordinance

Regarding Ordinance No. 7,799-N.S (Chapter 12.99), HCD found that the City did not make adequate findings with respect to ADU and Junior ADU development impacts on traffic flow and public safety when the City adopted limitations on ADU and Junior ADU development in the Hillside Overlay zoning district.

HCD asserts that the traffic simulation study referenced in Chapter 12.99 is not specific to ADUs and Junior ADUs and therefore cannot be used to justify the restriction on the number of ADUs in the Hillside Overlay. Additionally, the traffic simulation study does not provide data on how many lots are likely to add ADUs and Junior ADUs, does not identify specific impacts new ADUs and Junior ADUs may have on evacuations, and does not account for the potential for ADUs and Junior ADUs to be excluded from requiring a parking space given the availability of public transit in the Hillside Overlay. Furthermore, HCD adds that even if the City adequately justified the restriction of ADUs and Junior ADUs, it may not justify restrictions on ADUs or Junior ADUs that fall under subdivision (e) of Government Code section 65852.2, because local development standards do not apply to ADUs created under that subdivision. Government code section 65852.2, subdivision (e) requires local agencies to ministerially approve building permit applications for the creation of ADUs and Junior ADUs within any residential or mixed-use zone, subject only to specific limitations.

Regarding BMC Section 12.99.030 – Total Number of Units Permitted, HCD asserts that the City's decision to limit the number of units allowed per lot in the Hillside Overlay to one ADU or one Junior ADU conflicts with Government Code Section 65852.2, subdivisions (e)(1)(A), (B), (C), and (D), which requires a local agency to ministerially approve an application for a building permit within a residential or mixed-use zone to create one ADU and one Junior ADU per lot. Lines (A) through (D) of subdivision (e) identify the following ADU categories:

- (A) One ADU and one Junior ADU within the proposed space of a single-family dwelling, or existing space of a single-family dwelling or accessory structure

- (B) One detached, new construction ADU
- (C) Multiple ADUs within the portions of existing multifamily dwelling structures that are not used as livable space
- (D) Not more than two ADUs that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling

State Law Updates

In addition to HCD's letter, on January 1, 2023, the most recent round of state ADU regulations came into effect, impacting maximum height limits, prohibiting front setback standards that would preclude at least an 800 square foot ADU, and requiring internal connections between Junior ADUs and main dwelling units.

Staff recommend making the following amendments to Title 23 of the BMC:

1. Remove standards that provide a distinction between parcels within and outside of the Hillside Overlay, and apply non-Hillside Overlay ADU standards citywide where residential uses are permitted;
2. Bring the City's zoning code into compliance with current State ADU law, including SB 897, AB 2221, and AB 2097, and respond to HCD's letter; and
3. Clarify and/or correct minor technical edits associated with the related Ordinance sections, and edit for consistency with the existing BMC.

Public safety remains a significant concern regarding increasing density in the Hillside Overlay. To address these concerns, staff are working with the Fire Department to collect additional data on the health and safety impacts of increased development in the Hillside Overlay.

On March 14, 2023, the Fire Department was authorized by the City Manager to execute a contract with KLD Engineering, P.C., for Evacuation and Response Time Modeling from April 1, 2023 through June 30, 2024 as part of an effort to collect data and forecast the number of vehicles and people that may need to be evacuated during a wildfire or other emergency.¹ The study will also be analyzing how major evacuation routes will operate under emergency conditions, and whether there would be any public safety impacts resulting from projected development of new ADUs and Junior ADUs, including parking and additional vehicular travel in the Very High Fire Hazard Severity Zone.

In addition to this study, the City is in the process of updating the Local Hazard and Mitigation Plan and Disaster Preparedness and Safety Element, which will similarly provide an opportunity to collect data and engage community members.

Together, the data collected from the evacuation study as well as input received from community members could enable the City Council to make the findings to support the

¹ <https://berkeleyca.gov/sites/default/files/documents/2023-03-14%20Item%2004%20Contract%20KLD%20Engineering.pdf>

reinstitution of controls on ADU development in the Hillside Overlay. Staff plan to bring the Fire Department’s study findings, as well as other research and community engagement findings, back to Planning Commission and City Council by Summer 2024.

Proposed Ordinance

The Ordinance recommended by the Planning Commission would amend Title 23 of the BMC as follows:

23.106 Rules of Measurement

Consistent with the provisions of Subdivision (c) in Government Code 65852.2, staff propose amending 23.106.020(B) and 23.106.030(D) to exclude up to 800 square feet of area associated with an existing or proposed ADU or Junior ADU from lot coverage and gross floor area calculations. Presently, once an ADU is built, it counts towards lot coverage and gross floor area, which can mean that even minor future additions to the main dwelling would require an Administrative Use Permit (AUP). By amending 23.106.020(B) and 23.106.030(D) to exclude up to 800 square feet of ADU area, the regulation is consistent with state law, removes a barrier to development, and aligns with the State’s goal of streamlining the development of ADUs.

In addition, staff propose amending 23.106.090(A) to exempt attached ADUs from inclusion in average building height calculations. This would allow for residences, in particular those on a slope, to add an attached ADU without technically increasing the average building height and thereby limiting the ability to make other structural changes in the future.

23.306 Accessory Dwelling Units (Organization)

The proposed Ordinance simplifies the ADU chapter by consolidating seven sections into four, maintaining consistency with other chapters of Title 23 (see Table 1).²

Table 1: Chapter 23.306 - Existing and Proposed Sections

| Existing Sections | Proposed Sections |
|---|-----------------------------------|
| 23.306.010– Purposes | 23.306.010– Purpose |
| 23.306.020– Applicability and Definitions | 23.306.020– Applicability |
| 23.306.030– Permit Procedures | 23.306.030– Development Standards |
| 23.306.040– Development Standards | 23.306.040– Permit Procedures |
| 23.306.050– Deed Restrictions | |
| 23.306.060– Neighbor Noticing | |
| 23.306.070– Rooftop Decks and Balconies | |

The proposed Ordinance adds a reference to the latest California Government Code Section 65852.1 and removes subsection (f) which states that the purpose of the chapter is to reduce potential impacts of new development in the Very High Fire Hazard

² The proposed ordinance includes Deed Restrictions and Neighbor Noticing under Section 23.306.040 (Permit Procedures), and Rooftop Decks and Balconies under Section 23.396.030 (Development Standards).

Severity Zones (VHFHSZ), Wildland-Urban Interface Fire Areas, and Hillside Overlay. This complies with HCD’s finding that the current Ordinances do not meet the requirements of state law.

23.306.020 Accessory Dwelling Units (Applicability)

The proposed Ordinance removes subsection (b), which defines the Hillside Overlay for the purposes of the ADU chapter, and removes the reference to Chapter 12.99 to comply with HCD’s finding that the City does not sufficiently justify the creation of a separate set of regulations for the Hillside Overlay.

The proposed amendment includes a new subsection clarifying that ADUs and Junior ADUs do not count towards density calculations established by the underlying zoning districts. This is consistent with HCD guidance in the HCD ADU Handbook Update³.

Staff also propose amending the maximum number of units permitted on a lot with a duplex or multi-family dwelling to allow for two detached ADUs and at least one interior ADU (see Table 2). In 2022, HCD changed its interpretation regarding the total number of ADUs that "must" be allowed by local governments on any given parcel. Whereas in the 2020 ADU Handbook, HCD wrote that "local governments are not required to allow (A) and (B) together or (C) and (D) together," in the July 2022 ADU Handbook, HCD rewrote that "local governments must allow (A) and (B) together or (C) and (D) together." Although this change in HCD's interpretation is not supported by any corresponding change in state law, the proposed Ordinance is drafted to be consistent with HCD's new interpretation for lots with a duplex or multi-family dwelling.

Table 2: Existing and Proposed Maximum Density Standards on a Lot with a Duplex or Multi-Family Dwelling

| Existing Maximum Density | Proposed Maximum Density |
|--|---|
| Either: a. Up to two detached ADUs; <u>or</u> b. At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot. | Two detached ADUs <u>and</u> at least one interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot |

³ July 2022 HCD ADU Handbook. <https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf>.

23.306.030 Accessory Dwelling Units (Development Standards)

In response to HCD’s letter and to bring the development standards section into compliance with state law, staff propose removing standards that are specific to parcels located in the Hillside Overlay. Instead, the development standards will apply to ADUs and Junior ADUs citywide.

Staff also recommend a number of technical revisions to the development standards section, including removing Junior ADU standards from the development standards table and including all relevant information in subsection (B), and replacing footnotes from the development table with a subsection for supplemental standards.

Within subsection (C), staff propose technical edits to amend the provisions pertaining to building projections into yards to align with other sections of the code and in response to Planning Commission’s recommendation. This includes permitting bay windows and balconies to project two feet into the required setbacks so long as there remains at least a two-foot setback from front and side property lines, and does not permit bay windows and balconies to project into the required rear ADU setback, which is four feet. This would allow for ADUs to benefit from the same projection allowances as single-family homes of the same size, while still ensuring that the projections are a reasonable distance from the property lines.

In addition to these technical revisions, a number of the standards have been changed to match state law. Tables 3 and 4 provide the proposed development standards and the rationale informing the recommended changes. This table does not include all ADU development standards; it only includes the standards that are proposed to be amended.

Table 3: Proposed Revisions to ADU Development Standards & Rationale

| Basic Standard | Proposed Standards | Rationale/Intent |
|----------------------------|--|---|
| Building Height, Maximum | Detached, New Construction – 20 ft. | Increase the maximum building height for Attached, New Construction from 20 ft. to 25 ft. to match state law (SB 897). The current 20 ft. maximum building height for Detached, New Construction already exceeds the 18 ft. and 2 ft. roof pitch accommodation required by state law. |
| | Attached, New Construction – 25 ft. | |
| Lot Line Setbacks, Minimum | Front of Interior Lot – Same as underlying district | Add a standard for front setbacks on through lots to ensure that there are standards for such parcels, consistent with existing regulations for accessory buildings. |
| | Front of Through Lot - Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer | |

| | | |
|---|--|--|
| Building Separation for Detached ADU, Minimum | 3 ft. | Add a minimum building separation standard (in addition to below “Detached or Attached ADU” supplemental standard) for consistency with standards for Accessory Buildings. |
| Required Off-Street Parking Spaces | See 23.322.030 – Required Parking Spaces | Move to BMC 23.322 – Parking and Loading to be consistent with other parking standards. |

Table 4: Proposed Revisions to ADU Development Supplemental Standards & Rationale

| Supplemental Standard | Proposed Standards | Rationale/Intent |
|---------------------------------------|---|---|
| State Exemption ADU | No lot coverage, floor area ratio, open space, front setback, or minimum lot size standard in the underlying district shall preclude at least an 800 square foot ADU. | Match state law. |
| Junior ADU Shared Sanitation Facility | If a Junior ADU shares a sanitary facility with a single-family dwelling, an internal connection between the Junior ADU and the main living area of the single-family dwelling is required. | Match state law. |
| Junior ADU Floor Area | The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single-family dwelling. | Clarify the rules of measurement for gross floor area if a sanitation facility is shared. |
| Detached or Attached ADU | If an ADU is located within 3 feet of an exterior wall of a main building, it is considered attached. | Establish a Building Separation standard for Detached ADU, Minimum (see also “Building Separation for Detached ADU, Minimum” above). |
| Attached ADU, New Construction | Attached ADUs with height up to 25 feet are permitted with a Zoning Certificate. | Eliminate the requirement for AUP approval for ADUs to achieve maximum permitted height to conform with state law and in response to Planning Commission recommendation. (GOV 65852.2(c)(2)(D). |

Figure 1 – Examples of Additions Over 14 ft. Containing Attached ADUs




23.306.040 Accessory Dwelling Units (Permit Procedures)

Currently it is required that notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission of a building permit to the Planning Department, and shall include

the project address, allowable hours of construction, a link to the City’s ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor. The cost of materials, postage, and staff time is paid for by the applicant – currently a fixed fee of \$460.

Figure 2 – Existing ADU Notice (Front and Back)



Planning and Development Department
Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley, CA 94704

Post and Mail Date:
Month X, 2023

NOTICE OF APPLICATION: ACCESSORY DWELLING UNIT (ADU)

BP#B2023-XXXXX
Address

Applicant Contact Information
Applicant Full Name
Phone number
Email address

Permit information and status may be viewed online:
<https://permits.cityofberkeley.info/CitizenAccess/Default.aspx>

«Next Record» «NAME1»
«NAME2»
«ADDRESS1» «ADDRESS2»

NOTICE OF APPLICATION: Accessory Dwelling Unit (ADU)

The City received an application to construct an accessory dwelling unit(s) at the property listed on the front of this postcard. Zoning review and approval of the application will be based on the objective criteria found in State law and local regulations, including Chapters 23.306 and 12.99 of the Berkeley Municipal Code (BMC).

For questions about the design and construction of the proposed ADU, please contact the applicant listed on the front of this application notice.

Construction noise is only allowed between 7:00 a.m. – 7:00 p.m. on weekdays, and 9:00 a.m. – 8:00 p.m. on weekends and legal holidays. (BMC 13.40.070). For complaints about construction noise, please contact Environmental Health at envhealth@cityofberkeley.info, or (510) 981-5310.

Tenants of the subject property may contact a Rent Board Counselor by email at rent@cityofberkeley.info, or at (510) 981-RENT (510-981-7368).

Additional information about ADUs is available online at: <https://berkeleyca.gov/ADU> or by contacting the Land Use Planning Division at planning@cityofberkeley.info or (510) 981-7400.

The requirement for neighbor noticing presents a number of challenges for applicants and members of the public. ADU permits are building permits, and plans associated with building permit applications are protected under copyright law, and cannot be printed out or shared online with members of the public (unlike plans associated with zoning permits). For neighbors interested in seeing proposed ADU plans, this means that they must visit the Permit Service Center in-person and look at the plans accompanied by a staff member. Additionally, ADU permits are non-discretionary permits, so members of the public cannot appeal a conforming proposed ADU. The noticing procedure can create an expectation that there is a discretionary review process involved, and there is not.

In order to address these concerns, Planning Commission recommended amendments to the neighbor noticing requirements as follows:

1. **Require mailing a notice to tenants of the subject property only.** The Planning Commission recommended amending the Ordinance to provide notice only to tenants of the subject property. Staff propose requiring project applicants to attest to whether any tenants live on site as part of the project application. The presence of tenants would trigger the mailing of a notice to tenants of the subject property.
2. **Increase clarity of the notice.** The Planning Commission recommended more clearly indicating the non-discretionary nature of the permit and noting that permit and construction information and resources can be found on the City's ADU webpage.

23.322.020 Parking and Loading (Applicability)

Staff propose amending BMC Tables 23.322-1, 23.322-2, and 23.322-4 to relocate off-street parking standards for ADUs in Residential, Commercial, and Manufacturing Districts into the Parking and Loading chapter of the BMC (previously specified in Chapter 23.306). Required parking for ADUs within the Hillside Overlay remains one parking space per ADU unless it is located within 0.5 miles of a transit stop as defined in Government Code Section 65852.2⁴ or otherwise satisfies subdivision (d) of the same section.

23.322.080 Parking Layout and Design (Placement)

Staff propose the creation of a new subsection (G) in BMC 23.322.080 to provide guidance on parking placement for ADUs, and includes the following parking placement exceptions:

⁴ "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65852.2&lawCode=GOV

- a. On a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU, is allowed in any configuration on the lot, including within the front yard setback; or
- b. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback.

Currently, parking flexibility only applies to replacement parking for main dwelling units and new parking provided for an ADU. To account for ADU projects seeking to provide new parking spaces for both the main dwelling and the ADU, staff propose allowing for the same flexibility in lot configuration for the main dwelling unit's proposed new parking space as is allowed for the ADU's parking space. Encouraging off-street parking in the Hillside Overlay can partially mitigate safety and evacuation access concerns.

23.324.060 Exemptions to Nonconforming Uses, Structures, and Buildings

In the current zoning code, minor alterations of nonconforming structures within required setbacks, such as for windows and doors, require an AUP. To reduce the administrative costs associated with providing new openings for ADUs, staff propose allowing by right openings to lawful nonconforming existing structures or buildings that are proposed to be converted to an ADU. Staff proposes to add BMC 23.324.060(C) to include the following standards:

C. Accessory Dwelling Units. The following alterations of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate:

1. New windows, doors, or other openings to a portion of a building or structure within a minimum required setback.
2. New windows, doors, or other openings to a portion of a building or structure exceeding the height limit.

23.502.020 Defined Terms

Junior ADU. Staff propose relocating the definition for "Junior Accessory Dwelling Unit" within the definition of "Accessory Dwelling Unit" and striking out the reference to a working refrigerator in response to HCD's findings.

Addition, Major Residential. Staff propose amending the definition for "Addition, Major Residential" to add a subsection that exempts the floor area associated with an existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet. This would eliminate the requirement for an AUP to add an ADU or Junior ADU to a house, thus matching the State's intent of streamlining the processing of ADU development.

Efficiency Kitchen. Staff propose amending the definition of an “Efficiency Kitchen” by removing the requirement for a sink to match the State’s definition and in response to HCD’s findings.⁵ Note that while kitchen sinks are required in dwelling units, Junior ADUs are not required to have a sink because they do not meet the definition of a “dwelling unit” in California Building Code Section 202.⁶

New Construction. Staff propose amending the definition of “New Construction” to include ADUs, in addition to new main buildings.

BACKGROUND

On May 3, 2023, the Planning Commission held a public hearing to consider proposed amendments to Title 23 developed by staff (**Attachment 3**). Following public comment and a discussion, the Planning Commission unanimously recommended staff’s proposal with three modifications, which were incorporated into the proposed amendments as follows:

- 1. Regulating bay window and balcony projections using setback requirements.** The Commission recommended a technical edit to permit bay windows and balconies on all ADUs outside the Hillside Overlay, with projections measured by setback distance from the property line. Staff previously recommended separate standards for attached versus detached ADUs, with attached ADUs permitted to project two feet into the required setbacks as long as there remains at least a two-foot setback from property lines. In this recommendation, detached ADUs were not permitted to have projections. However, the Commission found that the goal of allowing for more flexibility with projections while also limiting proximity of a dwelling unit to the property line could be achieved more simply by regulating projections for *all* ADUs using property setbacks.
- 2. Revising Neighbor Noticing requirements for clarity and efficiency.** The Commission recommended revising the neighbor noticing requirement so that public notices for ADUs link to the City’s ADU webpage and identify additional permit and construction information, and only need to go to tenants on the subject property. Staff amended the noticing requirements accordingly. Staff plan to further revise the existing ADU notice to clearly communicate the non-discretionary nature of the permit, in accordance with the Commission’s recommendations.
- 3. Removing the AUP requirement for attached ADUs proposed as additions to streamline ADU building permit applications.** Planning Commission recommended allowing for attached ADUs to reach maximum allowable height

⁵ The only other reference to an “efficiency kitchen” in the Berkeley Municipal Code pertains to the definition of a Junior ADU.

⁶ California Building Code Section 202, <https://codes.iccsafe.org/content/CARC2022P1/chapter-2-definitions>.

without requiring an AUP to match the State's goal of streamlining the ADU development process.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

ADUs are generally low impact infill development that have the potential to decrease vehicles miles traveled and greenhouse gas emissions and increase availability of housing near various community amenities, the university campus, transit services and employment opportunities.

Environmental Determination. The project is statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h), the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

RATIONALE FOR RECOMMENDATION

The proposed Zoning Ordinance amendments to Title 23 relating to ADUs are required to ensure that the Zoning Ordinance conforms to all applicable state laws and addresses HCD's letter to the City, dated October 17, 2022.

ALTERNATIVE ACTIONS CONSIDERED

The Planning Commission considered a range of amendments and recommended modifications in response to feedback and deliberations, as discussed above.

CONTACT PERSON

Zoe Covello, Assistant Planner, Planning and Development Department, 510-981-7418
Grace Wu, Principal Planner, Planning and Development Department, 510-981-7484

Attachments:

- 1: Zoning Ordinance
- 2: HCD's Letter, dated October 17, 2022
- 3: Staff Report from May 3, 2023 Planning Commission Meeting
- 4: Notice of Public Hearing

ORDINANCE NO. -N.S.

REPEAL OF THE WILDFIRE HAZARD EVACUATION RISK MITIGATION ORDINANCE (BMC 12.99), AND AMENDMENTS TO THE RULES OF MEASUREMENT (BMC 23.106), ACCESSORY DWELLING UNIT (ADU) ORDINANCE (BMC 23.306), PARKING AND LOADING (BMC 23.322), EXEMPTIONS TO NONCONFORMING USES, STRUCTURES, AND BUILDINGS (BMC 23.324.060), AND DEFINED TERMS (BMC 23.502.020) RELATING TO ADUS

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

Section 1. That Berkeley Municipal Code Chapter 12.99 is hereby repealed.

Section 2. That Berkeley Municipal Code 23.106.020(B) is amended to read as follows:

B. *Exclusions.* The lot coverage calculation excludes:

1. Uncovered porches, landings and stairs;
2. Uncovered decks, except that a deck on the roof of a building or accessory structure or over an enclosed space or paved ground area is included in the lot coverage calculation; and
3. The area of the roof of a subterranean structure, when such a structure is not more than 3 feet above finished grade.
4. The area of any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 3. That Berkeley Municipal Code 23.106.030(D) is amended to read as follows:

D. *Excluded Areas.* The following areas are excluded from gross floor area calculation:

1. Covered or uncovered areas used for off-street parking or loading spaces.
2. Driveways ramps between floors and maneuvering aisles of a multi-level parking garage.
3. Mechanical, electrical, and telephone equipment rooms below finished grade.
4. Areas which qualify as usable open space.
5. Arcades, porticoes, and similar open areas for non-residential uses which are:
 - (a) Located at or near street level;
 - (b) Accessible to the general public; and

(c) Are not designed or used as sales, display, storage, service, or production areas.

6. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 4. That Berkeley Municipal Code 23.106.090(A)(1) through (3) is amended to read as follows:

A. *Average Building Height.*

1. Average Building Height: The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the addition) to the roof features shown in Table 23.106-1: Average Building Height Measurement. See [Figure 23.106-4: Average Building Height.](#)

~~2. Figure 23.106-4: Average Building Height.~~

2. Dormers are not included in the average building height calculation.

3. Attached accessory dwelling units are not included in the average building height calculation.

Section 5. That Berkeley Municipal Code 23.306 is amended to read as follows:

Sections:

~~23.306.010– Purposes~~

~~23.306.020– Applicability and Definitions~~

~~23.306.030– Development Standards Permit Procedures~~

~~23.306.040– Permit Procedures Development Standards~~

~~23.306.050– Deed Restrictions~~

~~23.306.060– Neighbor Noticing~~

~~23.306.070– Rooftop Decks and Balconies~~

23.306.010 Purposes.

~~The purposes of this Chapter are to~~ This Chapter establishes accessory dwelling unit (ADU) and junior accessory dwelling unit (Junior ADU) standards that:

A. Implement California Government Code Section 65852.1, 65852.2 and 65852.22.

B. Increase overall supply and range of housing options in Berkeley.

C. Expedite small-scale infill development.

- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.

~~F. Reduce potential impacts of new development in Very High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas as designated in the BMC Chapter 19.48 and as may be amended from time to time, and the Hillside Overlay District (HOD) due to unique conditions and hazards within these areas that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety consistent with Government Code 65852.2, subdivision (a)(1)(A), which allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."~~

23.306.020 Applicability and Definitions.

A. The provisions of this chapter apply to zoning districts where residential uses are permitted, on lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.

~~B. For purposes of this Chapter the Hillside Overlay District (HOD) includes all lots within Berkeley's designated Very High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas that are zoned R-1H (Single-Family Residential—Hillside Overlay), R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), or ES-R (Environmental Safety-Residential).~~

~~B. Number of ADUs and JADUs Permitted Per Lot. See Table 23.306-1—ADU and Junior ADU Maximum Number of Units per Lot. Except as expressly modified by Chapter [12.99](#), the following number of ADUs and JADUs shall be the maximum number of accessory units permitted on lots subject to this Chapter.~~

~~C. Density Exemption. ADUs and Junior ADUs [are not included in](#) the minimum or maximum density established by the underlying zoning district.~~

TABLE 23.306-1—ADU AND JUNIOR ADU MAXIMUM NUMBER OF UNITS PER LOT

| <u>Use, Primary</u> | <u>ADU and Junior ADU, Maximum Per Lot</u> |
|--|---|
| <u>Single Family Dwelling, one unit on lot</u> | <u>1 ADU and 1 Junior ADU, both are permitted</u> |
| <u>Single Family Dwelling, more than one unit on lot</u> | <u>1 ADU</u> |
| <u>Duplex or Multi-Family Dwelling</u> | <u>2 detached ADUs and at least one interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot</u> |

| | |
|----------------------------|-------|
| Group Living Accommodation | 1 ADU |
|----------------------------|-------|

- ~~1. Lot with one Single Family Dwelling: One ADU and/or one JADU.~~
- ~~2. Lot with more than one Single Family Dwelling: One ADU.~~
- ~~3. Lot with a Duplex or Multiple-Family Dwelling, either:

 - ~~(a) Up to two detached ADUs; or~~
 - ~~(b) At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot.~~~~
- ~~4. Lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory: One ADU~~

23.306.030 Permit Procedures.

- ~~A. *Zoning Certificate.* An application for an ADU or JADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including Development Standards, Deed Restrictions, and Neighborhood Noticing.~~
- ~~1. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a Building Permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.~~
 - ~~2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code Section 65852.2(e)(1).~~
 - ~~3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or JADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.~~

23.306.0340 Development Standards.

- A. *Basic Standards.* See Table 23.306-~~21~~: ADU ~~and JADU~~ Development Standards.

TABLE 23.306-~~21~~. ADU ~~AND JADU~~ DEVELOPMENT STANDARDS

| BASIC STANDARDS | SUPPLEMENTAL STANDARDS |
|---------------------------|-------------------------------|
| Gross Floor Area, Maximum | 23.306.030(A)(1); |

| | | |
|--|--|---|
| <u>Studio or 1 bedroom</u> | <u>850 sq. ft.</u> | <u>23.306.030(A)(2);</u> |
| <u>2+ bedrooms</u> | <u>1,000 sq. ft.</u> | <u>23.306.030(A)(3);</u> <u>23.306.030(A)(4)</u> |
| <u>Building Height, Maximum</u> | | |
| <u>Conversion</u> | <u>Same as existing structure</u> | <u>23.306.030(A)(2);</u> <u>23.306.030(A)(4)</u> |
| <u>Detached, New Construction</u> | <u>20 ft.</u> | <u>23.306.030(A)(5)</u> |
| <u>Attached, New Construction</u> | <u>25 ft.</u> | <u>23.306.030(A)(5);</u> <u>23.306.030(A)(7)</u> |
| <u>Lot Line Setbacks, Minimum</u> | | |
| <u>Front of Interior Lot</u> | <u>Same as underlying district</u> | <u>23.306.030(A)(1)</u> |
| <u>Front of Through Lot</u> | <u>Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer</u> | <u>23.306.030(A)(6)</u> |
| <u>Rear</u> | <u>4 ft.</u> | |
| <u>Interior Side</u> | <u>4 ft.</u> | |
| <u>Street Side</u> | <u>4 ft.</u> | |
| <u>Building Separation for Detached ADU, Minimum</u> | <u>3 ft.</u> | <u>23.306.030(A)(5)</u> |
| <u>Required Off-Street Parking Spaces</u> | <u>See 23.322.030– Required Parking Spaces</u> | |

1. State Exemption ADU. No lot coverage, floor area ratio, open space, front setback, or minimum lot size standard in the underlying district shall preclude at least an 800 square foot accessory dwelling unit.
2. Existing Building Conversion. An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for maximum gross floor area in Table 23.306-2. ADU Development Standards is allowed a physical addition of no more than 150 square feet. The addition must comply with maximum height and setback requirements.
3. Duplex or Multi-Family Dwelling Conversion. Interior ADU(s) must be created entirely through non-habitable residential portions of the existing main building that are not within the living space of a dwelling unit (e.g. basement, attic, garages, storage room).
4. Accessory Building or Accessory Structure Conversion. An ADU converted from an accessory building or accessory structure legally established at least three years prior to submission of an ADU application that does not comply with the maximum height, size, and/or rear and side setback requirements is allowed to maintain non-conformity to the same dimensions of the existing accessory building or accessory structure, provided that the existing side and rear setbacks are sufficient for fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing accessory

building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.

5. Detached or Attached ADU. Detached ADUs shall maintain a minimum 3-foot separation from other buildings on the lot. If an ADU is located within 3 feet of an exterior wall of a main building, it is considered attached for the purposes of applying the development standards in Table 23.306-2 ADU Development Standards.

6. Detached ADU Setback Exceptions. If there is a lesser setback allowed in 23.304.060-Accessory Buildings and Enclosed Accessory Structures for a comparable accessory building or accessory structure in the underlying zoning district, that setback shall apply.

4.7. Attached ADU, New Construction Height. Attached ADUs with height greater than 14 ft. and up to 25 ft. allowed with a Zoning Certificate.

| | ADU ¹ | JADU |
|--|--|-------------------|
| Maximum Size Outside of HOD ² | | 500 sf |
| Studio or 1 bedroom | 850 sf | N/A |
| 2+ bedrooms | 1000 sf | |
| Maximum Size Within HOD | 800 sf | 500 sf |
| Maximum Height Outside of HOD | 20 ft. | N/A |
| Maximum Height Within HOD | 16 ft. | |
| Front Yard Setback | Same as underlying district | |
| Rear Setback | 4 ft ³ | |
| Side Setback | 4 ft ³ | |
| Required Off-Street Parking Outside of HOD | None ⁴ | |
| Required Off-Street Parking Within HOD | The lesser of 1 space per bedroom or ADU ^{5, 6} | None ⁶ |

~~[1] An ADU converted from an Accessory Building or Accessory Structure legally established at least three years prior to submission of an ADU application that does not comply with the Maximum Height, Size, and/or Rear and Side Setback requirements is allowed to maintain non-conformity to the same dimensions of the existing Accessory Building or Accessory Structure, provided that the existing side and rear setbacks are sufficient for fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing Accessory Building or Accessory Structure shall comply with the development standards in this table.~~

~~[2] An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for Maximum Size in this table is allowed a~~

~~physical addition of no more than 150 square feet. The addition must comply with Maximum Height and Setback requirements in this table.~~

~~[3] If there is a lesser setback allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district, that setback shall apply.~~

~~[4] Replacement parking is not required. Replacement of off-street parking for the Main Building is allowed and does not need to comply with Parking Maximums (BMC 23.322.070) nor Parking Layout and Design (BMC 23.322.080).~~

~~[5] No off-street parking shall be required for ADUs that satisfy the criteria defined in subdivision (d) of California Government Code section 65852.2 or any successor provision thereto.~~

~~[6] If an applicant provides off-street parking for an ADU or a JADU in the HOD, parking shall be allowed in any configuration on the lot, including within the front yard setback.~~

B. Junior ADUs.

1. Basic Standards. A Junior ADU shall be contained entirely within an existing or proposed single family dwelling or its attached garage, and have no more than 500 square feet in floor area.
2. Shared Sanitation Facility. If a Junior ADU shares a sanitary facility with a single family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.
3. Junior ADU Floor Area. The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single family dwelling.

B. Projections.

C.

~~Except as limited by Paragraph B.2 of this Section, architectural features (Outside of the Hillside Overlay.~~

1. Attached ADU. Chimneys, ~~w~~Water ~~h~~Heater ~~e~~Enclosures, ~~f~~Flues, ~~h~~Heating and ~~c~~Cooling ~~e~~Equipment, ~~e~~Eaves, ~~c~~Cornices, ~~c~~Canopies, ~~a~~Awnings, ~~bay windows, and balconies~~) may project two feet into the required front and side setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows and balconies may not project into a required rear ADU setback.
2. Within the Hillside Overlay. No projections shall be allowed within ~~at~~the required setback ~~on lots that are within the Hillside Overlay District.~~

G.D. Rooftop Decks within the Hillside Overlay. Roofs on detached ADUs within the Hillside Overlay may not be designed, converted, or used as usable open space.

23.306.0450 Permit Procedures Deed Restrictions.

A. Zoning Certificate. An application for an ADU or Junior ADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including development standards, deed restrictions, and neighborhood noticing.

1. If an application to create an ADU or Junior ADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a building permit shall not be issued for the ADU or Junior ADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired. See 23.404.060(A) Post-Decision Provisions (Effective Dates).
2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or Junior ADU that complies with the requirements of Government Code Section 65852.2(e)(1).
3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or Junior ADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.

B. Neighbor Noticing.

1. Scope and Timing of Notice. Notice of an ADU application shall be mailed to ~~tenants- of owners and tenants of the subject, adjacent, confronting and abutting properties~~ the subject property within ten working days of submission of the building permit to the Planning Department City.
2. Content of Notice. Notice shall provide the address of the project and include allowable hours of construction, a link to the City's ADU webpage identifying permit and construction resources, and contact information for a Rent Board Housing Counselor.
- 4.3. Mailing Fees. The applicant shall be responsible for the cost of materials, postage, and staff time necessary to process and mail the notices.

D.C. Deed Restriction. The property owner shall file a deed restriction with the Alameda County Recorder which states:

1. The Junior ADU shall not be sold separately from the main building;
2. The ADU shall not be sold separately from the main building unless the conditions of BMC 23.306.0450(D) ADUs Developed by a Qualified Nonprofit Developer ~~B~~ are met;
3. The ADU and/or Junior ADU shall not be rented for a term that is shorter than 30 days; and

4. If the property includes a Junior ADU, the Junior ADU, or the Single Family Dwelling in which the Junior ADU is located, shall be owner-occupied.

E.D. ADUs Developed by a Qualified Nonprofit Developer. An ADU built or developed by a "qualified nonprofit corporation" may be sold or conveyed separately from the mMain bBuilding to a "qualified buyer," as such terms are defined in subdivision (b) of Section [65852.26](#) of the California Government Code. The ADU must be held pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:

1. Delineation of all areas of the property that are for the exclusive use of a cotenant;
2. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;
3. Procedures for dispute resolution among cotenants before resorting to legal action;
4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;
6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence; and
7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility.

~~9. 23.306.060 Neighbor Noticing.~~

~~10. Scope and Timing of Notice. Notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department.~~

~~11. Content of Notice. Notice shall provide the address of the project, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.~~

~~12. Mailing Fees. The applicant shall be responsible for the cost of materials, postage and staff time necessary to process and mail notices.~~

~~13. 23.306.070 Rooftop Decks and Balconies.~~

~~14. Notwithstanding any provisions of this Title to the contrary, roofs on lots within the Hillside Overlay District may not be designed, converted or used as Usable Open Space.~~

Section 6. That Berkeley Municipal Code 23.322.020(C) is amended to read as follows:

C. *Changes of Use.*

1. *Commercial Districts.* In the Commercial Districts, off-street parking is required for a change in use only when the structure is expanded to include new floor area.
2. *Manufacturing and R-SMU Districts.*
 - (a) In the Manufacturing and R-SMU districts, off-street parking is required for a change in use only when:
 - i. The structure is expanded to include new floor area; and/or
 - ii. The use is changed to one with a numerical parking standard greater than the district minimum.
 - (b) If the new use is changed to one with a higher numerical parking standard than the district minimum, the new use must provide the incremental difference between the two numerical parking standards. A higher numerical parking standard may be reduced to the district minimum as provided in Section 23.322.050~~(A)(2)~~ (Change of Use).
 - (c) As used in this section, the “district minimum” parking requirement is:
 - iii. 2 spaces per 1,000 square feet of floor area in the Manufacturing Districts; and
 - iv. 1 space per 1,000 square feet of floor area in the R-SMU district.
3. *All Other Residential Districts.* In all Residential Districts except for R-SMU, off-street parking spaces are required for all changes in use.

Section 7. That the section named; Residential Uses; in Berkeley Municipal Code Table 23.322-1, Required Off Street Parking in Residential Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read as follows:

TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

| Land Use | Number of Required Off-street Parking Spaces |
|---|---|
| Residential Uses | |
| Accessory Dwelling Unit | <u>Junior ADU: None required</u> <u>ADU outside of Hillside Overlay: None required</u> <u>ADU within Hillside Overlay: 1 per ADU unless satisfies the criteria in subdivision (d) of Government Code Section 65852.2. See Chapter 23.306</u> |
| Dwellings, including Group Living Accommodations | <u>R-3, R-4, and R-5 Districts (1-9 units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit.</u> <u>R-3, R-4, and R-5 District (10 or more units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per 1,000 sq. ft. of gross floor area</u> <u>All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit</u> <u>All Other Locations: None required</u> |
| Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing | <u>If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager.</u> <u>All Other Locations: None required.</u> |
| Rental of Rooms | <u>If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers</u> <u>All Other Locations: None required</u> |

Section 8. That Berkeley Municipal Code Table 23.322-2 is amended to read as follows:

TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

| Land Use | Required Parking Spaces |
|--|--|
| Residential Uses | |
| Accessory Dwelling Unit | See Chapter 23.306 <u>None required</u> |
| Dwellings, including Group Living Accommodations | <u>If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit</u> <u>All Other Locations: None required</u> |
| Hotel, Residential | None required |
| Mixed-Use Residential | None required |

| Land Use | Required Parking Spaces |
|---|---|
| (residential use only) | |
| Senior Congregate Housing | None required |
| Non-Residential Uses | |
| All non-residential uses except uses listed below | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Hospital | 1 per each 4 beds plus 1 per each 3 employees |
| Library | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 1 per 500 sq. ft. of publicly accessible floor area |
| Nursing Home | 1 per 3 employees |
| Medical Practitioners | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 1 per 300 sq. ft. |
| Hotels, Tourist | <u>C-DMU District</u> : 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts</u> : 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Motels, Tourist | <u>C-DMU District</u> : 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts</u> : 1 per guest/sleeping room plus 1 for owner or manager [1] <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Large Vehicle Sales and Rental | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-SA District</u> : 1 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Small Vehicle Sales and Service | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-SA District</u> : 1 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Manufacturing | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-W District</u> : 1 per 1,000 sq. ft [1] <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Wholesale Trade | <u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-W District</u> : 1 per 1,000 sq. ft <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft. |
| Live/Work | If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |
| <u>Notes:</u> [1] Spaces must be on the same lot as building it serves | |

Section 9. That the section named; Residential Uses; in Table 23.322-4, Required Off Street Parking in Manufacturing Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read as follows:

TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

| Land Use | Required Parking Spaces |
|----------------------------|--|
| Residential Uses | |
| Accessory Dwelling Unit | See Chapter 23.306 <u>None required</u> |
| Dwellings | None required |
| Group Living Accommodation | None required |

Section 10. That Berkeley Municipal Code 23.322.080 is amended to read as follows:

23.322.080– Parking Layout and Design

A. Traffic Engineering Requirements.

1. All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City of Berkeley’s Traffic Engineering requirements.
2. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible, and safe parking areas, and are adequately integrated with Berkeley’s overall street pattern and traffic flows.

B. Dimensional Standards. Dimensional requirements and standards for off-street parking spaces, driveways, and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and ZAB.

C. Access Orientation in Non-Residential Districts. Access to new parking areas in a Non-Residential District that serve commercial uses shall be oriented in such a way as to minimize the use of streets serving primarily residential uses.

D. Residential Parking Lots in Non-Residential Districts. Parking lots in a non-residential district used exclusively for residential parking must comply with standards in Section 23.322.080 that apply in Residential Districts.

~~*D.E. Placement--Residential Districts.*~~

1. *Side Setback Areas.*

- (a) One new off-street parking space in a required side setback area, where none exists, is allowed by right.
- (b) The space must be constructed of a permeable surface unless the Public Works Department or Office of Transportation determines it is infeasible.
- (c) The space must be screened as required by 23.322.080.HG (Screening).
- (d) The location of the space shall minimize impact on usable open space.

2. *Other Setback Areas.* No portion of an off-street parking space may be located in a required front, street side, or rear setback area unless:

- (a) The parking space location is authorized by Chapter 23.306 (Accessory Dwelling Units); or
- (b) The Zoning Officer approves an AUP, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.

3. *Multifamily Buildings.*

- (a) An off-street parking space may not be located closer than 10 feet in horizontal distance from a door or a window of a building with three or more dwelling units where the space is on the same or approximately the same level as the building.
- (b) For the purposes of this section, a window whose bottom edge or point is more than 6 feet in vertical height from the level of the subject off-street parking space is not considered on the same or approximately the same level.
- (c) The Zoning Officer may approve an AUP to grant an exception to this requirement.

E.F. *Placement--Non-Residential Districts.*

- 1. *Where Prohibited.* Except when otherwise allowed by this chapter, ground-level off-street parking spaces are not permitted within 20 feet of the lot's street frontage unless the parking is entirely within a building with walls.
- 2. *Corner Lots.* For a corner lot, the ZAB may approve a Use Permit to allow the parking within 20 feet of the street frontage facing the secondary street.
- 3. *C-W District.*
 - (a) Off-street automobile parking in the C-W district is not permitted between the front lot line and a main structure within a designated node.
 - (b) Outside of a designated node, off-street automobile parking may be allowed between the front lot line and a main structure with a Use Permit or AUP. If

the project requires ZAB approval, a Use Permit is required. An AUP is required for all other projects.

- (c) To approve the AUP or Use Permit, the review authority must find that one or more of the following is true:
- i. Parking in the rear or on the side of the property is impractical because of the lot's depth and/or width.
 - ii. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses.
 - iii. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location.
 - iv. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front lot line.

G. Placement--ADU.

(a) On a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU is allowed in any configuration on the lot, including within the front setback; or

(b) Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback.

F.H. Grade Change. This subsection applies to off-street parking spaces in all districts, except for parking decks in Residential Districts.

1. The difference in elevation between a parking space and the finished grade on adjacent areas of the lot may not exceed 5 feet at any point.
2. Where there is a difference in elevation between a parking space and adjacent finished grade, the parking space shall be setback from a lot line as shown in Table 23.322-7.

TABLE 23.322-7. REQUIRED SETBACKS FOR PARKING SPACES WITH ADJACENT GRADE CHANGES

| DIFFERENCE IN ELEVATION | MINIMUM SETBACK |
|--|-----------------|
| Parking space lower than finished grade | |
| 3 to 5 ft | 4 ft. |
| Less than 3 ft | No min. setback |
| Parking space higher than finished grade | 6 ft. |

G.I. Screening.

1. Table 23.322-8 shows required parking space screening. Screening must effectively screen parked vehicles from view from buildings and uses on adjacent, abutting, and confronting lots. Screening may not interfere with pedestrian safety.

TABLE 23.322-8. REQUIRED PARKING SPACE SCREENING

| DISTRICTS | WHEN REQUIRED | REQUIRED SCREENING FEATURE | SCREENING FEATURE HEIGHT |
|--|---|---|---|
| All Residential Districts | 2 or more parking spaces, or any parking space partly or entirely within a required rear setback area | Continuous view-obscuring wood fence, masonry wall, or evergreen hedge which may be broken only for access driveways and walkways | 4 ft. min and 6 ft. max. |
| All Commercial and Manufacturing Districts | 2 or more parking spaces | Wall, fence, or evergreen shrubbery hedge in a landscape strip | Parking adjacent to public right-of-way or front lot line: 3 ft. min. and 4 ft. max. Parking adjacent to rear or side lot line: 4 ft. min and 6 ft. max. |

2. In the C-W, M, MM, MU-LI districts, screening and landscape buffers are not required for any portion of a parking lot adjacent to Third Street (Southern Pacific Railroad).

H.J. Landscape Buffers.

1. All paved areas for off-street parking spaces, driveways, and any other vehicle-related paving must be separated from adjacent lot lines and the public right-of-way by a landscaped strip as shown in Table 23.322-9.

TABLE 23.322-9. REQUIRED LANDSCAPE BUFFERS

| DISTRICT/NUMBER OF SPACES | MINIMUM WIDTH OF LANDSCAPE STRIP | |
|--|--|---|
| | AREAS ADJACENT TO SIDE OR REAR LOT LINES | AREAS ADJACENT TO PUBLIC RIGHT-OF-WAY OR FRONT LOT LINE |
| Residential Districts | | |
| 1-3 spaces | 2 ft. | 2 ft. |
| 4 spaces or more | 4 ft. [1] | 4 ft. [1] |
| Commercial and Manufacturing Districts | | |
| 1 space | None required | None required |

| | | |
|--|-----------|-----------|
| 2-3 spaces | 2 ft. | 3 ft. |
| 4 spaces or more | 4 ft. [1] | 4 ft. [1] |
| Note: [1] Calculated as average width along the full length of landscape strip. | | |

2. In all districts, this landscape buffer requirement does not apply to driveways that serve two adjacent lots when adjacent to a side lot line.
3. In the Residential Districts, this landscape buffer requirement also does not apply to pedestrian walkways that are separated from such areas by a landscaped strip at least two feet wide.

~~H.K.~~ I.K. *Paved Setback Areas.* In Residential Districts, the total area of pavement devoted to off-street parking spaces, driveways, and other vehicle-related paving may not exceed 50 percent of any required setback area that runs parallel to and abuts a street.

~~J.L.~~ J.L. *Driveway Width.*

1. A driveway may not exceed 20 feet in width at any lot line abutting a street or one-half of the width of the street frontage of the lot, whichever is less.
2. In a Non-Residential district, the Zoning Officer may modify this requirement with an AUP.

~~K.M.~~ K.M. *Driveway Separation.* On a single lot in a Residential District, driveways must be spaced at least 75 feet from one another, as measured along any continuous lot line abutting a street.

~~L.N.~~ L.N. *Tandem Parking.* Tandem spaces that provide required off-street parking require an AUP, except when allowed by right by Chapter 23.306 (Accessory Dwelling Units).

~~M. Residential Parking Lots in Non-Residential Districts. Parking lots in a non-residential district used exclusively for residential parking must comply with standards in this section that apply in Residential Districts.~~

~~N.O.~~ N.O. *Carports.* A carport shall meet the minimum horizontal and vertical dimensions specified by the City's Traffic Engineer to be used for one or more legal parking spaces required under this chapter.

Section 11. That Berkeley Municipal Code is amended to add a new Section 23.324.060(C) to read as follows:

C. Accessory Dwelling Units. The following alterations of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate:

1. New windows, doors, or other openings to a portion of a building or structure within a minimum required setback.
2. New windows, doors, or other openings to a portion of a building or structure exceeding the height limit.

Section 12. That Berkeley Municipal Code 23.502.020(A)(4) is amended to read as follows:

4. Accessory Dwelling Unit (ADU). An attached or detached secondary dwelling unit that is located on the samea lot as a proposed or existing single family dwelling, duplex, multi-family dwelling use, or group living accommodation in a zoning district where residential uses are permitted and provides independent living facilities for one or more persons. An ADU must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: Exterior or independent access to the ADU, living and sleeping quarters, a full kitchen, and a full bathroom. An ADU also includes the following: (a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code, or (b) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Junior Accessory Dwelling Unit (Junior ADU). A unit that is contained entirely within the walls of an existing or proposed single family dwelling, or a single family dwelling unit's attached garage. A Junior ADU must include a separate exterior entrance and, at minimum, an efficiency kitchen with a working refrigerator. A Junior ADU may include separate sanitation facilities or may share sanitary facilities with a single family dwelling. The property owner must reside in either the Single Family Dwelling or the JADU.

(a) with a proposed or existing Single Family Dwelling, Duplex, Multi-Family Dwelling Use or Group Living Accommodation. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: 1) exterior or independent access to the Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

(b)(a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

Section 13. That Berkeley Municipal Code 23.502.020(A)(8) is amended to read as follows:

8. *Addition, Residential.* The creation of any new portion of a main building which results in a vertical or horizontal extension of the building, or results in additional

residential gross floor area to an existing main building, as long as such new gross floor area does not exceed 15 percent of the lot area or 600 square feet, whichever is less. For purposes of this definition gross floor area does not include:

- (a) Additions of gross floor area devoted to required off-street parking spaces, creation of mezzanines or lofts within the building's shell;
- (b) Making previously unusable attics into habitable floor area (except where new areas with vertical clearance of 6 feet or greater are created through expansions of the building shell);
- (c) Excavations of earth within the existing building footprint (i.e. expansion of existing basements or new basements), or
- (d) Replacement of existing floor area that was lawfully constructed and is located entirely within the addition's shell.
- (d)(e) The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.

Section 14. That Berkeley Municipal Code 23.502.020(A)(9) is amended to read as follows:

9. *Addition, Major Residential.*

- (a) A residential addition greater than 15 percent of the lot area or 600 square feet. Floor area from all residential additions since October 31, 1991, with the exception of:
 - i. Additions that are entirely subsumed within previously existing floor area; and
 - ii. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.
- (b) The floor area of subsequent stories where the addition does not exceed the district residential addition height limit, shall count towards the calculation of gross floor area for the purposes of this definition.
- (c) Any new floor area, except as exempted under (9)(a). shall be treated as a new major residential addition for the purpose of permit processing, when the cumulative square footage exceeds 15 percent of the lot area or 600 square feet, whichever is less.

Section 15. That Berkeley Municipal Code 23.502.020(E)(1) is amended to read as follows:

1. Efficiency Kitchen. A ~~kitchen that includes a sink,~~ a cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.

Section 16. That Berkeley Municipal Code 23.502.020(J) is amended to read as follows:

J. "J" Terms.

~~Junior Accessory Dwelling Unit (JADU). A unit that is contained entirely within the walls of a Single Family Dwelling. A JADU must include a separate exterior entrance and an Efficiency Kitchen with a working refrigerator. A JADU may include separate sanitation facilities or may share sanitary facilities with a Single Family Dwelling. The property owner must reside in either the Single Family Dwelling or the JADU.~~

Section 17. That Berkeley Municipal Code 23.502.020(N)(1) is amended to read as follows:

N. "N" Terms.

1. New Construction. Construction of a new main building or accessory dwelling unit.

Section 18. Severability.

If any provision or clause of this Ordinance or any application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this Ordinance. To this end the provisions and applications of this Ordinance are severable, and the Council of the City of Berkeley hereby declares that it would have passed this Ordinance and each provision or clause without regard to whether any other portion of this Ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 19. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 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.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500

Sacramento, CA 95833

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www.hcd.ca.gov

October 17, 2022

Jordan Klein, Director
Planning and Development Department
1947 Center Street, 3rd Floor
City of Berkeley, CA 94704

Dear Jordan Klein:

RE: Review of Berkeley's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, § 65852.2)

Thank you for submitting the City of Berkeley's (City) accessory dwelling unit (ADU) Ordinance Nos. 7,797-N.S. and 7,799-N.S. (collectively, Ordinances), both adopted on February 8, 2022, to the California Department of Housing and Community Development (HCD). The Ordinances were received on February 23, 2022. HCD has reviewed the Ordinances and submits these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the Ordinances do not comply with section 65852.2 in the manner noted below. Under that statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than November 17, 2022.

The Ordinances address many statutory requirements; however, HCD finds that the Ordinances do not comply with State ADU Law in the following respects:

Ordinance No. 7,797-N.S.

- Section 23.502.020.E.1 and J.1 – *Efficiency Kitchen* – The Ordinance defines efficiency kitchen as including a sink and having a working refrigerator. However, the sink requirement, previously specified in Government Code section 65862.22, subdivision (a)(6), was removed and statute does not specify any type of appliances, thereby creating more options to satisfy the appliance requirement. Efficiency kitchen is now defined as “[a] cooking facility with appliances.” (Gov. Code, § 65852.22, subd. (a)(6)(A).) It shall include “[a] food preparation counter and storage cabinets that are in reasonable size in relation to the size of the junior accessory dwelling unit.” (Gov. Code, § 65852.22, subd. (a)(6)(B).) The City must remove the sink requirement as well as the reference to a working refrigerator to comply with existing statute.

Jordan Klein, Director
Page 2

Ordinance No. 7,799-N.S.

- Section 12.99 – *Wildfire Hazard Evacuation Risk Mitigation Ordinance* – To restrict ADUs and Junior Accessory Dwelling Units (JADUs) in the Hillside Overlay District, the Ordinance relies on a local agency’s ability to designate areas where ADUs may be permitted based on the impact on traffic flow and public safety per Government Code 65852.2, subdivision (a)(1)(A). The Ordinance provides general information regarding the Hillside Overlay District and its topography and location within Berkeley’s Very High Fire Hazard Severity Zone (VHFHSZ). In addition, the Ordinance refers to a study published by UC Berkeley, and upon further communication by HCD with the City on March 4, 2022, the City provided information regarding a traffic simulation study (*Developing Transportation Response Strategies for Wildfire Evacuations via an Empirically Supported Traffic Simulation of Berkeley, California, Wong, 2021*) conducted within the Hillside Overlay District.

However, while HCD is sympathetic to concerns about fire safety and the need to ensure adequate evacuation in the event of a fire, the City has not adequately demonstrated that new ADUs will actually impact public safety in the VHFHSZ. The traffic simulation study is not specific to ADUs and JADUs, and therefore its information and conclusions do not adequately justify the restriction of ADUs in the Hillside Overlay District per Government Code 65852.2, subdivision (a)(1)(A). Specifically, the City relies on the study, which looks at total vehicular use, to conclude that additional ADUs will create an evacuation hazard. This study, however, does not provide data on how many lots are likely to add ADUs or what specific impact new ADUs might have on evacuations. Moreover, the City does not account for the potential for ADUs to be excluded from requiring a parking space given the availability of public transit in the Hillside Overlay District. HCD is aware that AC Transit serves the Berkeley Hills location, exempting many, if not all, potential lots from parking space requirements for new ADUs.

Furthermore, even if the City would provide adequate justification for this restriction on ADUs under this subdivision, the City may not justify such a restriction on ADUs that fall under subdivision (e), as local development standards (such as an area restriction based on VHFHSZ designation) provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e).

In summary, the City must remove these restrictions and permit applications pursuant to Government Code 65852.2, subdivisions (a) and (e).

Jordan Klein, Director
Page 3

- Section 12.99.030 – *Total Number of Units Permitted* – The Ordinance limits the number of units allowed per lot in the Hillside Overlay District to one ADU or JADU. However, this limitation conflicts with the Government Code section 65852.2, subdivisions (e)(1)(A) and (B), requirement to allow for both an ADU and JADU on a lot with a proposed or existing single-family dwelling, should certain conditions be met. In addition, this limitation conflicts with Government Code section 65852.2, subdivisions (e)(1)(C) and (D), for lots with existing multifamily structures. The City must amend this prohibition to explicitly permit applications per Government Code 65852.2, subdivision (e).

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinances to comply with State ADU Law or adopt the Ordinances without changes. Should the City choose to adopt the Ordinances without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinances comply with State ADU Law despite the findings made by HCD. Accordingly, the City's response should provide a plan and timeline to bring the Ordinances into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the Ordinances into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

HCD appreciates the City's efforts in the preparation and adoption of the Ordinances and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Mike Van Gorder, of our staff, at (916) 916-776-7541 or at mike.vangorder@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal stroke extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: May 3, 2023

TO: Members of the Planning Commission

FROM: Zoe Covello, Assistant Planner
Grace Wu, Principal Planner

SUBJECT: Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) to Conform to Current State Law and Guidance from the California Department of Housing and Community Development

RECOMMENDATION

Planning Commission is asked to hold a public hearing, receive and provide comment on the proposed Zoning Ordinance amendments pertaining to Accessory Dwelling Units and Junior Accessory Dwelling Units, and make a recommendation for consideration by the City Council.

SUMMARY

City staff have prepared amendments to Title 23 (Zoning Ordinance) of the Berkeley Municipal Code (BMC) in response to: (a) recent changes in State laws pertaining to Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (Junior ADU) that took effect on January 1, 2023, and (b) feedback from the California Department of Housing and Community Development (HCD) finding that the City of Berkeley's current ADU ordinance does not comply with State law.

These amendments will serve to bring the City's ADU ordinance into compliance with current State law and HCD guidance.

This report provides:

1. Background on Berkeley's existing ADU ordinance and fire safety concerns;
2. A summary of new State ADU Law;
3. A summary of HCD's finding of noncompliance and staff's proposed response for addressing the issues raised; and
4. Proposed Zoning Ordinance amendments and rationale.

BACKGROUND

ADU Regulations in the City of Berkeley

The City of Berkeley's current ADU Ordinance was amended in accordance with the State of California law (Government Code Sections 65852.2¹ and 65852.22²) and took effect on March 17, 2022. The primary ordinance regulating ADU development in the City is Berkeley Municipal Code (BMC), Chapter 23.306: Accessory Dwelling Units. This chapter allows ADUs on properties located in a zoning district that permits residential use, and provides development standards based on the location of the property. The ordinance currently includes separate development standards for properties that are located in certain zoning districts within the Hillside Overlay [R-1(H), R-2(H), R-2A(H)] and the ES-R district.

In addition to Chapter 23.306, the City adopted Chapter 12.99: Wildfire Hazard Evacuation Risk Mitigation Ordinance, which serves to *"permit and promote the construction of accessory dwelling units and junior accessory dwelling units while protecting human life and health, promoting the public health, safety, and general welfare, and minimizing public and private losses due to dangerous conditions in specific areas"* in accordance with Government Code 65852.2, subdivision (a)(1)(A), which allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."³

Chapter 12.99 was adopted in response to a short-term Council referral in January 2021. The referral provided direction to amend the local ADU zoning ordinance and Berkeley's Fire Code, requesting that a set of ordinance amendments and implementation programs be evaluated and recommended to Council to address emergency access and egress. The referral also requested parking and objective development standards to address the constraints presented by the high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3.

In response to the January 2021 referral, Planning and Development Department staff proposed revisions to development standards to limit allowable ADU size and increase front yard setbacks in the City's Very High Fire Hazard Severity Zone, which encompasses a significant portion of the Hillside Overlay.

On April 7, 2021, the Planning Commission held a public hearing and recommended staff's proposed amendments to City Council, adding that the maximum height for ADUs be increased from 16 feet to 18 feet. City Council adopted Chapter 23.306 (Accessory Dwelling Unit Ordinance) as submitted by the City Manager with amendments from

¹ Government Code Section 65852.2,
<https://leginfo.ca.gov/faces/selectFromMultiples.xhtml?lawCode=GOV§ionNum=65852.2>

² Government Code Section 65852.22,
https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65852.22

³ Prior to adopting Chapters 23.306 and 12.99, the City had previously prohibited the construction of ADUs in the ES-R district (Zone 3) and on any lot with frontage on a roadway of less than 26 feet width in the Hillside Overlay, subject to discretionary review. After the ADU ordinance adopted in December 2019 expired on December 4, 2020, the City had been operating without any local provisions for ADUs; all ADUs in residential districts were regulated only by State law, allowing their development without regard to street width or parking.

Councilmember Kesarwani.⁴ City Council further amended the ordinance with regards to the three-year rolling date for ADU conversions and the addition of balconies to prohibited projections.

On October 26, 2021, City Council referred to the City Manager a request to develop a set of public safety regulations that address public safety issues stemming from new development in fire-prone areas. Those safety regulations resulted in the adoption of Chapter 12.99 (Wildfire Hazard Evacuation Risk Mitigation Ordinance) on January 25, 2022.

2022 State ADU Law Updates - SB 897, AB 2221, and AB 2097

Three new State ADU laws took effect January 1, 2023, codified in Government Code section 65852.2 pertaining to ADUs, necessitating an update to the City of Berkeley's ADU ordinance. These new State ADU laws relate to:

1. **Maximum height limits.** SB 897⁵ increases ADU height standards for both attached and detached ADUs in the following circumstances:
 - An attached ADU on a lot in any permissible zoning district shall have a height limitation no less than 25 feet.
 - A detached ADU that is located either on a lot in any permissible zoning district that is within a 0.5 mile of a major transit stop or high-quality transit corridor as defined in Public Resources Code (PRC) Section 21155 or on a lot with an existing or proposed duplex or multi-family, multi-story (two or more stories) building shall have a height limitation of no less than 18 feet. An additional two feet (totaling 20 feet maximum height) is allowed for a detached ADU on a lot in any permissible zoning district that is within 0.5 miles of a transit stop or high-quality transit corridor as defined in PRC Section 21155 to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.
2. **Prohibiting development standards that preclude 800 square foot ADUs.** Under AB 2221⁶, local agencies are prohibited from establishing lot coverage, floor area ratio, open space, or minimum lot size standards that would physically preclude construction of an 800 square foot ADU, including a minimum front setback.
3. **Required connections between a Junior ADU and the main dwelling unit.** SB 897 requires both a separate entrance to the Junior ADU from the main entrance to the structure and an interior connection to the main living area of the

⁴ Councilmember Kesarwani's amendments included protection for non-habitable space in multi-family buildings, clarified rules that apply to Accessory Structures being converted into ADUs, clarified owner occupancy requirements for JADUs, and modified noticing requirements for tenants and neighbors. <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-01-18%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

⁵ Senate Bill 897, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB897.

⁶ Assembly Bill 2221, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2221.

single family dwelling if a Junior ADU shares sanitation facilities with the primary dwelling unit.

- 4. Changes to off-street parking related to ADUs.** While parking may be provided voluntarily, per AB 2097⁷ no off-street parking may be required for an ADU or a Junior ADU if the lot is located within a 0.5 mile of public transit, as defined in PRC Section 21155. Note, the existing ADU ordinance already has provisions for reduced parking requirements within a 0.5 mile walking distance of public transit.⁸

The proposed revisions to the zoning ordinance reflect these changes, which can be found in the Discussion section below.

2022 Letter from HCD Requesting Amendments to the City's ADU Ordinance

On October 17, 2022, the City received a letter from HCD stating that they had reviewed the City's current ADU ordinances (BMC Sections 23.306 and 12.99, the "Ordinances") and found that the Ordinances do not comply with Government Code Section 65852.2 (see **Attachment 4**).

Efficiency Kitchen Definition

HCD found a discrepancy between the definition of "Efficiency Kitchen" contained within Ordinance No. 7,797-N.S. (Chapter 23.306) and Government Code §65852.22(a)(6)(A) and requested that the City remove the sink requirement from its zoning definition, as well as the reference to a working refrigerator in the definition of a "Junior Accessory Dwelling Unit."

Wildfire Hazard Evacuation Risk Mitigation Ordinance

Regarding Ordinance No. 7,799-N.S (Chapter 12.99), HCD found that the City did not make adequate findings with respect to ADU development impacts on traffic flow and public safety when the City adopted limitations on the quantity and size of ADU development in the Hillside Overlay.

HCD asserts that the traffic simulation study referenced in Chapter 12.99 is not specific to ADUs and Junior ADUs and therefore cannot be used to justify the restriction on the number of ADUs in the Hillside Overlay. Additionally, the traffic simulation study does not provide data on how many lots are likely to add ADUs, does not identify specific impacts new ADUs may have on evacuations, and does not account for the potential for ADUs to be excluded from requiring a parking space given the availability of public transit in the Hillside Overlay. Furthermore, HCD adds that even if the City adequately justified the restriction of ADUs under this subdivision, it may not justify restrictions on ADUs that fall under subdivision (e) because local development standards do not apply to ADUs created under Government Code section 65852.2, subdivision (e).

⁷ Assembly Bill 2097, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2097.

⁸ GOV 65852.2(j)(11) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

Government code section 65852.2, subdivision (e) requires local agencies to ministerially approve building permit applications for the creation of ADUs within a residential or mixed-use zone.

Regarding Section 12.99.030 – *Total Number of Units Permitted*, HCD asserts that the City’s decision to limit the number of units allowed per lot in the Hillside Overlay to one ADU or one Junior ADU conflicts with Government Code Section 65852.2, subdivisions (e)(1)(A), (B), (C), and (D), which requires a local agency to ministerially approve an application for a building permit within a residential or mixed-use zone to create one ADU *and* one Junior ADU per lot.

DISCUSSION

To conform to State ADU law and respond to HCD’s letter, staff recommend amendments to Title 23 of the BMC that achieve the following purposes:

1. Remove standards that provide a distinction between parcels within and outside of the Hillside Overlay, and apply non-Hillside Overlay ADU standards citywide where residential uses are permitted⁹;
2. Bring the City’s zoning code into compliance with current State ADU law and guidance, including SB 897, AB 2221, and AB 2097; and
3. Clarify and/or correct minor technical edits associated with the related ordinance sections, and edit for consistency with existing BMC style guidelines.

23.106 Rules of Measurement

Consistent with the State Exemption ADU provisions of Subdivision (c) in Government Code 65852.2, staff propose amending 23.106.020(B) and 23.106.030(D) to exclude up to 800 square feet of area associated with an existing or proposed ADU or Junior ADU from lot coverage and gross floor area calculations. Presently, once an ADU is built, it counts towards lot coverage, which can mean that even minor future additions would require a Use Permit. By amending 23.106.020(B) and 23.106.030(D) to exclude up to 800 square feet of area, the regulation is consistent with State law, removes a barrier to development, and aligns with the State’s goal of incentivizing the development of ADUs.

23.306 Accessory Dwelling Units (Organization)

The proposed ordinance simplifies the ADU Chapter by consolidating seven sections into four, maintaining consistency with other Chapters of Title 23 (**see Table 1**).

⁹ Staff will also recommend to City Council to repeal BMC Section 12.99. However, as this public hearing is only pertaining to Title 23 of the BMC, this action is not up for discussion this evening.

Table 1: Chapter 23.306 - Existing and Proposed Sections

| Existing Sections | Proposed Sections |
|---|-----------------------------------|
| 23.306.010– Purposes | 23.306.010– Purpose |
| 23.306.020– Applicability and Definitions | 23.306.020– Applicability |
| 23.306.030– Permit Procedures | 23.306.030– Development Standards |
| 23.306.040– Development Standards | 23.306.040– Permit Procedures |
| 23.306.050– Deed Restrictions | |
| 23.306.060– Neighbor Noticing | |
| 23.306.070– Rooftop Decks and Balconies | |
| | |

23.306.010 Accessory Dwelling Units (Purpose)

The proposed ordinance adds a reference to the latest California Government Code Section 65852.1 and removes subsection (f) which states that the purpose of the chapter is to reduce potential impacts of new development in the Very High Fire Hazard Severity Zones (VHFHSZ), Wildland-Urban Interface Fire Areas, and Hillside Overlay. This allows for compliance with HCD’s finding that the current ordinances do not meet the exceptions included in State law that allow for the creation of a separate set of regulations in the Hillside Overlay.

23.306.020 Accessory Dwelling Units (Applicability)

The proposed ordinance removes subsection (b), which defines the Hillside Overlay for the purposes of this chapter, and removes the reference to Chapter 12.99, to comply with HCD’s finding that the City does not sufficiently justify the creation of a separate set of regulations in the Hillside Overlay.

The proposed amendment includes a new subsection clarifying that ADUs and Junior ADUs do not count towards density calculations established by the underlying zoning districts. This is consistent with HCD guidance in the HCD ADU Handbook Update.¹⁰

Staff also propose amending the maximum number of units permitted on a lot with a duplex or multi-family dwelling to allow for two detached ADUs *and* at least one interior ADU (**see Table 2**). In 2022 HCD changed its interpretation regarding the total number of ADUs that "must" be allowed by local governments on any given parcel. Whereas in the 2020 ADU Handbook, HCD wrote that "local governments are not required to allow (a) and (b) together or (c) and (d) together," in the 2022 ADU Handbook HCD rewrote that "local governments must allow (a) and (b) together or (c) and (d) together." Although this change in HCD's interpretation is not supported by any corresponding change in state law, the proposed ordinance is drafted to be consistent with HCD's new interpretation.

¹⁰ HCD Accessory Dwelling Unit Handbook, <https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf>.

Table 2: Existing and Proposed Maximum Density Standards on a Lot with a Duplex or Multi-Family Dwelling

| Existing Maximum Density | Proposed Maximum Density |
|--|---|
| Either: a. Up to two detached ADUs; <u>or</u> b. At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot. | Two detached ADUs <u>and</u> at least one interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot |

23.306.030 Accessory Dwelling Units (Development Standards)

In response to HCD’s letter and to bring the development standards section into compliance with State law, staff propose removing standards that are specific to parcels located in the Hillside Overlay. Instead, the development standards apply to ADUs and Junior ADUs citywide.

Staff also recommend a number of technical revisions to the development standards section, including: removing Junior ADU standards from the development standards table and including all relevant information in subsection (B), as well as replacing footnotes from the development table with a subsection for supplemental standards.

Within subsection (C), staff propose technical edits to amend the provisions related to projections to align with other sections of the code, including permitting bay windows and balconies on attached ADUs outside of the Hillside Overlay as long as there remains at least a two-foot setback from property lines, as the code allows for non-ADUs of the same placement and size to have both. However, because detached ADUs are permitted to be built much closer to the property line than primary dwelling units (and attached ADUs), staff propose continuing to prohibit the projections of bay windows and balconies into setbacks for those types of ADUs citywide.

In addition to these technical revisions, a number of the standards have been changed to match State law. **Table 3** provides the proposed development standards and the rationale informing the recommended changes. This table does not include all ADU development standards; it only includes the standards that are proposed to be amended.

Table 3: Proposed Revisions to ADU Development Standards & Rationale

| Basic Standard | Proposed Standards | Rationale/Intent |
|---|---|--|
| Building Height, Maximum | Detached, New Construction – 20 ft. | The maximum building height for Attached, New Construction has been increased from 20 ft. to 25 ft. to match State law (SB 897). The current maximum building height for Detached New Construction already exceeds the 18 ft. required by State law. |
| | Attached, New Construction – 25 ft. | |
| Lot Line Setbacks, Minimum | Front of Interior Lot – Same as underlying district | Staff propose adding a standard for front setbacks on through lots to ensure that there are standards for such parcels, consistent with existing regulations for Accessory Buildings. |
| | Front of Through Lot - Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer | |
| Building Separation for Detached ADU, Minimum | 3 ft. | To conform with Building Code's definition of attached versus detached buildings, staff propose adding a minimum building separation standard (in addition to a Detached ADU supplemental standard – see below). |
| Required Off-Street Parking Spaces | See 23.322.030 – Required Parking Spaces | Move to BMC 23.322 – Parking and Loading to be consistent with other parking standards. |
| Supplemental Standard | | |
| State Exemption ADU | No lot coverage, floor area ratio, open space, front setback, or minimum lot size standard in the underlying district shall preclude at least an 800 square foot accessory dwelling unit. | To match the State Law. |
| Junior ADU Shared Sanitation Facility | If a Junior ADU shares a sanitary facility with a single family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required. | To match the State Law. |
| Junior ADU Floor Area | The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single family dwelling. | To clarify the rules of measurement for gross floor area if a sanitation facility is shared. |
| Detached or Attached ADU | If an ADU is located within 3 feet of an exterior wall of a main building, it is considered attached. | See the rationale/intent for establishing a Building Separation, Minimum (above). |

- **AUP for Addition over 14 feet.** While this section does not regulate residential additions, staff note that attached ADUs proposed as residential additions over 14 feet would be required to receive AUP approval in order to reach their maximum allowable height (they can now go up to 25 feet – see Table 3).¹¹ Removing the AUP process would be in keeping with the State's intent to streamline the ADU development process and further remove barriers to

¹¹ Residential additions can go up to 14 ft., but require an AUP to go up to 28 ft.

development. The Planning Commission is asked to consider removing the AUP requirement for residential additions for attached ADUs.

23.306.040 Accessory Dwelling Units (Permit Procedures)

Under the current procedure, it is required that notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission of a building permit to the Planning Department, and shall include the project address, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor. The cost of materials, postage, and staff time is paid for by the applicant – currently a fixed fee of \$460.

The requirement for neighbor noticing presents a number of challenges for staff, applicants, and members of the public. ADU permits are building permits, and cannot be printed out or shared online with members of the public (unlike zoning permits). For neighbors interested in seeing proposed ADU plans, this means that they must visit the Permit Service Center in-person and look at the plans accompanied by a staff member. Additionally, ADU permits are non-discretionary permits, so members of the public ultimately do not have a means of providing feedback on or appealing a proposed ADU. Staff have found there is often an expectation from public posting or receiving notice of a proposed ADU that there is a public review process involved, and there is not.

- **Neighbor Noticing.** While staff made no changes to Neighbor Noticing, with the exception of moving it to the Permit Procedures section, staff are asking Planning Commission to consider removing the Neighbor Noticing requirement.

23.322.020 Parking and Loading (Applicability)

Per AB 2097, no off-street parking may be required for an ADU or a Junior ADU if the lot is located within a 0.5 mile of public transit, as defined in PRC Section 21155. The City of Berkeley's existing ADU ordinance already has provisions for reduced parking requirements within a 0.5 mile walking distance of public transit. To comply with AB 2097, staff recommend adding a location exemption for parking, which would state that "Off-street parking spaces are not required for new uses or buildings, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2." This change will also be brought as a part of the State Law Technical Edits ordinance amendments package, which is why it is shown in blue in **Attachment 1**.

Staff propose amending BMC Tables 23.322-1, 23.322-2, and 23.322-4 to specify off-street parking standards for ADUs in Residential, Commercial, and Manufacturing Districts (previously specified in Chapter 23.306). Staff also propose amending Table 23.322-1 to bring the residential off-street parking standards into compliance with State law by allowing for one parking space per ADU unless it is located within 0.5 miles of

public transit as defined in Section 21155 of the Public Resources Code or it satisfies the criteria defined in subdivision (d) of Government Code Section 65852.2.

BMC 23.322.080(E)(2) Other Setback Areas

This section, formerly referred as BMC 23.322.080(D)(2), is recommended to be amended to include the following standards:

- a. On a lot with an existing or proposed ADU, replacement of off-street parking for the main building or required off-street parking for an ADU, is allowed in any configuration on the lot, including within the front yard setback; or
- b. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback.

Currently, parking flexibility only applies to replacement parking for main dwelling units and new parking provided for an ADU. To account for ADU projects seeking to provide new parking spaces for both the main dwelling and the ADU, staff propose allowing for the same flexibility in lot configuration for the main dwelling unit's proposed new parking space as is allowed for the ADU's parking space. Encouraging off-street parking in the Hillside Overlay can mitigate safety and evacuation access concerns.

23.324.060 Exemptions to Nonconforming Uses, Structures, and Buildings

Notably, in the current ADU ordinance, minor alterations in nonconforming setbacks, such as for windows and doors, as well as minor excavations, require an AUP. To reduce the amount of process, time, and money for staff and applicants seeking to make minor alterations to their ADUs, staff propose allowing "by-right" alterations to nonconforming existing structures or buildings that are proposed to be converted to an ADU. Staff proposes to add BMC 23.324.060(C) to include the following standards:

C. Accessory Dwelling Units. The following additions or enlargements of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate:

1. Alterations of a portion of a building or structure (including windows and other openings) within a minimum required setback.
2. Alterations of a portion of a building or structure (including windows and other openings) exceeding the height limit.

23.502.020 Defined Terms

Junior ADU. Staff proposes relocating the definition for "Junior Accessory Dwelling Unit" within the definition of "Accessory Dwelling Unit" and striking out the reference to a working refrigerator in response to HCD's findings.

Addition, Major Residential. The definition for “Addition, Major Residential” is recommended to be amended to add a subsection that exempts the floor area associated with an existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet, from qualifying. This would eliminate the requirement for an AUP to add an ADU or Junior ADU to a house, thus matching the State’s intent of streamlining the processing of ADU development locally.

Efficiency Kitchen. The proposed ordinance amends the definition of an “Efficiency Kitchen” by removing the requirement for a sink in response to HCD’s findings.

ENVIRONMENTAL REVIEW

The project is statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h).

NEXT STEPS

Staff recommend that Planning Commission adopt the proposed revisions. The next step will be to advance these proposed revisions – as well as repeal of Chapter 12.99 – to City Council.

Public safety remains a significant concern regarding increasing density in the Hillside Overlay. As stated in California Government Code Section 51175, the Legislature has found that wildfires pose a serious threat to the preservation of the public peace, health and safety. The legislature has determined that it is necessary that all levels of government work to implement preventive measures to ensure the preservation of the public peace, health, and safety.

Due to these state- and locally-recognized safety concerns, staff are working with the Fire Department to collect additional data on the health and safety impacts of increased development in the Hillside Overlay. On March 14, 2022, the Fire Department was authorized by the City Manager to execute a contract with KLD Engineering, P.C., for Evacuation and Response Time Modeling from April 1, 2023 through June 30, 2024 as part of an effort to collect data and forecast the number of vehicles and people that may need to be evacuated during a wildfire or other emergency.¹² The study will also be analyzing how major evacuation routes will operate under emergency conditions, and whether there would be any public safety impacts resulting from projected development of new ADUs, Junior ADUs, and their associated extra vehicles in the Very High Fire Hazard Severity Zone.

In addition to this study, the City is in the process of updating the Disaster and Safety Plan, which will similarly provide an opportunity to collect data and engage community

¹² Revised Agenda, Berkeley City Council Meeting, March 14, 2023. Item 4: Contract: KLD Engineering, P.C. for Evacuation and Response Time Modeling From: City Manager. <https://berkeleyca.gov/sites/default/files/city-council-meetings/2023-03-14%20REVISED%20Agenda%20Packet%20-%20Council%20%28WEB%29.pdf>

members, which could inform the making of findings to support the reinstatement of provisions or other controls on ADU production in the hills.

Staff plan to bring the Fire Department's study findings, as well as other potential research and community engagement findings, back to Planning Commission and City Council by summer 2024.

ATTACHMENTS

1. Draft Amended Ordinance
2. Ordinance No. 7,797-N.S. (Chapter 23.306), dated January 18, 2022.
3. Ordinance No. 7,799-N.S. (Chapter 12.99), dated January 25, 2022.
4. Letter from HCD - Review of Berkeley's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, § 65852.2), dated October 17, 2022.
5. Public Hearing Notice

NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL

Adoption of Zoning Ordinance Amendments to Title 23 and Repeal of Chapter 12.99 of the Berkeley Municipal Code to bring the Accessory Dwelling Unit (ADU) Ordinance into Compliance with State Law & Guidance

The Department of Planning and Development is proposing Zoning Ordinance Amendments to Title 23 and the repeal of Chapter 12.99 of the Berkeley Municipal Code to respond to recent changes in Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (Junior ADU) State laws that took effect on January 1, 2023 and a letter from the California Department of Housing and Community Development (HCD) requiring the City of Berkeley take action to bring its Ordinance into compliance with State ADU Law. The amendments would modify the following sections: BMC Chapter 12.99 and Sections 23.106 (Rules of Measurement), 23.306 (Accessory Dwelling Unit (ADU) Ordinance), 23.322 (Parking and Loading), 23.324.060 (Exemptions to Nonconforming Uses, Structures, and Buildings), and 23.502.020 (Defined Terms) relating to ADUs. The proposed amendments also include conforming technical edits to the BMC (for example, renumbering of tables and figures).

The project is statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h), the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

The hearing will be held on **Tuesday, July 25, 2023 at 6:00 PM.** in the Berkeley Unified School District Board Room located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at www.berkeleyca.gov as of **July 13, 2023.** **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Zoe Covello, Assistant Planner, at 510-981-7418.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service

or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@berkeleyca.gov for further information.

Published: July 14, 2023 – The Berkeley Voice

Public Hearing required by BMC 23.412.050 and Govt Code 65853; notice provided according to Govt Code 65090 and BMC 23.404.040.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on July 13, 2023.

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Mark Numainville, City Clerk