

## ORDINANCE NO.7,799-N.S.

AMENDMENTS TO THE ACCESSORY DWELLING UNIT (ADU) ORDINANCE (BMC 23.306) AND ADOPTION OF A WILDFIRE HAZARD EVACUATION RISK MITIGATION ORDINANCE (BMC 12.99)

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

Section 1. Berkeley Municipal Code Chapter 23.306 is amended to read as follows

**23.306 Accessory Dwelling Units**

**Sections:**

- 23.306.010 Purposes.
- 23.306.020 Applicability and Definitions.
- 23.306.030 Permit Procedures.
- 23.306.040 Development Standards.
- 23.306.050 Deed Restrictions.
- 23.306.060 Neighborhood Noticing.
- 23.306.070 Rooftop Decks and Balconies.

**23.306.010 Purposes.**

The purposes of this Chapter are to:

- A. Implement California Government Code Section 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).
- C. **Number of ADUs and JADUs Permitted 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.
  - 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.

**23.102.010 – 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.

**23.306.040 Development Standards.**

A. **Basic Standards.** See Table 23.306-1: ADU and JADU Development Standards.

**TABLE 23.306-1 ADU AND JADU DEVELOPMENT STANDARDS**

	ADU <sup>1</sup>	JADU
Maximum Size Outside of HOD <sup>2</sup>		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 <sup>3</sup>	
Side Setback	4 ft <sup>3</sup>	
Required Off-Street Parking Outside of HOD	None <sup>4</sup>	
Required Off-Street Parking Within HOD	The lesser of 1 space per bedroom or ADU <sup>6,7</sup>	None <sup>6</sup>
<p>[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.</p> <p>[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.</p>		

[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. Projections.**

1. Except as limited by Paragraph B.2 of this Section, architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings) 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 shall not project into a setback.
2. No projections shall be allowed within the required setbacks on lots that are within the Hillside Overlay District.

## **23.306.050 - Deed Restrictions.**

A. The property owner shall file a deed restriction with the Alameda County Recorder which states:

1. The JADU 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 23.306.050 B are met;
3. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days; and
4. If the property includes a JADU, the JADU, or the Single Family Dwelling in which the JADU is located, shall be owner-occupied.

B. 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 Main 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 2. Berkeley Municipal Code Chapter 12.99 is adopted to read as follows:

## **12.99 Wildfire Hazard Evacuation Risk Mitigation Ordinance**

### **Sections**

- 12.99.010 Title and Purposes
- 12.99.020 Applicability
- 12.99.030 Total Number of Units Permitted

### **12.99.010 Title and Purposes**

- A. This Chapter may be referred to as the “Wildfire Hazard Evacuation Risk Mitigation Ordinance.”
- B. The purposes of this chapter are 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.
- C. Government Code 65852.2, subdivision (a)(1)(A) allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."
- D. The Hillside Overlay District, as defined in BMC 23.306.020B, has unique conditions and hazards that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety:
  - 1. Wildfires, earthquakes and landslides put residents of the Hillside Overlay District at significant risk.
  - 2. The Hayward fault bisects the Hillside Overlay District.
  - 3. Due to the maze of narrow, steep, and winding streets, the Hillside Overlay District has extremely poor emergency access egress and evacuation conditions. Safety is compromised by a substandard street infrastructure that has limited accessibility for emergency responders as well as inadequate capacity for fast and reliable escape. A majority of street widths in the Hillside Overlay District have substandard widths, and difficulty of navigation in most areas is exacerbated by one or more conditions including steep slopes, sharp curves and acute-angled corners.
  - 4. 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. Doubling the number of households in these areas through the addition of just one ADU or JADU, assuming only one evacuation vehicle per household, would likely produce similar outcomes to the 1.7 vehicle-per-household evacuation scenario, likely with a larger total number of residents at risk.

5. Berkeley's Hillside Overlay District is comprised of the most difficult-to-access and evacuate areas in Berkeley's Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas. In addition, the Hayward Fault traverses the full length of these zones, with violent (Level 9 of 10) shaking predicted in the US Geologic Services Hayward Fault earthquake scenario (HayWired). Scientists at UC Berkeley's Seismology Lab have determined that the Hayward Fault is probably California's most dangerous, with a 31.7% chance of a 6.7 magnitude or greater earthquake in the next 26 years.
6. The City's Hazard Mitigation Plan, adopted December 10, 2019, identifies Earthquake and Wildland-Urban Interface Fire as "Likely" and "Catastrophic" events. Increasing density and intensity by permitting both one ADU and one JADU (2 total) in addition to the primary home, on every parcel in the Hillside Overlay District, representing a 200% increase in units allowed on most parcels, will seriously exacerbate the very extremely 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

#### **12.99.020 Applicability**

- A. Lots within the Hillside Overlay District (HOD), as defined in BMC 23.306.020 B, shall be subject to the provisions of this Chapter.

#### **12.99.030 Total Number of Units Permitted**

- A. Notwithstanding any provisions of Chapter 23.306 to the contrary, no more than one ADU or JADU shall be permitted per lot that is subject to this Chapter.

Section 3. Severability. If any provision or clause of this Ordinance or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this Ordinance are severable.

Section 4. 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.

At a regular meeting of the Council of the City of Berkeley held on January 25, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.