



Office of the City Manager

PUBLIC HEARING

July 25, 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>

<u>Group Living Accommodation</u>	<u>1 ADU</u>
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- ~~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

<u>BASIC STANDARDS</u>	<u>SUPPLEMENTAL STANDARDS</u>
<u>Gross Floor Area, Maximum</u>	<u>23.306.030(A)(1);</u>

Studio or 1 bedroom	850 sq. ft.	23.306.030(A)(2);
2+ bedrooms	1,000 sq. ft.	23.306.030(A)(3); 23.306.030(A)(4)
Building Height, Maximum		
Conversion	Same as existing structure	23.306.030(A)(2); 23.306.030(A)(4)
Detached, New Construction	20 ft.	23.306.030(A)(5)
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)(1)
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)(6)
Rear	4 ft.	
Interior Side	4 ft.	
Street Side	4 ft.	
Building Separation for Detached ADU, Minimum	3 ft.	23.306.030(A)(5)
Required Off-Street Parking Spaces	See 23.322.030– Required Parking Spaces	

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, wWater hHeater eEnclosures, fFlues, hHeating and cCooling eEquipment, eEaves, cCornices, cCanopies, aAwnings, 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 atthe required setback ~~on lots that are within the Hillside Overlay District.~~

C.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.
- 1.3. 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:

- The Junior ADU shall not be sold separately from the main building;
- 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;
- 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	Junior ADU: None required ADU outside of Hillside Overlay: None required ADU within Hillside Overlay: 1 per ADU unless satisfies the criteria in subdivision (d) of Government Code Section 65852.2. See Chapter 23.306
Dwellings, including Group Living Accommodations	<u>R-3, R-4, and R-5 Districts (1-9 units):</u> If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit. <u>R-3, R-4, and R-5 District (10 or more units):</u> 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>All Other Districts:</u> If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit <u>All Other Locations:</u> None required
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 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 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	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 None required
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.~~ 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.~~ 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.~~ 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.~~ 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.~~ 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 same 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**

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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
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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).

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- 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.

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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