

AGENDA

BERKELEY CITY COUNCIL MEETING

Tuesday, October 3, 2023

6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

TELECONFERENCE LOCATION - 1404 LE ROY AVE, BERKELEY 94708

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN

DISTRICT 6 – SUSAN WENGRAF

DISTRICT 7 – RIGEL ROBINSON

DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244.

*Remote participation by the public is available through Zoom. To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL: <https://cityofberkeley-info.zoomgov.com/j/1600539994> If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter Meeting ID: **160 053 9994**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@berkeleyca.gov.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Land Acknowledgement Statement: *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

Ceremonial Matters: *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

City Manager Comments: *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons attending the meeting in-person and wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

Public Comment by Employee Unions (first regular meeting of the month): *This period of public comment is reserved for officially designated representatives of City of Berkeley employee unions, with five minutes allocated per union if representatives of three or fewer unions wish to speak and up to three minutes per union if representatives of four or more unions wish to speak.*

Consent Calendar

The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar or Information Calendar for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".

No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Consent Calendar

- 1. Utility Easement: Bolivar Drive – East Bay Municipal Utility District**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,883–N.S. authorizing and directing the City Manager to convey a utility easement to the East Bay Municipal Utility District along Bolivar Drive at Aquatic Park.
First Reading Vote: Vote: All Ayes.
Financial Implications: None
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 2. 2024 Tax Rate: Transportation Network Company User Tax**
From: City Manager
Recommendation: Adopt a second reading of an Ordinance No. 7,886–N.S. setting the 2024 tax rate (effective January 1, 2024) for the transportation network company at the following rates: 56.162 cents on the user for each prearranged trip that originates in the City that is not part of a pooled prearranged trip and 27.424 for each pooled prearranged trip on each user who arranges each prearranged trip that originates in the City and which comprises part of the pooled prearranged trip.
First Reading Vote: Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Harrison.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 3. Authorizing a Lease of 830 University Avenue to Lifelong Medical Care**
From: City Manager
Recommendation: Adopt a second reading of an Ordinance No. 7,887–N.S authorizing the City Manager to enter into a lease for 830 University with Lifelong Medical Care (Lifelong).
First Reading Vote: Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Harrison.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

- 4. Police Accountability Board – Appointment of New Member**
From: City Manager
Recommendation: Adopt a Resolution appointing a new member to the Police Accountability Board nominated by Councilmember Robinson.
Financial Implications: See report
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 5. Revenue Contract with City of Emeryville for Animal Care Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a revenue contract and all necessary amendments with the City of Emeryville for a term of 33 months (Oct 6, 2023 – June 30, 2026) at a total amount not to exceed \$235,548.
Financial Implications: See report
Contact: Peter Radu, City Manager's Office, (510) 981-7000
- 6. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 3, 2023**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 7. Contract No. 9791 Amendment: Environmental Systems Research Institute, Inc. (ESRI) for Enterprise Graphical Information Systems (GIS) Software License Maintenance and Support**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9791 with Environmental Systems Research Institute, Inc. (Esri) for Enterprise GIS software license maintenance and support, increasing the amount by \$279,750 for a not-to-exceed total of \$900,750 for the period of July 1, 2023 through June 30, 2026.
Financial Implications: See report
Contact: Kevin Fong, Information Technology, (510) 981-6500

Consent Calendar

8. **Contract No. 114382-1 Amendment: M.C. Dean for UPS Maintenance**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 114382-1 with M.C. Dean, Inc. for Uninterrupted Power Supply (UPS) maintenance, increasing the amount by \$115,016 for a total not to exceed \$261,922 from July 1, 2014 to June 30, 2026.
Financial Implications: IT Cost Allocations Fund - \$115,016.
Contact: Kevin Fong, Information Technology, (510) 981-6500

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

The Presiding Officer will request that persons wishing to speak use the "raise hand" function to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

Action Calendar – Scheduled Public Comment Period

During this public comment period, the Presiding Officer will open and close a comment period for each Action item on this agenda (excluding any public hearings, appeals, and/or quasi-judicial matters). The public may speak on each item. Those who speak on an item during this comment period may not speak a second time when the item is taken up by Council.

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak use the "raise hand" function to be recognized and to determine the number of persons interested in speaking at that time.

Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

When applicable, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.

Action Calendar – Public Hearings

9. **Ambulance Transport Fee Increase**
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution adjusting the Ambulance User Fee to match Alameda County’s approved ambulance user fee schedule made effective July 1, 2023, for the Cities of Alameda, Albany, Berkeley, and Piedmont. The increase would be included as an updated addendum to the Ambulance Provider Agreement, and rescinding Resolution 70,726–N.S.
Financial Implications: See report
Contact: David Sprague, Fire, (510) 981-3473

10. **Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) and Repeal of Chapter 12.99 to Conform to State Law and Respond to Guidance from the California Department of Housing and Community Development**
(Continued from September 19, 2023) (Item contains revised and supplemental material)
From: City Manager
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.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar – Old Business

11. **Status Report - Berkeley’s Financial Condition (FY 2012 – FY 2021): Pension Liabilities and Infrastructure Need Attention** *(Continued from June 27, 2023)*
From: City Manager
Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

Information Reports

12. **Sanctuary City Contracting Compliance Report for FY 2023**
From: City Manager
Contact: Henry Oyekanmi, Finance, (510) 981-7300

13. **Update on the Implementation of Fair and Impartial Policing Task Force Recommendations**
From: City Manager
Contact: Jennifer Louis, Police, (510) 981-5900

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Archived indexed video streams are available at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the 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 to the City Clerk Department at 2180 Milvia Street. 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 Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <https://berkeleyca.gov/>.

Agendas and agenda reports may be accessed via the Internet at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

and may be read at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901
Email: clerk@berkeleyca.gov

Libraries: Main – 2090 Kittredge Street,
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,
North Branch – 1170 The Alameda, Tarea Hall Pittman South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

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*I hereby certify that the agenda for this meeting 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 September 21, 2023.*



Mark Numainville, City Clerk

## Communications

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through [Records Online](#).*

### Garbage Rates

1. Melanie Lawrence and John Smail

### 2274 Shattuck

2. Melanie Lawrence

### Tool Lending Library

3. David Lerman

### Ohlone Park

4. Walter Wood

### Police Matters

5. Janice Schroeder

### Berkeley Marina

6. Peter Kuhn

### Berkeley Commissioners

7. Cameron Woo

### BART

8. Jack Kurzweil
9. Melinda Howard-Herrarte, on behalf of the Sierra Club

### Staff Shortages

10. Eric Friedman

### Lights and Paving

11. Kathleen Davis



**BioTech Labs**

12. Ryian Adam Matthews

**Senior Citizen**

13. Sharon Turnoy

**Marina Dock Replacement**

14. Camille Antinori

**United Artist Theater**

15. Allen Michaan

**Gasoline Leaf Blowers**

16. Nina Sprecher

**Berkeley Diversity**

17. Sacha

**Longfellow School**

18. Anthony Vidal

19. Mara Greenaway

20. Liz Linden

21. James Angus

**Ohlone Greenway**

22. Mary Behm-Steinberg

**Hopkins Corridor**

23. Robion Kirby

**McGee Avenue and Allston Way**

24. Cheng Zhang

**Landlords**

25. Diana Bohn

**Waterfront Specific Plan**

26. Jim McGrath

**Youth Peace**

27. Youth Peace Program

**Fight Inequity**

28. Sylvia Mendez

**Berkeley Flag**

29. Aditya Prathap

**URL's Only**

30. Vivian Warkentin

**Supplemental Communications and Reports**

*Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.*

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**  
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**  
Available by 5:00 p.m. two days following the meeting.

ORDINANCE NO. 7,883-N.S.

AUTHORIZING AND DIRECTING CITY MANAGER TO CONVEY UTILITY EASEMENT: BOLIVAR DRIVE – EAST BAY MUNICIPAL UTILITY DISTRICT

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

Section 1. Conveyance of property authorized.

The City Manager is hereby authorized to convey to the East Bay Municipal Utility District a utility easement for Bolivar Drive, substantially in the form attached hereto as Exhibit A, for the real property described therein.

Section 2. Posting.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on September 12, 2023, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

**RECORDING REQUESTED BY**

East Bay Municipal Utility District

**AND WHEN RECORDED MAIL TO**

East Bay Municipal Utility District

P. O. Box 24055 - MS #903

Oakland, CA 94623

Attn: Real Estate Services (RK)

EA 23-001 – RW 5769 - Out of Tract Easement

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 60-2521-3-1

Pursuant to Government Code Section 27383, Grantee is exempt from paying recording fees.

R&T 11911 - Consideration is less than \$100

*Certificate of Acceptance Attached*

**GRANT OF EASEMENT**

THIS INDENTURE, made by and between City of Berkeley, a California municipal corporation, hereinafter called the Grantor, and EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation organized and existing under the laws of the State of California, hereinafter called the Grantee,

**WITNESSETH:**

THAT the Grantor, for a good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, hereby grants to the Grantee and to its successors and assigns a perpetual easement and right-of-way for the purpose of laying down, constructing, reconstructing, removing, replacing, repairing, maintaining, operating and using, as the Grantee may see fit, any facilities necessary for the transmission of utilities, including all necessary braces, connections, fastenings and other appliances and fixtures, in, under, along and across that certain real property described in **Exhibit "A"** and shown on **Exhibit "B"**, attached hereto and made a part hereof.

TOGETHER with the right of ingress to and egress from said right-of-way and the right at all times to enter in, over and upon said right-of-way and every part thereof and also to use said right-of-way for all purposes connected with the laying down, constructing, reconstructing, replacing, removing, repairing, maintaining, operating and using said utilities.

The Grantor and the Grantor's heirs, successors, or assigns shall not place or permit to be placed on said right-of-way any building or structure, including but not limited to houses, garages, outbuildings, swimming pools, tennis courts, retaining walls, decks, and patios nor allow to be done anything which may interfere with the full enjoyment by the Grantee of the rights herein granted.

The above paragraph notwithstanding Grantor reserves the right to landscape the

easement area in a manner consistent with the Grantee's use; however, such use by Grantor shall not include the planting of trees nor a change in the existing surface elevation (grade) of the easement area by more than one (1) foot without first having prior written consent of the Grantee.

The Grantee agrees that said utilities shall be constructed and maintained at a depth of at least eighteen (18) inches below the present surface of the ground.

The Grantee agrees upon the completion of any of its works hereunder to restore as near as possible the surface of the ground to the condition in which it was prior to the commencement of said work.

TO HAVE AND TO HOLD, all and singular, the rights above described unto the Grantee and the Grantee's successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has executed this indenture this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

City of Berkeley, a California municipal corporation

By: \_\_\_\_\_

[AUTHORIZED SIGNER(S), TITLE]

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
*Date Here Insert Name and Title of the Officer*

personally appeared \_\_\_\_\_  
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**EXHIBIT A  
LEGAL DESCRIPTION**

Real property situate in the City of Berkeley, County of Alameda, State of California, described as follows:

Being a portion of Section 9, Township 1 South, Range 4 West, Lots 1 and 2 as shown on that certain map entitled "Map No. 4 of Salt Marsh and Tide Lands, situate in the County of Alameda, State of California" certified copies of which are on file with the Survey General of the State of California and a portion of Berkeley Aquatic Park (APN 60-2521-3-1), and a portion of that certain Quitclaim Deed recorded September 12, 1936 in Liber 3402 Page 25 in the Office of the County Recorder of Alameda County more particularly described as follows:

**BEGINNING** at the southwesterly corner of Parcel B as shown on that certain Parcel Map 11067 filed on April 27, 2023 in Book 358 of Parcel Maps at Pages 26 through 27, inclusive, in the Office of the County Recorder of Alameda County being also a point on Allardt's Water line as described and shown on the project report of Ralph A. Beebee, dated September 3, 1936 on file at the City of Berkeley;

Thence along the southerly extension of the southwesterly line of Parcel B, South 19°56'38" East, 30.15 feet to the intersection with the centerline of Bancroft Way;

Thence along the centerline of Bancroft Way, South 75°42'45" West, 20.10 feet;

Thence along a line parallel with and 20 feet westerly from, measured at right angles, the westerly line of Parcel B, as shown and described on said Parcel Map (358 PM 26) North 19°56'38" West, 207.89 feet;

Thence continuing along a line parallel with and 20 feet westerly from, measured at right angles, the westerly line of Parcel A and B, as shown and described on said Parcel Map (358 PM 26) North 22°41'29" West, 860.26 feet;

Thence North 68°17'58" West, 15.61 feet;

Thence North 22°41'29" West, 48.61 feet;

Thence North 24°20'06" West, 60.20 feet;

Thence North 01°14'01" East, 38.74 feet;

Thence North 72°35'23" East, 14.59 feet to a point on said Allardt's Water line;

Thence along said line South 28°56'22" East, 24.28 feet to an angle point in said Allardt's Water Line being also the intersection with the northwesterly extension of the westerly line of said Parcels A and B (358 PM 26);

Thence along said northwesterly extension and the westerly line of said Parcel A and Parcel B, respectively, also being said Allardt's Water line, South 22°41'29" East, 990.39 feet;

Thence South 19°56'38" East, 180.20 feet along said Parcel B; to the **POINT OF BEGINNING**.



Containing 25,954 square feet or 0.596 acres, more or less.

**END OF DESCRIPTION.**

**Exhibit B attached hereto and by this reference made part hereof.**

For: BKF Engineers

Davis Thresh, P.L.S. No. 6868

9/7/2023  
Dated

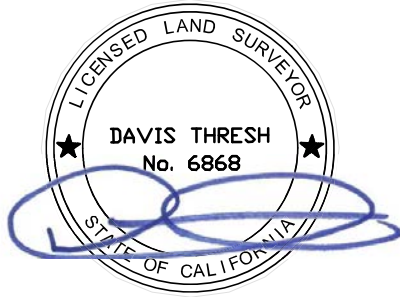




**LEGEND**

POB = POINT OF BEGINNING

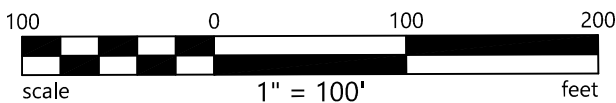
----- = DESCRIBED EASEMENT  
 \_\_\_\_\_ = LOT LINE



LOCATION OF ALLARDT'S WATERLINE DETERMINED BY "ADJUSTED COORDINATES OF STATIONS" IN RELATION TO THE COORDINATES LISTED FOR "USEFUL TRANSIT POINTS" AS SHOWN ON THE PROJECT REPORT OF RALPH A. BEEBEE, DATED SEPTEMBER 3, 1936 ON FILE AT THE CITY OF BERKELEY



CITY OF BERKELEY  
 BERKELEY AQUATIC PARK  
 APN: 60-2521-3-1  
 T.I.S, R.4W. LOTS 1 AND 2  
 SALT MARSH AND TIDE LANDS,  
 MAP NO.4  
 QUITCLAIM DEED  
 LIBER 3402 PAGE 25



SEE SHEET 2

20.00'

BOLIVAR DRIVE

AQUATIC PARK  
 SCIENCE CENTER II  
 DOC. NO. 2011-220883

PARCEL A  
 PARCEL MAP 11067  
 BOOK 358 PAGES 26-27

±3.5'x10' TO BE DEDICATED BY SEPARATE DOCUMENT (NOT A PART)

PARCEL B  
 PARCEL MAP 11067  
 BOOK 358 PAGES 26-27

AQUATIC PARK  
 SCIENCE CENTER II  
 DOC. NO. 2011-220883

±3.5'x10' TO BE DEDICATED BY SEPARATE DOCUMENT (NOT A PART)

**EASEMENT**  
 25,954 SQ. FT.  
 0.596 ACRES±

N22°41'29"W 860.26'  
 S22°41'29"E 990.39'  
 N19°56'38"W 207.89'  
 S19°56'38"E 180.20'  
 S75°42'45"W 20.10'

POB

S19°56'38"E 30.15'  
**BANCROFT WAY**  
 (60' WIDE)



**BKF ENGINEERS**  
 4670 WILLOW ROAD  
 SUITE 250  
 PLEASANTON, CA 94588  
 (925) 396-7700  
 www.bkf.com

Subject EXHIBIT B  
**PLAT TO ACCOMPANY LEGAL DESCRIPTION**  
 Job No. 20191091  
 By MO Date 09/07/23 Chkd. MGR  
 SHEET 1 OF 2

KRISILAS & GEE  
DOC. NO. 2019-083837  
LOT 11 BLOCK 91  
19 M 79



N72°35'23"E  
14.59'

N1°14'01"E  
38.74'

N24°20'06"W  
60.20'

N22°41'29"W  
48.61'

N68°17'58"W  
15.61'

S28°56'22"E  
24.28'

**ADDISON STREET**  
(60' WIDE)



**EASEMENT**

25,954 SQ. FT.±  
0.596 ACRES±

±3.5'X10' TO BE DEDICATED  
BY SEPARATE DOCUMENT  
(NOT A PART)

CITY OF BERKELEY  
BERKELEY AQUATIC PARK  
APN: 60-252I-3-1  
T.S. R.4W. LOTS 1 AND 2  
SALT MARSH AND TIDE LANDS,  
MAP NO.4  
QUITCLAIM DEED  
LIBER 3402 PAGE 25

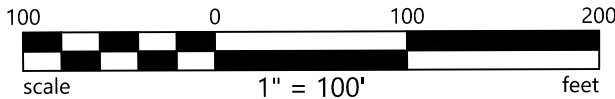
20.00'

**BOLIVAR DRIVE**

AQUATIC PARK  
SCIENCE CENTER II  
DOC. NO. 2011-220883

PARCEL A  
PARCEL MAP 11067  
BOOK 358 PAGES 26-27

±3.5'X10' TO BE DEDICATED  
BY SEPARATE DOCUMENT  
(NOT A PART)



LOCATION OF ALLARDT'S WATERLINE  
DETERMINED BY "ADJUSTED COORDINATES OF  
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PARCEL B  
PARCEL MAP 11067  
BOOK 358 PAGES 26-27

AQUATIC PARK  
SCIENCE CENTER II  
DOC. NO. 2011-220883

SEE SHEET 1

N22°41'29"W 860.26'  
S22°41'29"E 990.39'



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Subject **EXHIBIT B**  
**PLAT TO ACCOMPANY LEGAL DESCRIPTION**  
Job No. 20191091  
By MO Date 09/07/23 Chkd. MGR  
SHEET 2 OF 2

ORDINANCE NO. 7,886-N.S.

IMPOSING A GENERAL TAX ON USERS OF TRANSPORTATION NETWORK COMPANIES AT A RATE OF 56.162 CENTS FOR PRIVATE TRIPS AND 27.424 CENTS FOR POOLED TRIPS

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

Section 1. The 2024 Tax Rate, effective January 1, 2024, to fund general municipal services is set at 56.162 cents for private trips and 27.424 for pooled trips.

Section 2. This tax rate will result in estimated total collections of \$1,022,160.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on September 19, 2023, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: Harrison.



ORDINANCE NO. 7,887-N.S.

LEASING THE ANN CHANDLER HEALTH CENTER AT 830 UNIVERSITY TO LIFELONG MEDICAL CARE AND THE BERKELEY FREE CLINIC

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

Section 1. FINDINGS:

1. The City of Berkeley acquired 830 University Avenue in 1933 for use as a health clinic.
2. The Department of Health, Housing, and Community Services' Public Health Division ceased operating clinic services in 830 University Avenue in early 2023.
3. Lifelong Medical Care has proposed using the site to offer homeless health care services, and the Berkeley Free Clinic has proposed to move their current operations to this location.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO A LEASE FOR 830 UNIVERSITY.

The City Manager is hereby authorized to enter into a five-year lease agreement with the option for a five-year extension with Lifelong Medical Care for real property located at 830 University and known at the Ann Chandler Health Center. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 3. 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.

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

Noes: None.

Absent: Harrison.

Internal

**LEASE**

**By and Between**

CITY OF BERKELEY  
a Charter City organized and existing under the laws of the State of California  
("Landlord")

**and**

LIFELONG MEDICAL CARE  
a non-profit corporation  
("Tenant")

Dated:                     , 2023

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### **EXHIBITS**

|             |                                                                         |
|-------------|-------------------------------------------------------------------------|
| Exhibit A-1 | Legal Description of Property                                           |
| Exhibit A-2 | Depiction of the Premises                                               |
| Exhibit B   | May 20, 2022 Building Inspection Report by E. A. Davidovits & Co., Inc. |

Internal

**LEASE**

**BASIC LEASE INFORMATION**

- 1. **Landlord:** City of Berkeley, a Charter City organized and existing under the laws of the State of California  
2180 Milvia Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704  
Attn: Deputy Director, Health, Housing, and Community Services  
Telephone: 510-981-5400
- 2. **Tenant:** Lifelong Medical Care, a non-profit corporation  
2344 Sixth Street  
Berkeley, CA 94710  
Phone: 510-981-4177
- 3. **Effective Date:** \_\_\_\_\_, 2023
- 4. **Premises:** Approximately ten thousand (10,000) rentable square feet of space in the building commonly known and referred to as 830 University Avenue, Berkeley, California 94710 (the "**Premises**").
- 5. **Permitted Uses:** Medical office and clinical operations to serve low income and unhoused residents of the City of Berkeley. Any other associated or related legal uses shall be permitted.
- 6. **Initial Term:** Five (5) years, commencing as of the "**Commencement Date**" as that term is defined in the Lease.
- 7. **Rent:** In lieu of base rent, a monthly Maintenance Fee of two thousand dollars (\$2,000) (hereinafter "Maintenance Fee" or "Rent") shall be paid due during the Initial Term and during any Additional Term.

The Basic Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. In the event of any conflict between the Basic Lease Information and terms of the Lease, the terms of the Lease shall control.

LANDLORD'S INITIALS \_\_\_\_\_

TENANT'S INITIALS \_\_\_\_\_



## LEASE

This Lease Agreement ("**Lease**") is made and entered into as of the effective date specified in Section 3 of the Basic Lease Information, above ("**Effective Date**"), by and between City of Berkeley, a Charter City organized and existing under the laws of the State of California ("**Landlord**" or "**City**"), and Lifelong Medical Care, a non-profit corporation ("**Tenant**").

### 1. PREMISES.

1.1. Premises. Landlord is the owner of the land parcel(s) on which the Premises are located (the "**Property**"). A legal description of the Property is attached hereto and incorporated by reference as Exhibit A-1. Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises together with Tenant Improvements (defined below), if any. A drawing depicting the general location and layout of the demised Premises is attached hereto and incorporated by reference as Exhibit A-2. Any improvements or alterations existing in the Premises, or otherwise constructed by Tenant or on Tenant's behalf therein pursuant to Section 9 of this Lease are referred to in this Lease as "**Tenant Improvements.**"

1.2. Commencement Date: [REDACTED], 2023

1.3. Delivery Condition. Except as otherwise expressly provided, Tenant shall accept the Premises "as is."

1.4. Premises Name. Tenant acknowledges that the Premises has been known as the Ann Chandler Public Health Clinic, and agrees that any name Tenant gives to its operations at the Premises shall include the term "Ann Chandler." By way of example, Tenant may use the name "Trust Clinic at the Ann Chandler Health Center."

### 2. TERM.

2.1. Initial Term. The "**Initial Term**" of this Lease shall be as set forth in Section 6 of the Basic Lease Information and shall commence as of the Commencement Date set forth in Section 1.2 of the Lease. The Initial Term together with any Renewal Term(s), if any, are collectively referred to herein as the "**Term.**"

2.2. Renewal Term. Tenant shall have one (1) option to renew this Lease for a term of five (5) years (the "**Renewal Term**").

2.2.1 Right to Exercise. Tenant may exercise the option to renew this Lease only if it is fully compliant and current with all obligations after any applicable notice and cure periods as provided for under the Lease.

2.2.2 Notice. Tenant will provide Landlord with written notice of its election to renew the Lease with no less than six (6) months, prior to the end of the Term. If Tenant fails to provide such notice, its right to renew the Lease will not expire until fifteen (15) working days after the Tenant's receipt of Landlord's written demand that the Tenant exercise or forfeit the option to renew.

2.2.3 Extension of Term. Upon the commencement of a Renewal Term, all references to the Term of this Lease will be deemed to mean the Term as extended pursuant to this Section 2.2.

### 3. RENT

3.1. Maintenance Fees in Lieu of Base Rent. In lieu of base rent, Tenant shall pay Maintenance Fees as set forth in Section 7 of the Basic Lease Information. Maintenance Fees under this Lease shall become due as of the Commencement Date. Maintenance Fees shall be paid as set forth in Section 7 of the Basic Lease Information and this Section 3. Tenant shall pay to Landlord, at Landlord's address designated in Section 1 of the Basic Lease Information, or at such other address as Landlord may from time to time designate in writing to Tenant for the payment of Maintenance Fees, the Maintenance Fees designated in Section 7 of the Basic Lease Information, without notice, demand, offset or deduction, in advance, on the first day of each month of the Term. Upon execution of this Lease, Tenant shall pay to Landlord the first month's Maintenance Fees. If Maintenance Fees are due for a period of less than a full month, the amount due shall be prorated for such partial month on the basis of a 30-day month.

3.1.1 Application of Payments. All payments received by Landlord from Tenant shall be applied to the oldest obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing, on a check or money order, or otherwise shall modify this clause or have any force or effect.

### 4. UTILITIES

4.1. Tenant Utility and Service Costs. Tenant shall pay for all utilities and services required or desired by Tenant in connection with its use or occupancy of the Premises, including: (i) heat and air conditioning; (ii) water; (iii) gas, if applicable; (iv) elevator or lift service, if any; (v) electricity; (vi) telephone, computer, communications; (vii) trash pick-up; and (viii) any other materials, services, or utilities (individually and collectively, the "**Services**").

4.2. Conservation and Use Policies. Tenant, at its expense, shall comply with federal, state, or local governmental controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term.

### 5. TAXES

5.1. Taxes. Tenant represents and warrants that Tenant is a not for profit organization and is exempt from possessory interest tax.

### 6. INSURANCE

6.1. Landlord. Landlord shall maintain insurance or an insurance equivalent insuring the Premises (excluding Tenant's Property and any Tenant Improvements) on an occurrence basis against fire and extended coverage (including, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) similar in type and coverage limits to that carried by Landlord on its other properties. At Landlord's option, such insurance or insurance equivalent

may be carried under any blanket or umbrella policies or other insurance or insurance equivalent which Landlord has in force for other buildings or projects. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine. All such insurance or insurance equivalent maintained by Landlord pursuant to this Section 6.1 is referred to herein as "**Landlord's Insurance.**"

6.2. Tenant.

6.2.1 Tenant at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000, and property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision, including glass insurance and property damage limits of not less than \$200,000 insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. All such insurance shall insure performance by Tenant of the indemnity provisions set forth in Section 7. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City. All such insurance or insurance equivalent maintained by Tenant pursuant to this Section 6.2 is referred to herein as "**Tenant's Insurance.**"

6.2.2 If the insurance referred to in this Section 6.2 is written on a Claims Made Form, then following termination of this Lease, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this lease.

6.2.3 Tenant at its cost shall maintain on all its personal property, Tenant's Improvements, and alterations, in on, or about the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Tenant for the replacement of personal property or the restoration of Tenant's Improvements or alterations.

6.2.4 If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the Landlord (or, if the insurer will not agree to give such notice, Tenant must promptly notify the City of any such cancellation, termination or modification of coverage); provide for a waiver of any right of subrogation against Landlord to the extent permitted by law; and be approved as to form and sufficiency by the Landlord's Risk Manager, such approval not to be unreasonably withheld, conditioned or delayed.

6.2.5 Tenant shall forward copies of all insurance documents to: Department of Public Works, Real Property Division, 1947 Center Street, Fifth Floor, Ste. 521, Berkeley, California, 94704.

6.2.6 Waivers of Subrogation. Notwithstanding every other provision of this Lease to the contrary, Landlord shall not be liable (by way of subrogation or otherwise) to Tenant (or to any insurance company insuring Tenant), and Tenant shall not be liable (by way of subrogation or otherwise) to Landlord (or to any insurance company insuring Landlord), for any loss or damage to any of the property of Landlord or Tenant, as applicable, with respect to the Building, the Property or the Premises or any addition or improvements thereto, or any contents therein, to the extent covered by insurance carried or required to be carried by Landlord or Tenant, as applicable, even though such loss might have been occasioned by the negligence or willful acts or omissions of Landlord or Tenant, as applicable, or their respective employees, agents, contractors or invitees. Landlord and Tenant shall give their respective insurance providers which issue policies of insurance, with respect to the items covered by this waiver, written notice of the terms of this mutual waiver, and shall have such insurance policies properly endorsed, if necessary, to prevent the invalidation of any of the coverage provided by such insurance policies by reason of such mutual waiver. For the purpose of the foregoing waiver, the amount of any deductible applicable to any loss or damage shall be deemed covered by, and recoverable by Landlord or Tenant, as applicable, under the insurance policy to which such deductible relates.

## 7. INDEMNITY; LIABILITY EXEMPTION.

7.1. Indemnity. Except to the extent claims are caused by Landlord's negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless Landlord and its elected officials, officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (i) any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, where the same continues beyond applicable notice and cure periods; (ii) Tenant's use of the Premises, the conduct of Tenant's business or any activity, work or thing done, permitted or suffered by Tenant in or about the Premises or the Property; (iii) all damages, liability, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, Ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of 1990; or (iv) any act, error or omission of Tenant in or about the Property or any portion thereof (collectively, the "**Indemnification**"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to Landlord; provided, additionally, that the Berkeley City Attorney's Office may participate in the response to or defense of any Indemnification claim under this Section 7.1 at the City's sole expense. Without limiting Tenant's Indemnification obligations, Landlord shall be entitled to participate in the defense of any third party claim that is reasonably likely to give rise to Indemnification claim under this Section 7.1. Landlord shall indemnify, protect, defend, and hold harmless Tenant and its officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs,

Internal

liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection (1) the active negligence or willful misconduct of Landlord, or its officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns, and (2) any default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease. The obligations of Tenant and Landlord under this Section 7.1 shall survive the expiration or other termination of this Lease with respect to any claims or liability arising prior to such expiration or other termination.

7.2. Exemption of Landlord from Liability. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property including, but not limited to, Tenant's Property and any Tenant Improvements, and injury to or death of persons in, upon or about the Premises or the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except to the extent such claims are caused by Landlord's active negligence or willful misconduct. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, or injury to or death of Tenant's officers, agents, or employees, or any other person in or about the Premises or the Property, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising within or about the Premises or the Property or from other sources or places, except damage or injury caused by Landlord's active negligence or willful misconduct. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant or occupant, if any, of the Premises or the Property except to the extent such damages are caused by Landlord's failure to enforce the terms of any agreements or any applicable law with parties other than Tenant.

## **8. REPAIRS AND MAINTENANCE.**

8.1. Landlord's Repair and Maintenance. During the Term, Landlord shall be responsible for maintaining in good order, condition, and repair the following elements of the Premises: the foundations and footings of the Premises; all structural elements of the Premises, including roof structure, exterior walls, and interior bearing walls. Landlord's repair and maintenance requirements under this Section 8.1 shall include the necessary replacement of any of the listed elements of the Premises; provided, however, the scope of such requirements shall be subject to whether landlords of comparable buildings in the City of Berkeley would make the replacements of the listed elements of the Premises.

8.1.1 Performance by Tenant. If Tenant determines that any elements of the Premises subject to this Section 8.1 require maintenance, repair, or replacement, Tenant shall provide written notice of such to Landlord. Should Landlord fail to perform, within a reasonable time after such notice by Tenant, any maintenance, repairs, or replacements subject to this Section 8.1 (and expressly including Landlord's reasonable discretion hereunder), Tenant shall have the right (but not the obligation) to undertake such actions as may reasonably be required to effect a cure of Landlord's failure to so perform. Prior to undertaking any such actions, however,

Tenant shall consult with Landlord's Director of Public Works or their designee to determine the appropriate scope and cost of such actions. Landlord shall reimburse Tenant for all agreed upon, reasonable and necessary costs of cure within thirty (30) days after Tenant's delivery if an itemized statement of such costs, together with reasonable supporting documentation. Tenant may offset against Rent and other sums due to Landlord under the Lease any undisputed sums not timely paid by Landlord to Tenant, including interest thereon at the maximum lawful rate.

8.2. Parking, Exterior Lighting, Landscaping. Tenant shall maintain the exterior lighting system and landscaping of the Building, in good order, condition, and repair.

8.3. Security. Tenant shall maintain all locks and key systems used in the Premises.

## **9. TENANT IMPROVEMENTS.**

9.1. Pre-Approved Tenant Improvements. Subject to obtaining all required permits and approvals, including from the Director of Public Works representing the Landlord, Tenant will perform all maintenance, repairs and replacements called for by the May 20, 2022 Building Inspection Report by E. A. Davidovits & Co., Inc. (including all appendices but with the exception of roof maintenance or replacement), attached hereto as Exhibit B at its sole cost and expense.

9.2. Further Tenant Improvements. Tenant may make future alterations and improvements to the Premises with Landlord's prior written consent, not to be unreasonably withheld, conditioned, or delayed. Tenant shall have no duty to remove any alterations or improvements unless they are not customary for medical office use and Landlord notifies Tenant of the removal requirement at the time Landlord gives its consent to the alterations or improvements. Tenant may, at its sole cost and expense, install, operate, maintain, upgrade, repair, or replace an alarm, access control, or other building security system. Tenant may, at its sole cost and expense, install, operate, maintain, upgrade, repair, or replace, a solar electric generating system, which may include rooftop solar panels and battery backups. Landlord expressly grants Tenant the right to install solar panels on the roof of the Premises, and Tenant shall have no duty to remove such solar panels.

9.3. Standard of Work. All work to be performed by or on behalf of Landlord and Tenant shall be performed diligently and in a first-class, workmanlike manner, and in compliance with all applicable Laws and all insurance carrier requirements. Landlord shall have the right, but not the obligation, to periodically inspect such work and may require changes in the method or quality thereof. In no event shall such work materially obstruct access to the Property or any portion thereof.

9.4. Damage; Removal. Tenant shall repair all damage to the Premises, Property and any portions thereof caused by the installation or removal of alterations or other work performed by or on behalf of Tenant. If Landlord requires Tenant to remove improvements under Section 9.2, Tenant shall remove Tenant's trade fixtures and other improvements, alterations and additions and restore the Premises to their condition existing prior to the construction or installation of any such items and perform any closure work, investigation and environmental remedial work required by the presence or suspected presence of any Hazardous Materials under



Internal

Hazardous Materials Laws (as hereinafter defined) or by any other applicable Laws, but only to the extent Tenant, and not the Landlord or BFC (or their respective officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns), is responsible for causing the presence or suspected presence of Hazardous Materials in violation of Hazardous Materials Laws. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Premises or the Property whatsoever and in strict accordance with all applicable Laws.

9.5. Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Premises and Property and all portions thereof free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) business days' prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Tenant shall cause such lien to be released and removed within twenty (20) days after the date of filing, and if Tenant fails to do so, Landlord may take such action as may be necessary to remove such lien, without the duty to investigate the validity of it, and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon, at the Applicable Interest Rate, from the date of expenditure.

9.6. Bonds. Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, lien, performance, and payment completion bonds in an amount equal to one and one-half times the estimated cost of any alterations, additions, or improvements to insure Landlord, the Premises and the Property against any liability for mechanic's and materialmen's liens, and to ensure completion of the work and payment of any contractors or subcontractors.

## **10. USE; JOINT POSSESSION; INSPECTION; QUIET ENJOYMENT.**

10.1. Usage. The Premises shall be used only for the permitted uses set forth in Section 5 of the Basic Lease Information and for no other purpose without the prior written consent of Landlord. Tenant acknowledges that, except as expressly set forth in this Lease, neither Landlord nor any of Landlord's agents has made any representation or warranty with regard to the Premises, any Tenant Improvements, or the Property with respect to their suitability for the conduct of Tenant's business. Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws, statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually "**Law**" and collectively "**Laws**"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises; provided, however, if the Hazardous Materials was pre-existing prior to the Commencement Date, then Landlord, at its sole cost and expense, shall remedy such condition to comply with all Laws, and further provided that Tenant shall not be required under this Lease to remedy any such condition to the extent it is caused by BFC. Tenant shall be responsible for obtaining any permit or license required by any governmental agency permitting Tenant's use of the Premises.

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10.2. Joint Possession of and Operations on the Premises. Landlord and Tenant acknowledge and agree that, Landlord shall enter into a separate lease for the Premises with Berkeley Free Clinic ("**BFC**") to run concurrently with this Lease. Landlord and Tenant further acknowledge and agree that concurrently with the execution of this Lease, Tenant, and BFC will enter into a joint operating agreement ("**JOA**") under which Tenant will occupy the Premises between the hours of 8:00 a.m. and 5:30 p.m. Monday through Friday, and BFC will occupy the Premises on weekends and during the weekday hours not devoted to Tenant's use. It is understood that BFC shall be required under the JOA to operate in a manner consistent with the terms of this Lease. The JOA, as it may be revised or amended from time to time, shall be subordinate to the terms of this Lease. The parties agree their usage of the Premises space shall comply with any and all applicable requirements under the Health Insurance Portability and Accountability Act and other legal and health care regulatory requirements. In the event that the lease between Landlord and BFC terminates or expires, then Tenant shall have exclusive possession of the Premises twenty-four (24) hours a day, seven (7) days a week with no reduction in the Maintenance Fee. Upon the termination or expiration of the lease between Landlord and BFC, the JOA shall be automatically terminated.

10.3. Inspection. Landlord, or its representative or contractor, may enter the Premises by prior appointment with at least two business days' written notice between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, holidays excepted, to determine that (i) the Premises is being reasonably cared for, (ii) no waste is being made and that all actions affecting the Premises are done in the manner best calculated to preserve the Premises, and (iii) Tenant is in compliance with the terms and conditions of this lease.

10.4. Quiet Enjoyment. Tenant may not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing that may disturb the quiet enjoyment of any other occupant of the Building. For so long as Tenant is in compliance with the material terms of this Lease, Landlord shall warrant and defend Tenant in the quiet enjoyment and possession of the Premises during the Term. Tenant acknowledges and agrees that possession or use of the Premises by BFC in a manner consistent with the terms of any JOA pursuant to Section 10.2 and any applicable laws shall not constitute a violation of this Section 10.4.

## 11. ENVIRONMENTAL MATTERS.

11.1. Hazardous Materials Defined. As used in this lease, the term "**Hazardous Materials**" refers to any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous, biohazardous, or toxic materials, hazardous, biohazardous, or toxic wastes, hazardous, biohazardous, or toxic substances, carcinogenic materials or contaminants, and all other materials governed, monitored, or regulated by any Federal, State or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act.

11.2. Warranty; Hold Harmless. Landlord warrants that Landlord has no knowledge of the presence of any Hazardous Materials or other contamination in or under the Premises or Property in violation of any laws, codes, rules, orders, ordinances, directives, regulations,



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permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of Hazardous Materials. Landlord shall defend, save, protect and hold Tenant harmless from any loss arising out of the presence of any Hazardous Materials on the Property that was not brought to the Property by or at the request of Tenant, its agents, contractors, invitees or employees. Landlord acknowledges and agrees that Tenant has no obligation to clean up or remediate, or contribute to the cost of clean-up or remediation, of any Hazardous Materials unless such Hazardous Materials are released, discharged or spilled on or about the Property by Tenant or any of its agents, employees, contractors, invitees or other representatives. The obligations of this Section shall survive the expiration or earlier termination of this Lease.

## 12. DAMAGE AND DESTRUCTION.

12.1. Perilous Condition. If, during the Term, Landlord's Director of Public Works becomes aware of a perilous condition on the Premises that, in his or her opinion, substantially and significantly threatens the health and safety of Tenant's employees or invitees (a "**Perilous Condition**"), the Director of Public Works, or his or her designee, will immediately notify Tenant of such Perilous Condition, and Tenant shall use best efforts to promptly eliminate the Perilous Condition. Tenant shall immediately address any condition reasonably constituting an emergency, whether Tenant learns of the condition through Landlord or otherwise. If Tenant fails to address a Perilous Condition within thirty six (36) hours after Landlord's notice or to immediately address an emergency situation, Landlord may attempt to resolve the Perilous Condition or emergency situation. Subject to repair and maintenance obligations set forth in Section 8, Tenant shall reimburse Landlord for any costs incurred by Landlord in addressing the Perilous Condition or emergency situation promptly upon receipt of any Landlord's invoice for such costs.

12.2. Insured Casualty. If, during the Term, the Premises are totally or partially destroyed or utility services are cut off from any cause rendering the Premises totally or partially inaccessible or unusable (the "**Casualty**"), and if the restoration can be made under then existing Laws and can be completed within one hundred twenty (120) days after obtaining all necessary permits therefor and if the costs of such restoration are compensable by Landlord's insurance (an "**Insured Casualty**"), then Landlord shall restore the Premises (excluding Tenant's Property and any Tenant Improvements) to substantially the same condition as they were in immediately before destruction. If the existing Laws do not permit the restoration or if the costs of such restoration are not compensable by Landlord's insurance, either party may terminate this Lease by giving ninety (90) days' prior written notice to the other party. In case of Insured Casualty, there shall be an abatement or reduction of Maintenance Fees owed to Landlord, between the date of Insured Casualty and the date of completion of restoration if restoration takes place, or the earliest allowed date of termination if restoration does not take place and whether or not the Lease is terminated, based on the proportion to which the destruction renders the Premises unusable by Tenant for the ordinary conduct of business.

12.3. Tenant's Fault. If the Premises, the Property, or any portion thereof, are damaged resulting from the negligence or breach of this Lease by Tenant or any of its agents, employees,

contractors, invitees or other representatives and Tenant fails to cure such damage within a reasonable amount of time following written notice from Landlord, Maintenance Fees owed to Landlord shall not be reduced during the repair of such damage, Tenant shall have no right to terminate this Lease as provided in Section 12.1, and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.

12.4. Repair Limitation. Notwithstanding anything in this Lease to the contrary, Landlord shall not be required to repair any injury or damage, by fire or other cause, to Tenant's Property or any Tenant Improvements, if any, or to rebuild, repair or replace any decorations, alterations, partitions, fixtures, trade fixtures, additions or other improvements installed on the Premises by or for Tenant, unless and to the extent Landlord has received insurance proceeds from Tenant's property insurance as provided in Section 6.2 above, and neither Tenant or Landlord has opted to terminate this Lease as provided in Section 12.1.

12.5. Waiver. The provisions of this Lease contain an express agreement between Landlord and Tenant that applies in the event of any Casualty. Tenant fully waives the provisions of any statute or regulation, including California Civil Code sections 1932(2) and 1933(4) (as amended from time to time, and successor statutes thereto) for any rights or obligations concerning a Casualty.

### **13. EMINENT DOMAIN**

13.1. Effect on Rights and Obligations. If the whole or any substantial part of the Premises, or if the Property or any portion thereof which would leave the remainder of the Property unsuitable for the Permitted Uses, or if the land on which the Property is located or any material portion thereof, shall be taken or condemned for any public or quasi public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (each a "Taking"), then Landlord may, at its option, terminate this Lease and Maintenance Fees shall be abated during the unexpired portion of this Lease, effective when the physical taking of said Premises or said portion of the Property or land shall occur. However, if Landlord does not, in its sole discretion, opt to terminate this Lease in accordance with this Section 13, then this Lease shall remain in effect. Landlord shall maintain or terminate the leases of all other tenants in the Property who are similarly situated to Tenant consistent with its option with regard to Tenant. Notwithstanding the foregoing, if the whole of the Premises is subject to the Taking, or if the portion of the Premises not affected by the Taking is not in Tenant's business judgment reasonably suitable for Tenant's continued occupancy, Tenant may terminate this Lease as of the date of the Taking and be relieved of all obligations thereafter accruing under this Lease. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving written notice to Landlord within 30 days after the Taking, as of the date of termination, which date shall not be earlier than 30 days nor later than 90 days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the date of Taking if the date of Taking falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within the 30-day period, this Lease shall continue in full force and effect, except that the Maintenance Fees owed to Landlord thereafter to be paid shall be reduced on a pro-rata basis. Tenant shall notify Landlord in writing of any condemnation or threatened condemnation within ten (10) days after Tenant receives notice of said action or

threatened action. Where only a portion of the Premises is subject to a Taking and neither Landlord nor Tenant terminates this Lease, Landlord shall promptly restore the remainder of the Premises into an architectural whole and functional condition and the Maintenance Fees for any portion of the Premises subject to (or rendered unusable by) the Taking shall be abated during the unexpired Term effective when the physical taking of said portion of the Premises shall occur. Provided that Landlord complies with the preceding sentence, the Taking shall not be construed to constitute an actual or constructive eviction of Tenant or a breach of any express or implied covenant of quiet enjoyment.

13.2. Award. In connection with any condemnation, Landlord shall be entitled to receive all compensation and anything of value awarded, paid, or received in settlement or otherwise ("**Award**") and Tenant hereby irrevocably assigns and transfers to Landlord all rights to and interests in the Award and fully waives, releases, and relinquishes any claim to, right to make a claim on, or interest in the Award, including any amount attributable to any excess of the market value of the Premises for the remainder of the Term over the present value as of the termination date of the Rent payable for the remainder of the Term (commonly referred to as the "**bonus value**" of the Lease). Notwithstanding the foregoing, any portions of such award or proceeds which are specifically allocated by the condemning or purchasing party for the taking of or damage to trade fixtures of Tenant and moving and relocation costs shall be reserved specifically for Tenant.

#### 14. DEFAULT.

14.1. Events of Default. The occurrence of any of the following events shall, at Landlord's option, constitute an "**Event of Default**:"

14.1.1 As to Tenant: (i) Tenant's failure to pay Maintenance Fees within ten business days after receipt of a written notice of such failure from Landlord to Tenant; (ii) Tenant's failure to comply with any other material term or provision of this Lease if such failure is not remedied within thirty (30) days after receipt of a written notice specifying the nature of the breach in reasonably sufficient detail; provided, however, if such default cannot reasonably be remedied within such thirty day period, then a default will not be deemed to occur until the occurrence of Tenant's failure to comply within the period of time that may be reasonably required to remedy the default, up to an aggregate of ninety days (90), provided Tenant commences curing such default within thirty (30) days and thereafter diligently proceeds to cure such default.

14.1.2 As to Landlord: Landlord's failure to perform any obligation under this Lease if such failure is not remedied within thirty (30) days after receipt of a written notice from Tenant to Landlord specifying the nature of the breach in reasonably sufficient detail; provided, however, if such breach cannot reasonably be remedied within such thirty (30) day period, then a default will not be deemed to occur until the occurrence of Landlord's failure to perform within the period of time that may be reasonably required to remedy the breach, up to an aggregate of ninety (90) days, provided Landlord commences curing such breach within thirty (30) days and thereafter diligently proceeds to cure such breach. Notwithstanding the foregoing, if Landlord's failure to perform any obligation under this Lease renders the Premises wholly or partially

unusable by Tenant for the ordinary conduct of business for more than two (2) consecutive business days, then Landlord shall remedy such failure within five (5) business days after receiving written notice from Tenant to Landlord and Tenant shall be entitled to an abatement of Maintenance Fees owed to Landlord, to be prorated on the basis of a 30-day month, for the number of days such failure is not remedied after Landlord receives written notice from Tenant. For the avoidance of doubt, the abatement of rent provided for under this Section shall not be Tenant's sole remedy for Landlord's failure to perform Lease obligations.

#### 14.2. Remedies.

14.2.1 Termination. In the event of the occurrence of any Event of Default, Landlord shall have the right to give a written termination notice to Tenant and, on the date specified in such notice (which date shall be at least three (3) business days following the date of delivery of such notice), this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other Events of Default at the time existing shall have been fully remedied to the satisfaction of Landlord.

A. Repossession. Following termination, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Premises upon voluntary surrender by Tenant, or remove Tenant therefrom and any other persons occupying the Premises following reasonable written notice, using such legal proceedings as may be available; (ii) repossess the Premises or relet the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

14.3. Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at Law or in equity, by statute or otherwise shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at Law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Maintenance Fees nor any endorsement on any check or letter accompanying any check or payment of Maintenance Fees shall be deemed an accord and satisfaction of full payment thereof; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Maintenance Fees or to pursue other remedies.

### 15. ASSIGNMENT AND SUBLETTING.

15.1. Landlord's Consent. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Lease, the Premises or any part thereof, without Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Upon the assignment of the Lease by Tenant, the Tenant will have no further obligation under the Lease.

15.2. Joint Possession not a Sublease. Landlord and Tenant acknowledge and agree that the JOA shall not constitute a sublease or assignment under this Section 15.

## **16. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

16.1. If Tenant provides any aid, service or benefit to others on the City's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, Ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.

16.2. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, Ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All Tenant's activities must be in accordance with these laws, Ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

## **17. CITY NON-DISCRIMINATION ORDINANCE**

17.1. Tenant agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this lease, the Tenant agrees as follows:

17.1.1 The Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

17.1.2 The Tenant shall permit the Landlord access to records of employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the Landlord, are necessary to monitor compliance with this non-discrimination provision, and will, in addition, fill-out in a timely fashion, forms supplied by the Landlord to monitor these non-discrimination provisions.

## **18. NUCLEAR FREE BERKELEY**

18.1. Tenant agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

## **19. OPPRESSIVE STATES**

19.1. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to or to purchase, sell, lease or distribute commodities in the conduct of business with, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State

19.2. For purposes of this lease, the Tibet Autonomous Region and the provinces of Adu, Kham, and U-Tsang shall be deemed oppressive states.

19.3. Tenant's failure to comply with this section following thirty (30) days' written notice from Landlord shall constitute a default of this lease and Landlord may terminate this lease pursuant to Section 14. In the event that the City terminates this lease due to a default under this provision, City may deem Tenant a non-responsible bidder for five (5) years from the date this lease is terminated.

## **20. BERKELEY LIVING WAGE ORDINANCE**

20.1. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

20.2. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance (LWO). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased property, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered an Event of Default. The City shall (i) handle such records and documents in accordance with any and all applicable requirements under the Health Insurance Portability and Accountability Act and other legal and health care regulatory requirements and (ii) not disclose Tenant's Confidential Information, except as expressly permitted in this Lease or otherwise required by law.

The term "Confidential Information" shall include non-public information about the Tenant's business or activities that is proprietary and/or confidential, including, without limitation, all business, financial, technical, and other information of a party marked or designated as "confidential" (or some similar designation) or that, by its nature or the circumstances



surrounding its disclosure, should reasonably be regarded as confidential. Landlord hereby agrees to (i) use the Confidential Information of the Tenant solely for the purpose of performing its obligations under this Agreement; (ii) hold the Tenant's Confidential Information in strict confidence, and; (iii) not disclose such Confidential Information or any part thereof, to any person, except those officers, employees, agents or professional advisors (or those of its Affiliates) with a strict "need to know" in order for the Landlord to perform its obligations hereunder, provided that such officers, employees, agents or professional advisors shall prior to any disclosure, have agreed by signed writing or otherwise to be bound by confidentiality obligations no less strict than those described herein. Confidential Information shall not include (i) any information already rightfully in the public domain at the time of its disclosure or subsequently released into the public domain by the Tenant; (ii) any information already rightfully in the possession of the Landlord at the time of its disclosure by the Tenant without an obligation to maintain its confidentiality; (iii) any information that is independently developed by the Landlord without use of or reference to any Confidential Information of the Tenant, in either case such fact being proven through documentary evidence; (iv) information obtained by the Landlord from a third Party not in breach of any confidentiality obligations to the Tenant (v) information required to be disclosed by law, a court order or competent government authority, provided that in such case the Landlord shall, to the extent permitted by law, promptly inform the Tenant of such requirement of disclosure such that the Tenant has an opportunity to object to the production or disclosure by seeking a protective order.

Landlord acknowledges that the Tenant considers its Confidential Information to contain confidential, proprietary, trade secret information of the Tenant and that any unauthorized use or disclosure of such information would cause the Tenant irreparable harm for which its remedies at law would be inadequate. Accordingly, Landlord acknowledges and agrees that the Tenant will be entitled in addition to any other remedies available to it at law or in equity, to seek the issuance of injunctive relief, enjoin any breach or threatened breach of the Landlord's obligations hereunder with respect to the Confidential Information of the Tenant, in addition to such further injunctive relief as any court of competent jurisdiction may deem just and proper.

20.3. If Tenant is subject to the LWO, Tenant shall include the requirements of the Ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this Ordinance with regard to any employees who spend 25% or more of their compensated time on the Premises.

20.4. If Tenant fails to comply with the requirements of this the LWO and this Lease, the City shall have the rights and remedies described in this Section 20, in addition to any rights and remedies provided by law or equity.

20.5. Tenant's failure to comply with this Section 20 shall constitute an Event of Default. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to

fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

## **21. BERKELEY EQUAL BENEFITS ORDINANCE**

21.1. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

21.2. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered an Event of Default. The City shall (i) handle such records in accordance with any and all applicable requirements under the Health Insurance Portability and Accountability Act and other legal and health care regulatory requirements and (ii) not disclose Tenant's Confidential Information, except as expressly permitted in this Lease or required by law.

21.3. If Tenant fails to comply with the requirements of this Section 21, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

21.4. Tenant's failure to comply with this Section 21 shall constitute an Event of Default. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section 21. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

## **22. SANCTUARY CITY CONTRACTING ORDINANCE**

22.1. Tenant hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Tenant agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

- a. "Data Broker" means either of the following:
  1. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such



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information to their customers, which include both private-sector business and government agencies;

2. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:
1. The City's computer-network health and performance tools;
  2. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer-based activity.

### **23. CONFLICT OF INTEREST PROHIBITED**

23.1. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Lease.

23.2. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

23.3. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

### **24. RIGHT OF FIRST REFUSAL**

24.1. First Refusal Notice. If, during the Term, Landlord desires to sell or otherwise dispose of the Property, except as part of an Excluded Transaction (a "**Proposed Transfer**"), Tenant shall have a right of first refusal to purchase the Property in accordance with this Section 24 ("**ROFR**"), and Landlord shall not consummate the sale unless Landlord shall first deliver to Tenant a notice (the "**First Refusal Notice**") setting forth: (a) the identity of the proposed purchaser (the "**Offeree**"); (b) the sale price and each of the material terms of the proposed

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transaction, including but not limited to financial terms, use restrictions, or other covenants (the "**Purchase Terms**"); and (c) the proposed closing date of the Proposed Transfer (the "**Closing Date**").

24.2. Response Period. Tenant shall, for sixty (60) days following receipt of the First Refusal Notice, have the exclusive right to purchase the Premises on terms and conditions set forth in the First Refusal Notice ("**ROFR Response Period**"). If Tenant notifies Landlord in writing of its decision to exercise its right of first refusal on or before 5:00 p.m. on the last day of the ROFR Response Period, then Tenant shall be bound to purchase from Landlord, and Landlord shall be bound to sell to Tenant, the Property on the Purchase Terms.

24.3. Waiver of ROFR. If Tenant shall either: (a) deliver written notice of rejection of the First Refusal Notice to Landlord; or (b) fail to deliver written notice of acceptance of the First Refusal Notice within the ROFR Response Period, Tenant's ROFR hereunder shall conclusively be deemed to be waived with respect to the sale disclosed in the First Refusal Notice and Landlord shall be free, for a period of one (1) year from the end of the ROFR Response Period, to complete the Proposed Transfer to the Offeree or to any other third party on the Purchase Terms, and the Offeree or such other third party shall acquire the Property free and clear of the Tenant's ROFR (which shall be extinguished, null, void, and of no further force or effect upon such sale). In addition, if as of the Closing Date, Tenant has failed to complete its purchase of the Property due to any act or omission by Tenant, including but not limited to any failure to deliver funds or otherwise meet the Purchase Terms, then Tenant's ROFR shall be extinguished, null, void, and of no further force or effect as to any future sale, transfer, or disposition of the Property.

24.4. Excluded Transactions. Notwithstanding anything to the contrary contained in this Section 24, Tenant's right of first refusal shall not apply to the following transactions (the "**Excluded Transactions**"):

- (a) any condemnation of all or part of the Property;
- (b) any transfer, conveyance, covenant, or restriction by Landlord to change or limit the use of the Property for any public purpose.

24.5. Lease Termination. Upon the completion of such any purchase pursuant to this Section 24, this Lease and all obligations and liabilities of Landlord and Tenant hereunder shall terminate, except for those obligations which by their terms survive the termination hereof.

## 25. MISCELLANEOUS.

### 25.1. General.

25.1.1 Integration. This Lease, together with all exhibits and attachments hereto, the separate lease between Landlord and BFC, and the JOA, set forth all the agreements

between Landlord and Tenant concerning the Property and the Premises, and there are no agreements either oral or written other than as set forth therein.

25.1.2 Time of Essence. Time is of the essence of this Lease.

25.1.3 Attorneys' Fees. If any action is commenced which arises out of or related to this Lease, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge to be reasonable attorneys' fees, expert fees, and expenses in the action, in addition to costs and expenses otherwise allowed by Law. In all other situations, including any matter arising out of or relating to any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, Tenant agrees to pay all of Landlord's costs and expenses, including attorneys' fees and expert fees, which may be incurred in enforcing or protecting Landlord's rights or interests.

25.1.4 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

25.1.5 Law. This Lease shall be construed and enforced in accordance with the Laws of the State of California, without reference to its choice of law provisions.

25.1.6 Interpretation. The titles to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. As used in this Lease, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Lease shall be interpreted as though prepared jointly by both parties.

25.1.7 No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this Lease shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

25.1.8 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, subject to compliance with the terms of Section 15, Tenant.

25.1.9 Third Party Beneficiaries. Nothing herein is intended to create any third party benefit.

25.1.10 No Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto or any relationship other than the relationship of landlord and tenant.

Internal

25.1.11 Merger. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof or a termination by Landlord shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

25.2. Business License. Tenant certifies that it has obtained or applied for a City of Berkeley business license number as required by Berkeley Municipal Code Chapter 9.04; or Tenant claims that it is exempt from the provisions of B.M.C. Ch. 9.04 and has written below the specific B.M.C. section under which it is exempt.

25.3. Fixtures and Signs. Tenant may (i) make any lawful and proper minor alterations to the Premises; (ii) attach fixtures and interior signs in and on the Premises; and attach signage on the exterior of Building ("**Tenant Fixtures**"). Any signs referring to the name of the Premises shall include the term "Ann Chandler" consistent with the requirements of Section 1.3. Any Tenant Fixtures will remain the property of Tenant and may be removed from the Premises by Tenant at any time during the Term. All alterations and Tenant Fixtures are subject to Landlord's approval, which shall not be unreasonably withheld, conditioned, or delayed, and must comply with existing code requirements. All Tenant Fixtures shall be at Tenant's sole cost and expense. Installations and removals of Tenant Fixtures shall be made in such manner as to avoid injury or defacement of the Premises, and Tenant shall repair any injury or defacement, including discoloration caused by such installation or removal. All signs on the Premises shall conform to the provisions of Berkeley Municipal Code Chapter 20.04. Tenant shall be responsible for all fees, costs and expenses associated with installation and removal of Tenant Fixtures. In the event any such fees, costs or expenses are incurred by Landlord (whether directly or indirectly), Landlord shall deliver to Tenant an invoice, with reasonable supporting documentation, and Tenant shall reimburse Landlord for those amounts within thirty (30) days after receipt of such invoice.

25.4. Pesticides. All use of pesticides on the Premises shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

25.5. Prior Possession. Prior to the Commencement Date, Tenant has the right to (i) undertake Tenant Improvements, and (ii) store supplies and equipment in the Premises.

25.6. Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

25.7. Limitation of Liability. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

Internal

25.8. Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods), to Landlord's address and Tenant's address set forth in Sections 1 and 2 of the Basic Lease Information, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

25.9. Brokerage Commission. Landlord and Tenant each represents that they have not been represented by any broker in connection with this Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Commission**") is due or payable. Tenant agrees to indemnify and hold harmless Landlord from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Commission based upon any statement, representation or agreement of Tenant.

25.10. Authorization. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she or it is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

25.11. Holding Over. If, with Landlord's express written consent, Tenant holds over the Premises or any part thereof after expiration or earlier termination of the Term, such holding over shall constitute a month-to-month tenancy on all the other terms and conditions of this Lease, except that any obligations resulting from any JOA shall only hold over to the extent the JOA is still in effect. This section shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Maintenance Fees by Landlord following expiration or termination shall not constitute a renewal of this Lease or extension of the Initial Term or the Renewal Term, as the case may be, except as specifically set forth above. If Tenant remains in possession of the Premises after expiration or other termination of this Lease without Landlord's express written consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay Maintenance Fees of two thousand dollars (\$2,000) per month. If Tenant fails to surrender the Premises upon expiration or other termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against all loss or liability resulting from or arising out of Tenant's failure to surrender the Premises, including, but not limited to, any amounts required to be paid to any tenant or prospective tenant who was to have occupied the Premises after the expiration or other termination of this Lease and any related attorneys' fees and brokerage commissions.

25.12. Surrender. Upon the expiration or other termination of this Lease or Tenant's right to possession of the Premises, Tenant shall peaceably and quietly leave and surrender to Landlord the Premises, along with appurtenances and fixtures at the Premises (except Tenant Fixtures), all in good condition, ordinary wear and tear, damage by casualty, condemnation, acts of God, and Landlord's failure to make repairs required of Landlord excepted.

25.13. Joint and Several. If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

25.14. Covenants and Conditions. Each provision to be performed by Tenant or Landlord hereunder shall be deemed to be both a covenant and a condition.

25.15. Intentionally Omitted.

25.16. Accessibility; Disability Laws. To Landlord's actual knowledge, the Premises have not undergone an inspection by a Certified Access Specialist.

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises. "

Since compliance with the ADA and other federal and state disability laws (collectively, "**Disability Laws**") is dependent upon Tenant's specific use of the Premises, Landlord makes no warranty or representation as to whether or not the Premises comply with Disability Laws, except as otherwise expressly provided in this Lease. In the event that Tenant's specific and particular use of the Premises, as distinguished from uses generally associated with those permitted under Section 5, requires modifications or additions to the Premises in order to be in compliance with Disability Laws, Landlord agrees to make any such necessary modifications and/or additions at Tenant's sole cost and expense.

25.17. OFAC Compliance. Tenant represents and warrants to Landlord that Tenant is not a party with whom Landlord is prohibited from doing business pursuant to the regulations of the Office of Foreign Assets Control ("**OFAC**") of the U.S. Department of the Treasury, including those parties named on OFAC's Specially Designated Nationals and Blocked Persons List. Tenant is currently in compliance with, and shall at all times during the term of this Lease remain in compliance with, the regulations of OFAC and any other governmental requirement relating thereto. In the event of any violation of this section, Landlord shall be entitled to immediately terminate this Lease and take such other actions as are permitted or required to be taken under law or in equity. TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, RISKS, LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS) INCURRED BY LANDLORD ARISING FROM OR RELATED TO ANY BREACH OF THE FOREGOING CERTIFICATIONS. These indemnity obligations shall survive the expiration or earlier termination of this Lease.

***[SIGNATURES FOLLOW ON NEXT PAGE]***

Internal

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

**TENANT:**

LIFELONG MEDIAL CARE, a non-profit corporation,

By: \_\_\_\_\_

Print Name: David B. Vliet

Its: Chief Executive Officer

**--AND--**

**LANDLORD:**

CITY OF BERKELEY, a California municipal corporation

By: \_\_\_\_\_

Print Name: Dee Williams-Ridley

Its: City Manager

**ATTEST:**

\_\_\_\_\_

City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_

City Attorney

Internal

**EXHIBIT A-1**  
**Legal Description of Property**

APN: 56-1066-1

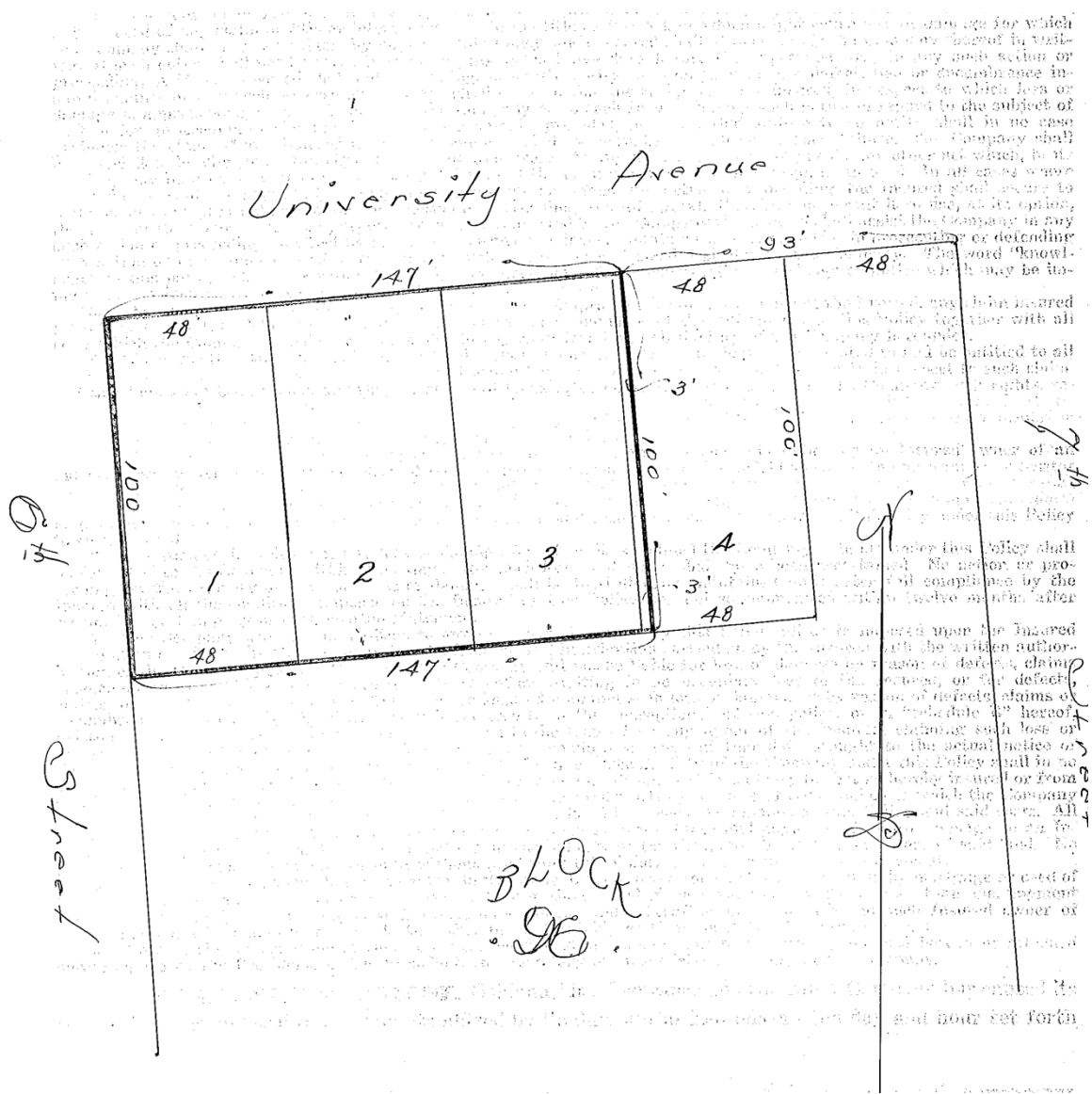
All those certain lots, pieces or parcels of land situate, lying and being in the City of Berkeley, County of Alameda, State of California, described as follows:

Beginning at the point of intersection of the Southern line of University Avenue with the Eastern line of 6<sup>th</sup> Street, as said Avenue and Street are shown on the Map hereinafter referred to; running thence Easterly along said line of University Avenue One Hundred and Forty-Seven feet; thence at right angles Southerly One Hundred feet; thence at right angles Westerly One Hundred Forty-Seven feet to the point of intersection thereof with said Eastern line of 6<sup>th</sup> Street; thence Northerly along said line of 6<sup>th</sup> Street One Hundred feet to the point of beginning.

Being all of Lots Numbered 1, 2, 3, and the Western Three feet of Lot Numbered 4, in Block Numbered 96, as said Lots and Block are delineated and so designated upon that certain Map entitled, "Map of the Sisterna Tract, Berkeley" – filed May 15, 1880 in Liber 7 of Maps, at page 43, in the office of the County Recorder of Alameda County.



Internal



**EXHIBIT A-2**

**Depiction of Premises**

**EXHIBIT B**

**May 20, 2022 Building Inspection Report by E. A. Davidovits & Co., Inc**





Office of the City Manager

CONSENT CALENDAR  
October 3, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Mark Numainville, City Clerk  
 Subject: Police Accountability Board – Appointment of New Member

RECOMMENDATION

Adopt a Resolution appointing a new member to the Police Accountability Board nominated by Councilmember Robinson.

FISCAL IMPACTS OF RECOMMENDATION

All commissioners are eligible to receive a stipend of \$100 per meeting.

CURRENT SITUATION AND ITS EFFECTS

In June of 2021 the Mayor and Members of the City Council nominated and appointed the initial nine members of the PAB and also appointed one alternate commissioner.

There are currently three seats on the PAB that are vacant. The alternate seat is also vacant.

Councilmember Robinson has nominated Joshua Cayetano to serve on the Police Accountability Board. Mr. Cayetano meets the eligibility criteria in the City Charter and may be appointed by a majority vote of the Council.

| <b>Commissioner</b> | <b>Nominated By</b>     |
|---------------------|-------------------------|
| <i>vacant</i>       | Mayor Arreguin          |
| <i>vacant</i>       | Councilmember Kesarwani |
| Regina Harris       | Councilmember Taplin    |
| John Moore          | Councilmember Bartlett  |
| Kitty Calavita      | Councilmember Harrison  |
| Leah Wilson         | Councilmember Hahn      |
| Juliet Leftwich     | Councilmember Wengraf   |
| <i>vacant</i>       | Councilmember Robinson  |
| Brent Blackaby      | Councilmember Humbert   |
| <i>vacant</i>       | Alternate               |

The City Charter provides for the appointment of members to the Police Accountability Board. Article XVIII, Section 125, Part 6 states, “The Mayor and each City Councilmember shall nominate one candidate from an applicant pool at a meeting of the City Council and that each individual nominee must be approved by a majority vote of the City Council.”

Members of the Police Accountability Board must:

- Be a resident of the City;
- Be at least 18 years of age
- Not be an employee, officer, or contractor with the City, a current sworn police officer from any agency, or a current employee, official, or representative of an employee association representing sworn police officers; and
- Be fair minded and objective with a demonstrated commitment to community service.

The City Charter indicates that desirable qualities of a Board member are familiarity with human resources, law, police procedures, police oversight, or involvement in civil rights or community organizations and that the City Council shall endeavor to establish a Board that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City.

#### BACKGROUND

Measure II was adopted on November 3, 2020 by the voters of Berkeley to establish an Office of the Director of Police Accountability and create a new Police Accountability Board (hereafter “Board”), both of which are independent of the City Manager. The members of the Board are approved by vote of the full Council.

All applicants are reviewed and their eligibility is verified by city staff against the requirements of the Charter.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable effects on sustainability or the environment associated with the recommendation in this report.

#### RATIONALE FOR RECOMMENDATION

The appointment is provided for by the City Charter and pursuant to the nomination submitted by Councilmember Robinson.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

APPOINTMENT OF JOSHUA CAYETANO TO THE POLICE ACCOUNTABILITY BOARD

WHEREAS, Measure II was adopted on November 3, 2020 by the voters of Berkeley to create a new Police Accountability Board; and

WHEREAS, Article XVIII, Section 125, Part 6 provides for the Council's appointment of board members; and

WHEREAS, the Councilmember Robinson submitted a nominee for appointment by the full council; and

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the following applicant is hereby appointed to the Police Accountability Board:

| <b>Nominee</b>  | <b>Nominated By</b>    |
|-----------------|------------------------|
| Joshua Cayetano | Councilmember Robinson |





Office of the City Manager

CONSENT CALENDAR  
October 3, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Peter Radu, Assistant to the City Manager  
 Subject: Revenue Contract with City of Emeryville for Animal Care Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to enter into a revenue contract and all necessary amendments with the City of Emeryville for a term of 33 months (Oct 6, 2023 – June 30, 2026) at a total amount not to exceed \$235,548.

FISCAL IMPACTS OF RECOMMENDATION

If approved, this recommendation will result in \$235,548 in revenue over 33 months for the City's general fund. Because this contract is strictly for Animal Care Services operations and supports, the funding will be added to the Berkeley Animal Care Services baseline budget into revenue code 011-21-203-000-0000-000-000444310- as follows:

- Year 1 (Oct 6, 2023 – June 30, 2024) - \$61,094
- Year 2 (July 1, 2024 – June 30, 2025) - \$85,938
- Year 3 (July 1, 2025 – June 30, 2026) - \$88,516

CURRENT SITUATION AND ITS EFFECTS

Since 2014, the City of Berkeley Animal Care Services (BACS) has contracted directly with the City of Piedmont to provide limited animal care services (mainly sheltering of animals) for animals coming from the Cities of Piedmont and Emeryville. In turn, Piedmont has contracted directly with Emeryville for the costs associated with Emeryville's share of the contract, which included sheltering at BACS as well as field call support provided by Piedmont's Animal Control Officers. Due to changes in Piedmont's staffing structure and capacity, Piedmont will be canceling their long-standing contract with Emeryville effective October 5, 2023, leaving the City of Emeryville and its animals with no options.

The scope of the proposed contract, which is included as an attachment to this report, includes sheltering and feeding animals from Emeryville and includes other services including limited field support (responding to deceased and injured animals as well as animal bites) and animal quarantining. Costs are based on actual costs associated with these services at BACS and projected based on call volume data received from the City of Emeryville.

### BACKGROUND

Since 2014, the City of Berkeley has contracted with the City of Piedmont to cover limited animal care services for both the City of Piedmont and the City of Emeryville. On Oct 5, 2023, the City of Piedmont will be canceling their contract with Emeryville.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are minimal environmental impacts associated with this contract, which simply shifts the responsibility and associated costs of status quo work already being performed by Piedmont for Emeryville over to Berkeley; if anything, it will result in fewer vehicle miles traveled, given Emeryville's closer proximity to BACS than Piedmont.

### RATIONALE FOR RECOMMENDATION

Emeryville has actively contracted with the City of Piedmont since 1974 for Animal Services. With changes to Piedmont's capacity resulting in the termination of this contract, Emeryville has no options for animal welfare services, some of which Berkeley has already been performing on their behalf, making this contract absorbable at the negotiated price.

### ALTERNATIVE ACTIONS CONSIDERED

Berkeley could choose not to enter into this contract or enter into a more limited scope contract. Given Emeryville's lack of other options for needed animal welfare services and the fact that Emeryville and Berkeley city staff have negotiated a mutually agreeable scope of work and cost, we recommend against these alternative options.

### CONTACT PERSON

Mike St Pierre, Animal Care Services Manager, (510) 681-6603.

#### Attachments:

- 1: Resolution
- 2: Revenue contract with City of Emeryville

RESOLUTION NO. ##,###-N.S.

ENTERING INTO A REVENUE CONTRACT AND ALL NECESSARY AMENDMENTS WITH THE CITY OF EMERYVILLE FOR ANIMAL CARE SERVICES

WHEREAS, the City of Berkeley Animal Care Services (BACS) provides animal sheltering, field services, and other supports not just to the City of Berkeley, but also to the cities of Albany, Piedmont and Emeryville through contracts with those cities, establishing BACS as a regional animal welfare provider for Northern Alameda County; and

WHEREAS, the City of Piedmont, since 1974, has contracted with the City of Emeryville for animal care services including field service calls and sheltering (the latter provided by BACS); and

WHEREAS, the City of Piedmont will cancel their contract with the City of Emeryville effective October 5, 2023, leaving the City of Emeryville with no options for needed animal welfare services; and

WHEREAS, the needs and welfare of animals is not subject to arbitrary jurisdictional borders.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to enter into a revenue contract and all necessary amendments with the City of Emeryville for a term beginning an amount not to exceed \$235,548 for a term beginning October 6, 2023 and ending June 30, 2026.

BE IT FURTHER RESOLVED that these revenues shall be added to the Berkeley Animal Care Services annual baseline budget to offset the direct costs of providing the services outlined in the contract.



**PROFESSIONAL SERVICES CONTRACT**

**THIS PROFESSIONAL SERVICES CONTRACT** (“Contract”) is effective as of \_\_\_\_\_ (the “Effective Date”), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, (“City”) and **CITY OF BERKELEY** (“Contractor”), individually referred to as a “Party” and collectively as the “Parties”.

**WITNESSETH THAT**

**WHEREAS**, the City desires to engage Contractor for Animal Control Services; and

**WHEREAS**, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Contract; and

**WHEREAS**, the City has determined that the Contractor is qualified by training and experience to render such services; and

**WHEREAS**, the Contractor desires to provide such services; and,

**WHEREAS**, the public interest will be served by this Contract; and

**NOW, THEREFORE**, the Parties hereto do mutually agree as follows:

**1. SCOPE OF SERVICES AND TERMINATION DATE**

**1.1 Project Description**

A complete project description is set forth in the Scope of Work, attached hereto as **Exhibit A** and incorporated herein by this reference.

**1.2 Services**

The services to be completed under this Contract (“Services”) are described in the Scope of Work set forth in **Exhibit A**. The Services shall be performed in accordance with terms, conditions, and specifications set forth herein. To the extent there is a conflict between the Scope of Work, and the terms, conditions, and specifications set forth herein, the terms, conditions, and specifications set forth herein shall govern.

**1.3 Schedule and Completion Date**

The Services to be provided by Contractor under this Contract shall commence on the Effective Date and terminate on **JUNE 30, 2026**. The Parties may, by mutual, written consent, extend the term of this Contract.

| FOR CITY USE ONLY |  |             |  |
|-------------------|--|-------------|--|
| Contract No.      |  | CIP No.     |  |
| Resolution No.    |  | Project No. |  |

## 2. WORK CHANGES

### 2.1 *City Rights to Change*

The City reserves the right to order changes in the Services to be performed under this Contract by altering, adding to or deducting from the Scope of Work. All such changes shall be incorporated in amendments executed by the Contractor and the City. Such amendments shall specify the changes ordered and any necessary adjustment of compensation and completion time.

### 2.2 *Additional Work Changes*

Any work added to the Scope of Work by an amendment shall be executed under all the applicable conditions of this Contract. No claim for additional compensation or extension of time shall be recognized unless contained in an amendment duly executed on behalf of the City and the Contractor.

### 2.3 *City Manager Execution*

The City Manager has authority to execute without further action of the Emeryville City Council, any number of amendments so long as their total effect does not materially alter the terms of this Contract or increase the total amount to be paid under this Contract, as set forth in Section 3.2 below.

## 3. COMPENSATION AND METHOD OF PAYMENT

### 3.1 *Compensation for Services Performed*

City agrees to pay the Contractor for the Services performed and costs incurred by Contractor upon certification by the City that the Services were actually performed and costs actually incurred in accordance with the Contract. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the City of invoices setting forth in detail the Services performed and costs incurred. The City shall pay the Contractor within forty-five (45) days after approval of the invoice by City staff.

### 3.2 *Total Compensation Amount*

The total amount paid under this Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **TWO HUNDRED THIRTY FIVE THOUSAND FIVE HUNDRED FORTY EIGHT DOLLARS AND NO CENTS (\$235,548.00)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be as set forth in **Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

## **4. COVENANTS OF CONTRACTOR**

### **4.1 *Assignment of Contract***

The Contractor covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Contract, without the prior express written consent of the City. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them and the City shall have no obligation to them.

### **4.2 *Responsibility of Contractor and Indemnification of City***

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Contractor or subcontractors as well as any claim by any employee, agent, Contractor or independent contractor hired or employed by Contractor that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Contract.

If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

### **4.3 *Independent Contractor***

The Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Services as an independent contractor and not as the agent or employee of the City. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the Services; hiring of contractors, agents or employees to complete the Services; and the payment of

employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

#### **4.4 Insurance**

Contractor shall not commence Services under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under **Exhibit B**, attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under **Exhibit B**. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

#### **4.5 Records, Reports and Audits**

##### 4.5.1 Records

- A. Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the City with respect to all matters covered by this Contract. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Contract. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

##### 4.5.2 Reports and Information

Upon request, the Contractor shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Contract in the form requested by the City.

##### 4.5.3 Audits and Inspections

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Contract. The Contractor will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Contract.

#### **4.6 Conflicts of Interest**

The Contractor covenants and declares that, other than this Contract, it has no holdings or interests within the City of Emeryville, nor business holdings, contracts or agreements with any official, employee or other representative of the City. For the duration of this Contract, in the event the Contractor or its principals, agents or employees acquire such a holding, interest, contract, or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Contractor will immediately notify the City of such holding, interest, contract, or agreement in writing.

#### **4.7 Confidentiality**

The Contractor agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

#### **4.8 Discrimination Prohibited**

The Contractor covenants and agrees that in performing the Services required under this Contract, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability, except as provided in section 12940 of the Government Code.

#### **4.9 Licenses, Certifications and Permits**

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Services contracted for under this Contract. All work performed by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

#### **4.10 Key Personnel**

*The Project Manager is / Key Personnel are* necessary for the successful prosecution of the Services due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team without the City's approval. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Contract and shall be grounds for termination.



#### **4.11 Authority to Contract**

The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Contractor to the terms of this Contract, if applicable.

#### **4.12 Ownership of Work**

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the Services to be performed by the Contractor (“Materials”) shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Contractor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

#### **4.13 City Labor Requirements**

##### 4.13.1 Compliance

At the Effective Date, compliance with the City’s living wage ordinance is  **required** /  **not required** for this Contract. If this Contract provides for compensation to Contractor of \$25,000 or more within a single fiscal year for providing Services to the City, then Contractor shall comply with the requirements of the City’s Living Wage Ordinance set forth in [Chapter 31 of Title 5 of the Emeryville Municipal Code](#), unless (i) Contractor is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City’s laws.

##### 4.13.2 Applicability

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Contractor who perform at least twenty-five percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to [Section 5-31.08 of the Emeryville Municipal Code](#). Contractor shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

##### 4.13.3 Non-Compliance

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor for back pay, reinstatement and

compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

#### 4.13.4 Living Wage

Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$18.00 PER HOUR** (which is [subject to increase annually on July 1st](#) to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

#### 4.13.5 Minimum Wage and Paid Sick Leave

In addition to the Living Wage Ordinance, the Contractor may be required to comply with the [City's Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance](#), as set forth in [Chapter 37 of Title 5 of the Emeryville Municipal Code](#), to the extent it is applicable.

### **4.14 California Labor Requirements**

#### 4.14.1 Prevailing Wage Requirements

Contractor is aware of the requirements of [California Labor Code](#) Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

#### 4.14.2 Registration

If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Contract and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

#### 4.14.3 Labor Compliance Oversight

This Contract may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

#### 4.14.4 Workers’ Compensation

Pursuant to the requirements of section 1860 of the [California Labor Code](#), Contractor will be required to secure the payment of workers’ compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following:

“I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

#### 4.14.5 Event of Default

Failure by Contractor to comply with any provision of this Section shall constitute a default of this Contract and shall be grounds for termination as provided in this Contract.

### 5. **TERMINATION**

- A. The City shall have the right to terminate this Contract for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.

- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Contractor for Services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Contractor shall: (1) promptly discontinue all Services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Contract, whether completed or in process, in the form specified by the City.
- E. Notwithstanding anything to the contrary, this Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.
- F. The rights and remedies of the City and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Contract or at law or in equity.

**6. NO PERSONAL LIABILITY**

No member, official or employee of the City shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Contract.

**7. ENTIRE AGREEMENT**

This Contract constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Contract not contained in this Contract shall be valid or binding. This Contract may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

**8. SUCCESSORS AND ASSIGNS**

Subject to the provisions of this Contract regarding assignment, this Contract shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

**9. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE**

If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any

other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Contract shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

**10. SEVERABILITY**

The caption or headnote on articles or sections of this Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Contract nor in any way affect this Contract. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Contract shall remain in full force and effect to the extent possible.

**11. BUSINESS TAX CERTIFICATE**

Prior to commencement of the Services to be provided hereunder, Contractor shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business tax and maintain said business tax certificate during the term of this Contract, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

**12. NOTICES**

**12.1 Communications Relating to Daily Activities**

All communications relating to the day-to-day activities of the work and invoices shall be exchanged between **Pedro Jimenez** for the City and **Mike St. Pierre** for the Contractor:

| <b>CITY</b>                                                                                         | <b>CONTRACTOR</b>                                                                                       |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| Pedro Jimenez, Assistant City Manager<br>Phone No: 510-596-3770<br>E-Mail : pjimenez@emeryville.org | Mike St. Pierre, Animal Services Manager<br>Phone No: 510-981-6600<br>E-Mail : MStPierre@berkeleyca.gov |

**12.2 Official Notices**

All other notices, writings or correspondence as required by this Contract shall be directed to the City and the Contractor, respectively, as follows:

| <b>CITY</b>                                                                                                                                                                                                                                                                                                                                                     | <b>CONTRACTOR</b>                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Paul Buddenhagen, City Manager<br/>1333 Park Ave<br/>Emeryville, California 94608<br/>Phone No: 510-596-4371<br/>E-Mail :<br/>paul.buddenhagen@emeryville.org</p> <p><i>with a copy to:</i><br/>Pedro Jimenez, Assistant City Manager<br/>1333 Park Ave<br/>Emeryville, California 94608<br/>Phone No: 510-596-3370<br/>E-Mail : pjimenez@emeryville.org</p> | <p>Dee Williams-Ridley, City Manager<br/>2180 Williams-Ridley<br/>Berkeley, Ca 94704<br/>Phone No: 510-981-7000<br/>E-Mail : DWilliams-<br/>Ridley@berkeleyca.gov</p> |

**13. COUNTERPARTS**

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

**14. NO THIRD-PARTY BENEFICIARIES**

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

**15. NON-EXCLUSIVITY**

City reserves right to employ other contractors in connection with the Services covered under this Contract.

**16. ASSIGNMENT OR TRANSFER**

Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Contract or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

**17. WAIVER**

The City's failure to enforce any provision of this Contract or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

**18. OTHER REQUIREMENTS**

Compliance with terms and conditions set forth in **Exhibit C** is  **required** /  **not required** for this Contract. Contractor shall also fully and adequately comply with the provisions included in **Exhibit C** ("Other Requirements") when attached hereto and incorporated herein by reference ("Other Requirements"). With respect to any conflict between such Other Requirements and the terms of this Contract and/or the provisions of state law, **Exhibit C** shall control.

*SIGNATURES ON FOLLOWING PAGE*

**19. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT**

**IN WITNESS WHEREOF** the City and the Contractor have executed this Contract, which shall become effective as of the date first written above.

Approved As To Form:

\_\_\_\_\_  
City Attorney

Dated: **CITY OF EMERYVILLE**

\_\_\_\_\_  
City Manager

Dated: **CITY OF BERKELEY**

\_\_\_\_\_  
Dee Williams-Ridley, City Manager *(Signature)*

|                             |                                                 |
|-----------------------------|-------------------------------------------------|
| <i>Attach:<br/>W-9 Form</i> | <i>Attach:<br/>Business License Certificate</i> |
|-----------------------------|-------------------------------------------------|



**Exhibit A**

*Scope of Services*

- A. The City of Berkeley shall provide the following services to and on behalf of the City of Emeryville:
- ❖ Shelter and feed animals brought to the Berkeley Animal Shelter by employees of the City of Emeryville Police Department or by residents of the City of Emeryville
  - ❖ Euthanize, after the legal holding period and only as necessary, animals brought to the Berkeley Animal Shelter by the City of Emeryville.
  - ❖ Quarantine animals, as necessary, for rabies observation for and on behalf of the City of Emeryville and its residents.
  - ❖ Disposal of deceased animals brought to Berkeley Animal Care services by employees or residents of the City of Emeryville.
  - ❖ Respond to calls from the City of Emeryville about deceased, injured, and bite animals, and provide necessary field service.
- B. The City of Emeryville agrees to:
- ❖ Provide all necessary pre-shelter and after-hours veterinary care through direct arrangements with clinics and/or emergency veterinarians. In the event that a City of Berkeley ACO picks up the injured animal, the City of Emeryville will advise which clinic to take the animal to.
  - ❖ Reimburse the City of Berkeley for the actual costs of providing care, plus an administrative fee of 15%, if the City of Emeryville fails to provide the necessary pre-shelter veterinary care.
  - ❖ Make payments to the City of Berkeley in which annual fees are due under this agreement on or before June 30th of each calendar year.
  - ❖ Not bring healthy wildlife to the Berkeley Animal Shelter under any circumstances.
  - ❖ Not deliver to the shelter in excess of 15 animals in a period of a day, or more than 30 animals per week unless prior arrangements have been made between both parties.
  - ❖ Be responsible for payment of testing fees for rabid animals. In the event that an animal must be immediately euthanized upon delivery to the shelter, a Berkeley Animal Shelter employee will humanely euthanize the animal and obtain the specimen required by the laboratory, however, it will be up to the City of Emeryville to pursue any necessary testing and taking delivery of said specimen to the laboratory.
  - ❖ Follow the procedures for bringing an animal to Berkeley Animal Care Services, including all required paperwork and history.
  - ❖ Responsible for their own record keeping of Emeryville animals brought to BACS.
  - ❖ Oversee all aspects of the licensing of animals residing in the City of Emeryville.

- ❖ Enforce and uphold the mandatory spay or neutering of all animals being returned to their owners, pursuant to Emeryville Municipal Code 6-1.304 and Berkeley Municipal Code 10.4.206. In the event that the animal owner requests a hearing, it shall be the responsibility of the City of Emeryville to schedule and conduct the hearing.

C. Under the agreement, the City of Berkeley shall not be obligated to provide any of the following services:

- ❖ Emergency veterinary care (pre-shelter or after hours).
- ❖ Patrolling of the City of Emeryville by a Berkeley Animal Care Services ACO.
- ❖ Collection of fees penalties, or monies of any kind or on behalf of the City of Emeryville.
- ❖ Field Services unrelated to deceased, injured, or bite animals, for or on behalf of the City of Emeryville, including but not limited to stray animals, barking dogs, animal left in vehicle, and unattended/unleashed animals.
- ❖ Investigation into bite cases, pursuing dangerous dog designation, and any other follow on the animal.
- ❖ Maintenance of records for or on behalf of the City of Emeryville

The budget info for the contract term: 33 months (Oct 6, 2023 – June 30, 2026)

FY24- \$61,094 (prorated)

FY25- \$85,938

FY26- \$88,516

\$235,548 (includes prorated FY24)



## EXHIBIT B Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **CITY OF BERKELEY**.

### 1. MINIMUM REQUIREMENTS

Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or Services required by the Contract hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage, as checked below:

#### 1.1 *Minimum Scope of Insurance*

Coverage shall be at least as broad as the latest version of the following:

- General Liability**  
Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- Automobile Liability**  
Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto) or if Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the General Liability Policy.
- Professional Liability / Errors and Omissions**  
Written on a policy form specifically designed to protect against acts, errors or omissions of the Contractor wherein "Covered Professional Services" as designated in the policy must specifically include Services performed under this Contract.
- Workers' Compensation and Employer's Liability**  
Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.
- Pollution Liability Insurance**  
Pollution Liability insurance for claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater. This shall

include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks.

### 1.2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

**General Liability**

**All Contract Types**

**\$1,000,000.00** per occurrence and **\$2,000,000.00** aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability.

**OR**

**Construction Specific**

**\$2,000,000.00** per occurrence and **\$4,000,000.00** aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability, and coverage for explosion, collapse and underground property damage hazards.

**Automobile Liability**

**\$2,000,000.00** per accident for bodily injury and property damage.

**Professional Liability / Errors and Omissions**

**\$2,000,000.00** per claim and aggregate.

**Workers' Compensation and Employer's Liability**

Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of **\$1,000,000.00** each accident, policy limit bodily injury or disease, and each employee bodily injury or disease.

**Pollution Liability Insurance**

**\$2,000,000.00** per occurrence and **\$2,000,000.00** aggregate.

Except for the professional liability / errors and omissions policy, defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the Parties required to be named as additional insureds pursuant to this Contract.

## 2. INSURANCE ENDORSEMENTS

The insurance policies shall contain the following provisions, if checked, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions, if checked, to the insurance policies:

□ **General Liability**

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 or CG20 37, or endorsements providing the exact same coverage, with respect to the work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it; and (4) the insurance coverage shall contain standard separation of insureds provisions.

□ **Automobile Liability**

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

□ **Professional Liability Coverage**

Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and Contractor agrees to maintain continuous coverage through a period no less than three years after termination of the Contract.

**☐ Workers' Compensation and Employer's Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

**☐ Pollution Liability Coverage**

(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

**ALL COVERAGES**

Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

**3. NO SPECIAL LIMITATIONS**

The required insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

**4. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS**

Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

**5. ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

**6. VERIFICATION OF COVERAGE**

Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**7. SUBCONTRACTORS**

All subcontractors shall meet the requirements of this Section before commencing any work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

**8. REPORTING OF CLAIMS**

Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the work performed under this Contract.

*Attach:*  
*Insurance Certificate and Endorsements*







Office of the City Manager

CONSENT CALENDAR  
October 3, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 3, 2023

RECOMMENDATION

Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is **\$9,284,266**

| <u>PROJECT</u>                                  | <u>Fund</u>                     | <u>Source</u>                                                                                    | <u>Amount</u>      |
|-------------------------------------------------|---------------------------------|--------------------------------------------------------------------------------------------------|--------------------|
| Housing Inspection Software                     | 129                             | Rental Housing Safety Program                                                                    | \$150,000          |
| FY24 Sidewalk Repair Project                    | 127<br>133<br>134<br>149        | State Transportation Tax<br>Measure F<br>Measure BB<br>Private Party Sidewalks                   | \$1,181,266        |
| Whistleblower Hotline                           | 011                             | General Fund                                                                                     | \$100,000          |
| Library Technology Roadmap                      | 101                             | Library Tax                                                                                      | \$100,000          |
| Berkeley Marina Docks D & E Replacement Project | 011<br>606<br>511<br>608<br>501 | General Fund<br>State Coastal Conservancy Grant Fund<br>Measure T1 P2<br>Marina Fund<br>CIP Fund | \$7,753,000        |
| <b>Total:</b>                                   |                                 |                                                                                                  | <b>\$9,284,266</b> |

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on October 3, 2023

CONSENT CALENDAR  
October 3, 2023

### CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager's purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

### BACKGROUND

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager's purchasing authority for services.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City's environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

### RATIONALE FOR RECOMMENDATION

Need for the goods and/or services.

### ALTERNATIVE ACTIONS CONSIDERED

None.

### CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on October 3, 2023

CONSENT CALENDAR  
October 3, 2023

Attachments:

1: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance  
After Council Approval on October 3, 2023

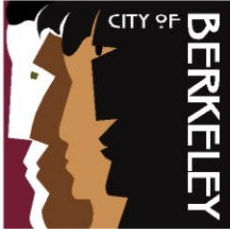
- a. Housing Inspection Software
- b. FY 24 Sidewalk Repair Project
- c. Whistleblower Hotline
- d. Library Technology Roadmap
- e. Berkeley Marina Docks D & E Replacement Project

Note: Original of this attachment with live signature of authorizing personnel is on file in  
General Services.

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                              | ESTIMATED COST         | BUDGET CODE TO BE CHARGED                                                                                                                                                                                                                                                                                                                                                                 | DEPT. / DIVISION                                      | CONTACT NAME & PHONE                                       |
|--------------------|-------------------------------------------------|----------------------|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|------------------------------------------------------------|
| 24-11628-C         | Housing Inspection Software                     | 9/21/23              | 10/24/2023               | Cloud-based government software for code enforcement and proactive housing inspections                                                                                                    | \$ 150,000.00          | 129-53-585-635-0000-000-441-613130                                                                                                                                                                                                                                                                                                                                                        | Planning / Building Safety                            | Jenny McNulty, x7451                                       |
| <b>DEPT. TOTAL</b> |                                                 |                      |                          |                                                                                                                                                                                           | <b>\$ 150,000.00</b>   |                                                                                                                                                                                                                                                                                                                                                                                           |                                                       |                                                            |
| 24-11629-C         | FY 2024 Sidewalk Repair Project                 | 10/12/23             | 10/31/2023               | Repair sidewalk from the 50-50 Sidewalk Program waitlist                                                                                                                                  | \$ 1,181,266.00        | \$985,000 in Funding entered in BA 2024/02/944<br><br>\$100,000 IN 127, \$100,000 IN 134, \$200,000 in 133, and \$50,000 in 149 in AAO1 Carryover request.                                                                                                                                                                                                                                | Public Works/ Engineering                             | Srinivas Muktevi 981-6402<br><br>Terrence Salonga 981-6447 |
| <b>DEPT. TOTAL</b> |                                                 |                      |                          |                                                                                                                                                                                           | <b>\$ 1,181,266.00</b> |                                                                                                                                                                                                                                                                                                                                                                                           |                                                       |                                                            |
| 24-11630-C         | Whistleblower Hotline                           | 1/1/24               | Feb-24                   | Whistleblower Hotline                                                                                                                                                                     | \$ 100,000.00          | 011-12-122-000-0000-000-411-612990-                                                                                                                                                                                                                                                                                                                                                       | Auditor/Performance                                   | Erin Mullen, 6756                                          |
| <b>DEPT. TOTAL</b> |                                                 |                      |                          |                                                                                                                                                                                           | <b>\$ 100,000.00</b>   |                                                                                                                                                                                                                                                                                                                                                                                           |                                                       |                                                            |
| 24-11632-C         | Library Technology Roadmap                      | 11/1/2023            | 12/1/2023                | Consultant to map out future of Library technology                                                                                                                                        | \$ 100,000.00          | 101-22-242-271-0000-000-463-612990-                                                                                                                                                                                                                                                                                                                                                       | Library / Director                                    | Henry Bankhead 981-6109                                    |
| <b>DEPT. TOTAL</b> |                                                 |                      |                          |                                                                                                                                                                                           | <b>\$ 100,000.00</b>   |                                                                                                                                                                                                                                                                                                                                                                                           |                                                       |                                                            |
| 24-11633-C         | Berkeley Marina Docks D & E Replacement Project | Oct-23               | Nov-23                   | Replacement of Marina Docks D & E, including demolition of existing docks, procurement and installation new dock float system, gangway, concrete piling, utilities and other accessories. | \$ 7,753,000.00        | PRWT122013<br><br>General Fund – \$5.5M<br>011-52-545-000-0000-000-461-663110-<br><br>State Coastal Conservancy Grant Fund – \$1.5M<br>606-52-545-000-0000-000-461-663110-<br><br>Measure T1 P2- \$168,000<br>511-52-545-000-0000-000-461-663110-<br><br>Marina Fund - \$485,000<br>608-52-545-000-0000-000-461-663110-<br><br>CIP Fund- \$100,000<br>501-52-545-000-0000-000-461-663110- | Parks, Recreation, & Waterfront / Capital Projects-WF | Nelson Lam 6395<br><br>Jesus Espinoza 6708                 |
| <b>DEPT. TOTAL</b> |                                                 |                      |                          |                                                                                                                                                                                           | <b>\$ 7,753,000.00</b> |                                                                                                                                                                                                                                                                                                                                                                                           |                                                       |                                                            |
| <b>TOTAL</b>       |                                                 |                      |                          |                                                                                                                                                                                           | <b>\$ 9,284,266.00</b> |                                                                                                                                                                                                                                                                                                                                                                                           |                                                       |                                                            |







Office of the City Manager

CONSENT CALENDAR

October 3, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kevin Fong, Director, Department of Information Technology  
 Subject: Contract No. 9791 Amendment: Environmental Systems Research Institute, Inc. (ESRI) for Enterprise Graphical Information Systems (GIS) Software License Maintenance and Support

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9791 with Environmental Systems Research Institute, Inc. (Esri) for Enterprise GIS software license maintenance and support, increasing the amount by \$279,750 for a not-to-exceed total of \$900,750 for the period of July 1, 2023 through June 30, 2026.

FISCAL IMPACTS OF RECOMMENDATION

Funding is allocated in the Department of Information Technology's Cost Allocation Budget and is subject to Council's approval of the proposed city-wide Budget and Annual Appropriation Ordinances:

|                  |                                                                  |
|------------------|------------------------------------------------------------------|
| \$93,250         | FY 2024: Fund 680<br>Information Technology Cost Allocation Fund |
| \$93,250         | FY 2025: Fund 680<br>Information Technology Cost Allocation Fund |
| \$93,250         | FY 2026: Fund 680<br>Information Technology Cost Allocation Fund |
| <b>\$279,750</b> | <b>Total FY 2024-2026 Software Maintenance</b>                   |
|                  |                                                                  |
| \$621,000        | Current Contract Value                                           |
|                  |                                                                  |
| <b>\$900,750</b> | <b>Not-to-Exceed Total through June 30, 2026</b>                 |

### CURRENT SITUATION AND ITS EFFECTS

Environmental Systems Research Institute, Inc. provides essential Geographic Information System (GIS) services and software to City staff and community members through internal and external websites. Esri is an international supplier of GIS services and software and their ArcGIS software is an open and interoperable technology platform that provides mapping, analysis, and data management.

The City uses Esri services and software to provide authoritative data, map services and web services. Esri map services are integrated into essential business applications used for public safety dispatch, licensing, permitting, asset management, Customer Relationship Management (CRM), and vehicle routing. Its use by many departmental staff such as Permit Center counter staff, customer service representatives, public safety dispatchers, crime analysts, planners, engineers, and solid waste supervisors is increasing. Specific examples of use include:

- Reviewing and approving development related projects that require the issuance of building permits.
- Identifying addresses to send out information about community programs and events.
- Sending out bills, submitting property tax assessment data to Alameda County and for business license renewals.
- Responding to service calls and fire inspections.

The City's current GIS enterprise license agreement (ELA) with Esri expires June 30, 2023. This contract will continue use of Esri's online GIS services as well as renew the City's enterprise GIS software license, which includes maintenance and support for July 1, 2023 through June 30, 2026.

### BACKGROUND

City staff began using Esri GIS software in 2000. Initially, this use was confined to single projects on a few desktops. Often, GIS gave staff better tools for analyzing land use when preparing a general plan and as the benefits of GIS became more widely known, GIS services expanded to other departments such as Public Safety, Public Works, Planning and Development.

In 2005, the Department of Information Technology (IT) began using Esri data and web server software to build the city's current Enterprise GIS, making GIS technology accessible throughout the organization.

In 2008, IT consolidated various departmental Esri software maintenance agreements into an enterprise license agreement (ELA), the Small Municipal and County Government



ELA program, which allows an unlimited number of users to access Esri GIS products and services.

In 2015, the City launched the Open Data Portal that uses GIS data in Esri format, including parcels, streets, council districts, police beats, bikeways and City trees. The data is available for download from the City's Open Data portal.

In 2016, IT migrated its Enterprise GIS data from a legacy data model to Esri's "Local Government Information Model" (LGIM) in order to leverage generic services, applications, and workflows made available by Esri for deployments that use the LGIM.

In 2019, IT launched the GIS Community Portal: <https://www.cityofberkeley.info/gisportal>. This portal allows community members to enter an address and receive regulation information for the entered property.

Additionally, the City uses Esri services and software to provide GIS solutions to the Berkeley community including a parcel conditions viewer, redistricting maps and data, zoning maps and numerous other maps. The Esri online GIS site, ArcGIS Online, hosts the city's story maps for capital improvement projects and City parks, as well as web maps for bicycle parking, tobacco retailer's restricted areas and solar installations.

#### ENVIRONMENTAL SUSTAINABILITY

Esri GIS provides the technological and scientific support necessary to create programs and processes that increase environmental sustainability. Public Works uses Esri desktop software to increase the efficiency of fleet vehicles by optimizing standard routes and subsequently reducing fuel consumption. Planning uses Esri's ArcGIS Online to promote investment in solar energy. The GIS Community Portal allows residents, businesses, city officials, and developers the ability to better understand what zoning and land use policies apply to properties of interest to them, without the need to call staff necessarily.

Esri GIS services and software support the city's digital map room. This reduces paper usage and the need for community members to visit the City to purchase paper maps.

### RATIONALE FOR RECOMMENDATION

GIS is integral to City operations, decision making, and communication. Esri GIS services and software provide geographic information to analysts, decision makers, field staff, and the public through mobile, Web, and desktop clients. Esri's ELA program provides a cost-effective way to deploy GIS into city operations and business processes such as permitting, licenses, CRM, asset management and public safety dispatch. The ELA program provides numerous benefits including:

- A lower cost per unit for licensed software and substantially reduced administrative and procurement expenses
- Maintenance on all Esri software deployed under the agreement
- Complete flexibility to deploy software products when and where needed
- ArcGIS for Desktop software and extensions including ArcGIS Spatial Analyst and 3D Analyst, ArcGIS for Server software for interactive mapping and data management, and ArcGIS Online subscription (Esri's online GIS site for hosted mapping, routing and demographics analyses)
- 4 user conference passes for staff, and Web Training
- Authorized Technical Support Callers

### ALTERNATIVE ACTIONS CONSIDERED

Staff considered not renewing Esri's licenses; however, Esri retains exclusive rights to their software. Esri is an industry leader of GIS software who has developed a platform that includes an expansive network of third-party software solutions that the City utilizes. These solutions include but are not limited to Accela, RouteSmart, and New World computer aided dispatch (CAD). Furthermore, Esri software is used by most jurisdictions in the region, which offers potential GIS data sharing for regional coordination initiatives.

### CONTACT PERSON

Kevin Fong, Director, Department of Information Technology, 510-981-6541

Attachments:

1: Resolution

RESOLUTION NO. ##, 'l#f.#-N.S.

CONTRACT NO. 9791 AMENDMENT: ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (ESRI), FOR GIS ENTERPRISE SOFTWARE LICENSE MAINTENANCE AND SUPPORT

WHEREAS, the City of Berkeley's current enterprise license agreement with Esri expires June 30, 2023; and

WHEREAS, Esri provides essential GIS services and software to City staff and community members; and

WHEREAS, the City of Berkeley has identified the need to continue use of Esri's GIS professional services and software; and

WHEREAS, the Esri licensing agreement, the Small Municipal and County Government Enterprise License Agreement program provides a cost-effective way to deploy GIS into the city operations and business processes; and

WHEREAS, the contract scope of services and payment will coincide with an Esri licensing agreement, the Small Municipal and County Government Enterprise License Agreement program; and

WHEREAS, In May 2017, The City Council adopted Resolution No. 67,965 to authorize City Manager to execute Contract No. 9791 with Environmental Systems Research Institute, Inc. (Esri) in the amount by \$225,000 for a not-to-exceed total of \$396,000 for the period of July 1, 2014 through June 30, 2020; and

WHEREAS, In January 2020, The City Council adopted Resolution No. 69,255 to authorize City Manager to execute Contract No. 9791 with Environmental Systems Research Institute, Inc. (Esri) in the amount by \$225,000 for a not-to-exceed total of \$621,000 for the period of July 1, 2020 through June 30, 2023; and

WHEREAS, funding has been identified in the Department of Information Technology's Fiscal Year 2024 Cost Allocation Budget and the funding for FY 25 and FY 26 is subject to Council's approval of the proposed citywide Fiscal Year 2025 and Fiscal Year 2026 Budget and Annual Appropriation Ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute any amendment to Contract No. 9791 with Environmental Systems Research Institute, Inc. (Esri) for online Geographic Information System (GIS) software license maintenance and support increasing the amount by \$279,750 for a not-to-exceed total of \$900,750 for the period of July 1, 2023 through June 30, 2026.





Office of the City Manager

CONSENT CALENDAR  
October 3, 2023

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Kevin Fong, Director, Department of Information Technology  
Subject: Contract No. 114382-1 Amendment: M.C. Dean for UPS Maintenance

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 114382-1 with M.C. Dean, Inc. for Uninterrupted Power Supply (UPS) maintenance, increasing the amount by \$115,016 for a total not to exceed \$261,922 and extending the term to June 30, 2026.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the additional \$115,016 is budgeted in the Department of Information Technology's Fiscal Year (FY) 2024-2026 IT Cost Allocation Fund as itemized below. Ongoing funding in future fiscal years is subject to Council approval of the proposed citywide budget and annual appropriation ordinances.

**Summary:**

|                  |                                                           |
|------------------|-----------------------------------------------------------|
| \$36,484         | FY 2024 Total UPS Maintenance Fund 680-IT Cost Allocation |
| \$38,308         | FY 2025 Total UPS Maintenance Fund 680-IT Cost Allocation |
| \$40,224         | FY 2026 Total UPS Maintenance Fund 680-IT Cost Allocation |
| <b>\$115,016</b> | <b>FY 2024-2026 Total UPS Maintenance</b>                 |

CURRENT SITUATION AND ITS EFFECTS

Uninterrupted Power Supplies (UPS) provide continued operation of critical network equipment and servers during planned and unplanned power outages, including the PG&E Public Safety Power Shutoff (PSPS) program, while also protecting network equipment and servers from damage in the event of a power irregularity (such as a spike or brownout). Routine health checks and maintenance, including battery replacement, is critical to ensure that UPS equipment functions as designed to protect City assets and help maintain continuity of service. The Department of Information Technology (IT) has been using M.C. Dean for routine UPS maintenance since 2014, and has been satisfied with the quality of service they provide.

### BACKGROUND

In July 2014, The City Manager approved a contract with M.C. Dean, Inc. (formerly Tima Power Systems) based on Request for Proposal#: 14-10797, for services and hardware for the Uninterrupted Power Supply (UPS) system.

In April 2017, The City Manager approved an amendment and assignment of the original contract with Tima Power Systems, Inc., assigning the contract to M.C. Dean, Inc.

In June 2017, The City Council approved an amendment with M.C. Dean, Inc. (formerly Tima Power Systems), for Uninterrupted Power Supply (UPS) Maintenance and Repair.

In September 2020, The City Council approved an amendment with M.C. Dean, Inc., for Uninterrupted Power Supply (UPS) Maintenance and Repair.

### RATIONALE FOR RECOMMENDATION

M.C. Dean, Inc. provides comprehensive service in the critical power industry, providing UPS maintenance, repair, and battery replacement for commercial, government, industrial, institutional, and educational clients for more than 50 years. M.C. Dean is very familiar with the City's IT UPS configuration, and has provided maintenance since 2014. IT has been satisfied with the quality of service M.C. Dean provides.

### ALTERNATIVE ACTIONS CONSIDERED

IT considered foregoing scheduled maintenance on the UPS systems, however due to the critical nature of the equipment being protected by the UPS systems, and the implementation of the PG&E Public Safety Power Shutoff (PSPS) program, IT considers it necessary to keep this equipment on a regular maintenance schedule.

### ENVIRONMENTAL SUSTAINABILTY

M.C. Dean follows Environmental Protection Agency (EPA) standards for proper disposal of replacement batteries.

### CONTACT PERSON

Kevin Fong, Director, Department of Information Technology, 981-6500

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

CONTRACT NO. 114382-1 Amendment: M.C. Dean for UPS Maintenance

WHEREAS, Uninterrupted Power Supplies (UPS) provide continued operation of critical network equipment and servers during a power outage, while also protecting network equipment and servers from damage in the event of a power spike; and

WHEREAS, the PG&E Public Safety Power Outage (PSPS) Program increases the chances of a planned power outage in the area; and

WHEREAS, In July 2014, The City Manager approved a contract with M.C. Dean, Inc. (formerly Tima Power Systems) based on Request for Proposal#: 14-10797, for services and hardware for the Uninterrupted Power Supply (UPS) system.

WHEREAS, In April 2017, The City Manager approved an amendment and assignment of the original contract with Tima Power Systems, Inc., assigning the contract to M.C. Dean, Inc.; and

WHEREAS, In June 2017, The City Council approved an amendment with M.C. Dean, Inc. (formerly Tima Power Systems), for Uninterrupted Power Supply (UPS) Maintenance and Repair; and

WHEREAS, In September 2020, by Resolution No. 69,553-N.S., The City Council approved an amendment with M.C. Dean, Inc. (formerly Tima Power Systems), for Uninterrupted Power Supply (UPS) Maintenance and Repair; and

WHEREAS, M.C. Dean, Inc. provides comprehensive service in the critical power industry, providing UPS maintenance, repair, and battery replacement for commercial, government, industrial, institutional, and educational clients for more than 50 years; and

WHEREAS, funding for the additional \$115,016 is budgeted in the Department of Information Technology's Fiscal Year (FY) 2024-2026 IT Cost Allocation Fund, and funding in future fiscal years is subject to council approval of the proposed citywide budget and annual appropriation ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend the City's agreement with M.C. Dean, Inc., increasing the amount by \$115,016 for UPS Maintenance for a total contract amount not to exceed \$261,922 for the period July 1, 2014 to June 30, 2026.







Office of the City Manager

**PUBLIC HEARING**  
 October 3, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: David Sprague, Fire Chief  
 Subject: Ambulance Transport Fee Increase

**RECOMMENDATION**

Conduct a public hearing and upon conclusion, adopt a Resolution adjusting the Ambulance User Fee to match Alameda County’s approved ambulance user fee schedule made effective July 1, 2023, for the Cities of Alameda, Albany, Berkeley, and Piedmont. The increase would be included as an updated addendum to the Ambulance Provider Agreement, and rescinding Resolution 70,726–N.S.

**FISCAL IMPACTS OF RECOMMENDATION**

The Alameda County Health Care Services Agency notified the City on July 12, 2023 that they had approved an increase in the Bundled Base Rate User Fee that may be charged by the County’s 911 Ambulance Transport Service Provider. Under the terms of the of Berkeley’s Emergency Medical Services Ambulance Transport Services Agreement, the City may increase its Bundled Base Rate to \$3,664.87, Mileage to \$82.69, Oxygen to \$273.79, and Treatment/Non-Transport to \$735.01 beginning July 1, 2023. The City will increase its rate effective November 1, 2023 and will not apply the increase retroactively. These adjustments account for the increased cost of ambulance transport, paramedic services, and medical equipment/supplies.

|                             | <b>Existing</b> | <b>Proposed</b> |
|-----------------------------|-----------------|-----------------|
| Base Rate                   | \$3,331.40      | \$3,664.87      |
| Mileage                     | \$75.17         | \$82.69         |
| Oxygen                      | \$248.88        | \$273.79        |
| Treatment / Non-Transport * | \$668.13        | \$735.01        |

*\*This rate shall be limited to patients who receive a medical intervention, such as intravenous medication administration, and subsequently refuse transport. Patient assessment, including ECG monitoring, does not constitute treatment.*

### CURRENT SITUATION AND ITS EFFECTS

Under the terms of the Alameda County Ambulance Provider Agreement, Alameda County Board of Supervisors is responsible for setting and approving any fees that are applicable to all providers. The increases are either COLA or base rate adjustments. For the City of Berkeley, the last rate increase was approved by the City Council on March 14, 2023 (Resolution 70,726–N.S.); and the rate increase was made effective April 1, 2023. Rate increases occur annually, the City adopted the 2022 rate almost one year late (on March 14, 2023) due to the impacts of the pandemic on fire administrative staffing. While this will be the second rate increase in 2023, it will bring the City back in line with the cycle of rate increases.

### BACKGROUND

Alameda County EMS is responsible for the procurement of emergency ambulance services for the local EMS system. The Berkeley Fire Department has an agreement with Alameda County to be the emergency transport provider for Berkeley since 1977. Albany, Piedmont, Alameda City, and Falck serve as the ambulance transport providers for other parts of Alameda County. Under the current agreement, all transport providers, including Berkeley, are in the Alameda County Emergency Medical Services District. Since 1986, the Berkeley Fire Department has provided ambulance transport service at the Advanced Life Support (ALS) or paramedic level.

Under the terms of the Alameda County Ambulance Provider Agreement, Alameda County Board of Supervisors is responsible for setting and approving any fees that are applicable to all agencies. The increases are either COLA or base rate adjustments.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the action requested in this report.

### RATIONALE FOR RECOMMENDATION

The Berkeley Fire Department is seeking Council approval to increase the base rate for ambulance user fees to match those approved by Alameda County and made effective on July 1, 2023. Periodic rate increases help to recoup increasing costs incurred for providing ambulance services.

Government Code Section 6062(a) dictates the manner of publication for fee increase public hearings.

### ALTERNATIVE ACTIONS CONSIDERED

Continue with the existing User Fee Schedule which was approved by the Alameda County Board of Supervisors and made effective July 1, 2022 and adopted by the City on March 14, 2023, implemented on April 1, 2023.

### CONTACT PERSON

David Sprague, Fire Chief, (510) 981-3473

Ambulance Transport Fee Increase

PUBLIC HEARING  
October 3, 2023

Attachments:

1: Resolution

2: Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

AMBULANCE USER FEE ADJUSTMENT

WHEREAS, the County of Alameda and the City of Berkeley are in an Ambulance provider Agreement dated June 1, 1984; and

WHEREAS, the County of Alameda Board of Supervisors sets the rates for emergency ambulance transport; and

WHEREAS, the revenue collected will be deposited into General Fund revenue account 010-6405-341-7900, and

WHEREAS, the County of Alameda Board of Supervisors established and approved a new Contractor's User Fee schedule for ambulance transport providers. The rates were made effective July 1, 2023.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the new ambulance user fee schedule is adopted in accordance with the rates established by the County of Alameda, effective July 1, 2023, as follows:

|                           | User Fee Schedule |
|---------------------------|-------------------|
| Base Rate                 | \$3,664.87        |
| Mileage                   | \$82.69           |
| Oxygen                    | \$273.79          |
| Treatment / Non-Transport | \$735.01          |

BE IT FURTHER RESOLVED that the new ambulance user fee schedule shall be effective November 1, 2023.

BE IT FURTHER RESOLVED that Resolution No. 70,726-N.S. is rescinded, effective November 1, 2023.

October 3, 2023

**NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL  
AMBULANCE USER FEE ADJUSTMENT**

**The public may participate in this hearing by remote video or in-person.**

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted by said city council of the City of Berkeley at which time and place all persons may attend and be heard upon the following:

The Fire Department is proposing to increase the Ambulance User Fee rates to match the ambulance transport provider fees set forth and approved by the County of Alameda. Collected ambulance fees are deposited into a General Fund revenue account.

The County of Alameda has established and approved a new base rate Contractor’s User Fee schedule for ambulance transport providers effective July 1, 2023. The City of Berkeley fee increase would be effective November 1, 2023. For the City of Berkeley, the last rate increase was approved by the City Council on March 14, 2023 (Resolution 70,726–N.S.); and the rate increase was made effective April 1, 2023.

|                             | <b>Existing</b> | <b>Proposed</b> |
|-----------------------------|-----------------|-----------------|
| Base Rate                   | \$3,331.40      | \$3,664.87      |
| Mileage                     | \$75.17         | \$82.69         |
| Oxygen                      | \$248.88        | \$273.79        |
| Treatment / Non-Transport * | \$668.13        | \$735.01        |

*\*This rate shall be limited to patients who receive a medical intervention, such as intravenous medication administration, and subsequently refuse transport. Patient assessment, including ECG monitoring, does not constitute treatment.*

The hearing will be held on October 3, 2023 **at 6:00 p.m.** in the School District Board Room, 1231 Addison Street, Berkeley CA 94702.

For further information, please contact David McPartland, EMS Assistant Chief, at (510) 981-3473.

A copy of the staff report for this hearing will be available on the City’s website at <https://berkeleyca.gov> as of **September 21, 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.**

October 3, 2023

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](mailto: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 (510) 981-6900 or [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov) for further information.

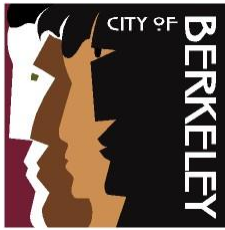
*If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.*

Published: September 22 and September 29, 2023 – The Berkeley Voice  
Per Government Code 6062A

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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 September 21, 2023.

Mark Numainville, City Clerk



Councilmember Sophie Hahn
City of Berkeley, District 5

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: September 19, 2023

Item Number: 17

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

Submitted by: **Mayor Arreguin and Councilmembers Wengraf and Hahn**

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

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

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

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

Policy Alternative 1:

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

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

This is [what happened at the 2915 Harper Street location](#) in South Berkeley. An ADU was placed directly at the front lot line because other areas of the parcel could not accommodate an 800 square foot ADU. The outcome at Harper Street has been a significant concern for the community and some Councilmembers.

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

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

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

Section 23.306.030 (A)(4)

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

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

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

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

Policy Alternative 2:

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

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

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

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

Policy Alternative 3:

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

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

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

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

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

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

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

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

Emeryville Amtrak	Ashby Ave. & San Pablo Ave.	Ashby BART	Bancroft Way & Telegraph Ave.	Allston Way & Shattuck Ave.	Solano Ave. & The Alameda	Arlington Blvd. & Moeser Lane	El Cerrito Del Norte BART
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7

AC TRANSIT SCHEDULE

EFFECTIVE:
August 6, 2023

Emeryville

Emeryville Amtrak
Hollis St.

Berkeley

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

Kensington

Arlington Avenue

El Cerrito

Arlington Blvd.
Barrett Avenue
El Cerrito del Norte BART

7 Monday through Friday except holidays To Emeryville Amtrak

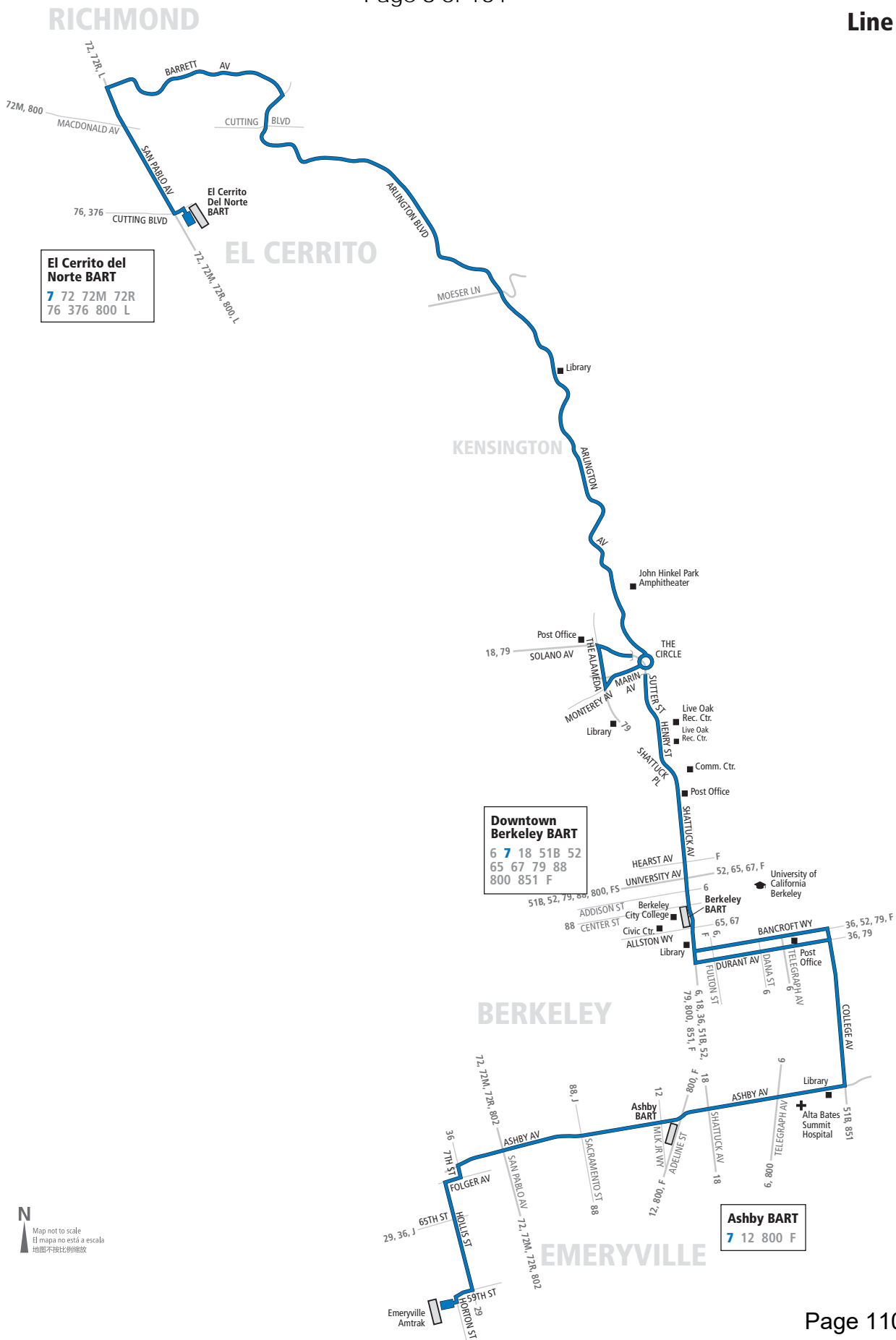
El Cerrito Del Norte BART	Arlington Blvd. & Moeser Lane	Solano Ave. & The Alameda	Allston Way & Shattuck Ave.	Durant Ave. & Telegraph Ave.	Ashby BART	Ashby Ave. & San Pablo Ave.	Emeryville Amtrak
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7 Saturdays, Sundays and holidays To El Cerrito Del Norte BART

Emeryville Amtrak	Ashby Ave. & San Pablo Ave.	Ashby BART	Bancroft Way & Telegraph Ave.	Allston Way & Shattuck Ave.	Solano Ave. & The Alameda	Arlington Blvd. & Moeser Lane	El Cerrito Del Norte BART
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7 Saturdays, Sundays and holidays To Emeryville Amtrak

El Cerrito Del Norte BART	Arlington Blvd. & Moeser Lane	Solano Ave. & The Alameda	Allston Way & Shattuck Ave.	Durant Ave. & Telegraph Ave.	Ashby BART	Ashby Ave. & San Pablo Ave.	Emeryville Amtrak
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El Cerrito del Norte BART
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 76 376 800 L

Downtown Berkeley BART
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 65 67 79 88
 800 851 F

Ashby BART
 7 12 800 F

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65 Monday through Friday except holidays To Senior Ave. loop

Allston Way & Shattuck Ave.	Euclid Ave. & Grizzly Peak Blvd.	Lawrence Hall of Science	Grizzly Peak Blvd. & Senior Ave.
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8:35a	8:47a	8:55a	
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10:35a	10:47a	—	10:55a
11:15a	11:27a	11:35a	
11:55a	12:07p	—	12:15p
12:35p	12:49p	12:58p	
1:15p	1:29p	—	1:37p
1:55p	2:09p	2:18p	
2:35p	2:50p	—	2:58p
3:15p	3:30p	3:38p	
3:55p	4:10p	—	4:18p
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5:15p	5:30p	—	5:38p
5:55p	6:10p	6:18p	
6:35p	6:50p	—	6:58p
7:15p	7:29p	7:37p	

65 Monday through Friday except holidays To Downtown Berkeley

Lawrence Hall of Science	Grizzly Peak Blvd. & Senior Ave.	Euclid Ave. & Grizzly Peak Blvd.	Allston Way & Shattuck Ave.
7:35a	—	7:47a	8:04a
—	8:15a	8:27a	8:44a
8:55a	—	9:07a	9:24a
—	9:35a	9:47a	10:06a
10:15a	—	10:28a	10:47a
—	10:56a	11:08a	11:27a
11:36a	—	11:49a	12:08p
—	12:16p	12:28p	12:47p
12:58p	—	1:11p	1:30p
—	1:38p	1:50p	2:09p
2:18p	—	2:31p	2:50p
—	2:58p	3:10p	3:27p
3:38p	—	3:50p	4:07p
—	4:18p	4:30p	4:47p
4:58p	—	5:10p	5:27p
—	5:38p	5:50p	6:07p
6:18p	—	6:30p	6:47p
—	6:58p	7:10p	7:27p
7:37p	—	7:48p	8:05p

65

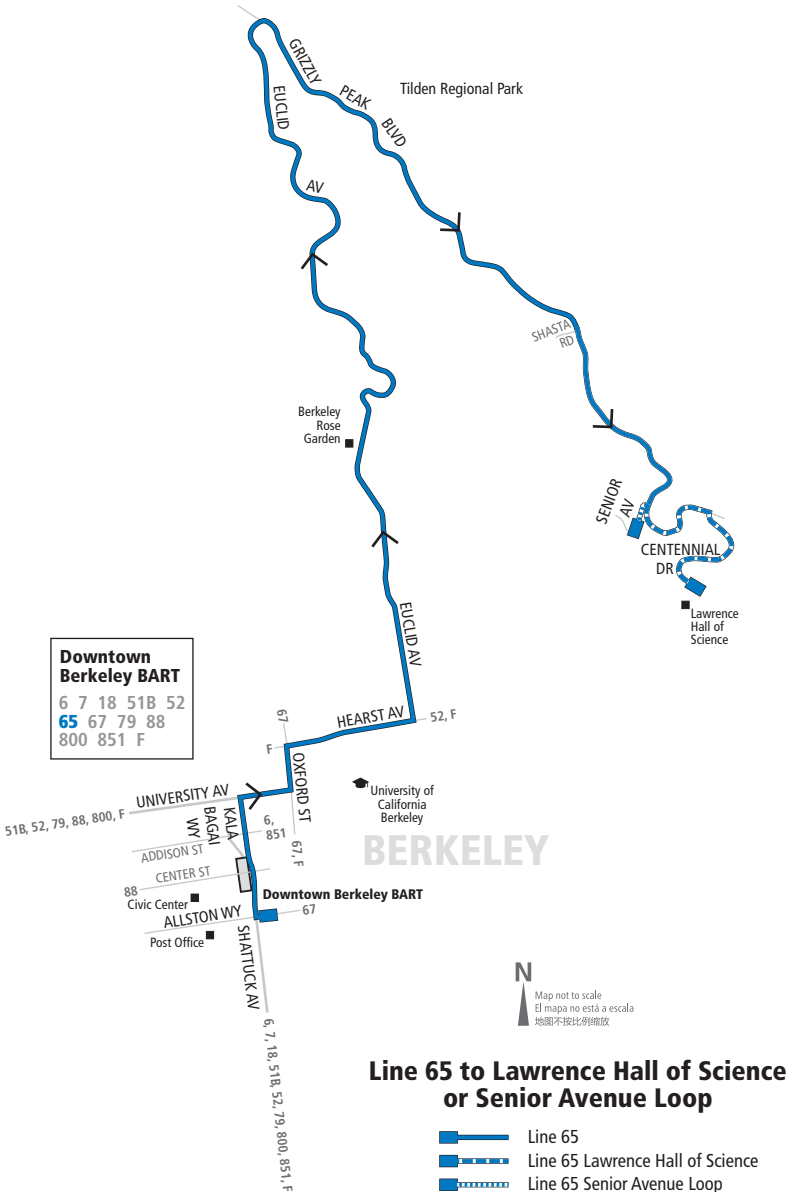
AC TRANSIT SCHEDULE

EFFECTIVE:
August 6, 2023

Berkeley

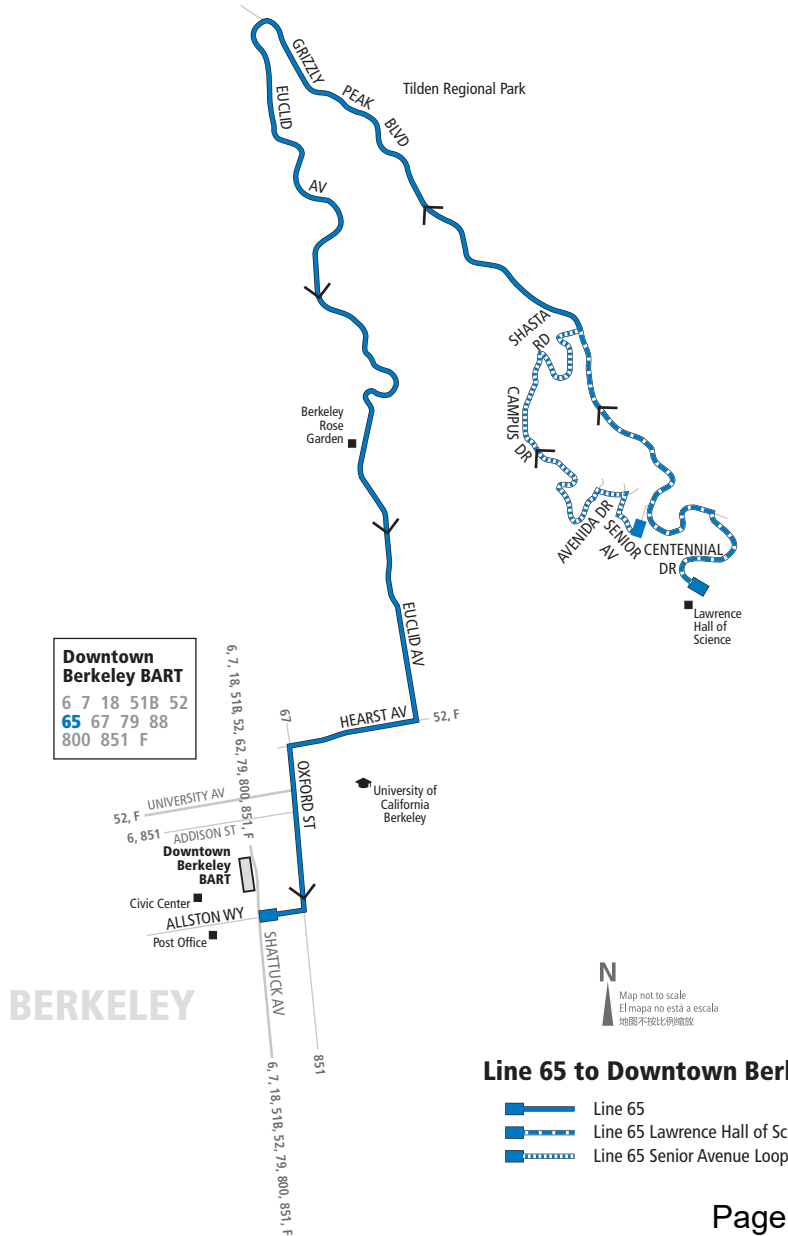
- Downtown Berkeley BART
- Hearst Avenue
- Euclid Avenue
- Grizzly Peak Blvd.
- Lawrence Hall of Science
- Senior Avenue
- Campus Drive

Line 65



Line 65 to Lawrence Hall of Science or Senior Avenue Loop

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



Line 65 to Downtown Berkeley

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

67 Monday through Friday except holidays To Downtown Berkeley

Spruce St. & Grizzly Peak Blvd.	Kenyon Ave. & Trinity Ave.	Vassar Ave. & Spruce St.	Allston Way & Shattuck Ave.
7:35a	7:37a	7:41a	7:56a
8:05a	8:07a	8:11a	8:26a
8:35a	8:37a	8:41a	8:56a
9:05a	9:07a	9:11a	9:26a
9:35a	9:37a	9:41a	9:56a
10:05a	10:07a	10:11a	10:26a
10:35a	10:37a	10:41a	10:56a
11:05a	11:07a	11:11a	11:26a
11:35a	11:37a	11:41a	11:56a
12:05p	12:07p	12:11p	12:26p
12:35p	12:37p	12:41p	12:56p
1:05p	1:07p	1:11p	1:26p
1:35p	1:37p	1:41p	1:56p
2:05p	2:07p	2:11p	2:26p
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5:35p	5:37p	5:41p	5:56p
6:05p	6:07p	6:11p	6:26p
6:35p	6:37p	6:41p	6:56p
7:05p	7:07p	7:11p	7:26p

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

Allston Way & Shattuck Ave.	Spruce St. & Grizzly Peak Blvd.
8:12a	8:22a
8:42a	8:53a
9:12a	9:23a
9:42a	9:53a
10:12a	10:23a
10:42a	10:53a
11:12a	11:23a
11:42a	11:53a
12:12p	12:23p
12:42p	12:53p
1:12p	1:24p
1:42p	1:54p
2:12p	2:24p
2:42p	2:55p
3:12p	3:25p
3:42p	3:55p
4:12p	4:25p
4:42p	4:56p
5:12p	5:26p
5:42p	5:56p
6:12p	6:26p
6:42p	6:56p

67

AC TRANSIT SCHEDULE

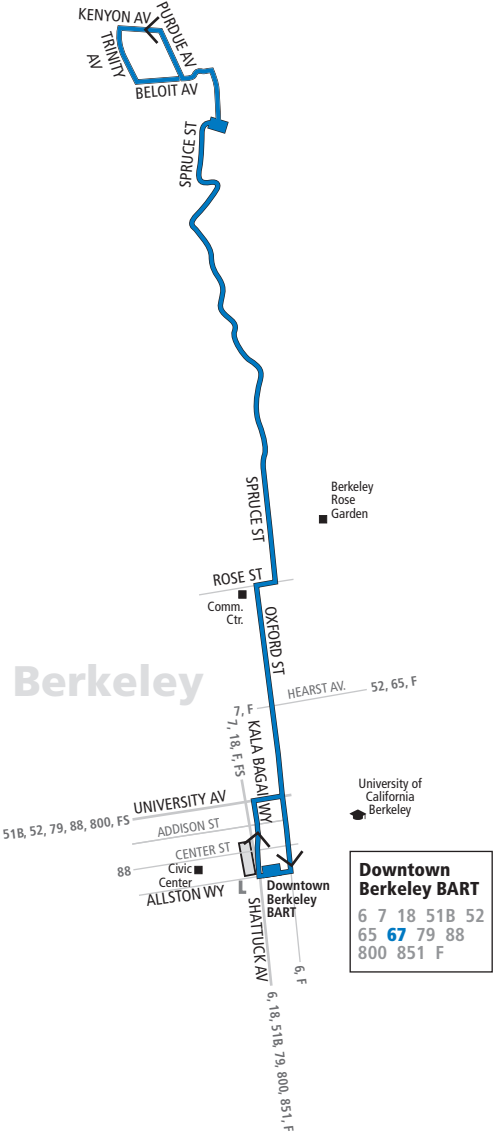
EFFECTIVE:

December 5, 2021

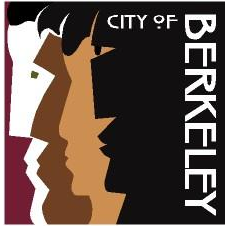
Berkeley

Downtown Berkeley BART
Oxford Street
Spruce Street
Beloit Avenue

Line 67



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Rashi Kesarwani
Councilmember District 1

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: September 19, 2023

Item Number: #17

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

Submitted by: Rashi Kesarwani

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

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



Rashi Kesarwani
Councilmember, District 1

ACTION CALENDAR
September 19, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

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

RECOMMENDATION

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

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

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

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

CURRENT SITUATION AND ITS EFFECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

C) Parking Requirements

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

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

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

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

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

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

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

RATIONALE FOR RECOMMENDATION

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

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

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

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

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

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

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

B. Noticing.

1. Scope and Timing of Notice. Notice of an ADU application shall be mailed to all occupants of the subject property, excepting the property owner(s), within ten working days of submission of the building permit to the City.

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

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

Recommend Pausing Parking Requirement for Hillside Overlay Specified in TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS and TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T) Pending Additional Written Legal Analysis, Consultation with HCD, and Evacuation Study Specific to ADUs in Hillside Overlay.

In its enforcement letter to the City of Berkeley Planning and Development Department dated Oct. 17, 2022, HCD provided clear interpretation of state ADU law as it relates to parking: “...the City does not account for the potential for ADUs to be excluded from requiring a parking space given the availability of public transit in the Hillside Overlay District. HCD is aware that AC Transit serves the Berkeley Hills location, exempting many, if not all, potential lots from parking space requirements for new ADUs.”

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

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

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

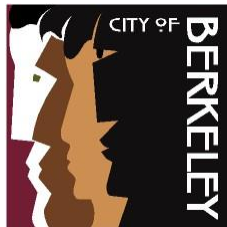
(A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

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

CONTACT PERSON

Councilmember Rashi Kesarwani, District 1

(510) 981-7110



Office of the City Manager

REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: September 19, 2023

Item Number: 17

Item Description: Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) and Repeal of Chapter 12.99 to Conform to State Law and Respond to Guidance from the California Department of Housing and Community Development (*Continued from July 25, 2023*)

Submitted by: Jordan Klein, Director, Planning and Development

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

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

Revisions to the Recommended Draft Ordinance

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

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

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

Policy Alternatives

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

ORDINANCE NO. -N.S.

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

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

Section 1. General Findings

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

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

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

Section 2. Specific Findings

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

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

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

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

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

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

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

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

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

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

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

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

1. Covered or uncovered areas used for off-street parking or loading spaces.
2. Driveways ramps between floors and maneuvering aisles of a multi-level parking garage.
3. Mechanical, electrical, and telephone equipment rooms below finished grade.
4. Areas which qualify as usable open space.
5. Arcades, porticoes, and similar open areas for non-residential uses which are:
 - (a) Located at or near street level;
 - (b) Accessible to the general public; and
 - (c) Are not designed or used as sales, display, storage, service, or production areas.
6. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

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

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

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

A. *Average Building Height.*

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

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

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

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

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

Sections:

23.306.010– Purposes

23.306.020– Applicability ~~and Definitions~~

23.306.030– ~~Development Standards~~ [Permit Procedures](#)

23.306.040– [Permit Procedures](#) ~~Development Standards~~

~~23.306.050– Deed Restrictions~~

~~23.306.060– Neighbor Noticing~~

~~23.306.070– Rooftop Decks and Balconies~~

23.306.010 Purposes.

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

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

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

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

23.306.020 Applicability and Definitions.

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

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

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

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

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

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

<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 23.306-21: ADU ~~and JADU~~ Development Standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Junior ADUs.

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

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

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

~~B. Projections.~~

C.

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

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

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

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

23.306.0450 Permit Procedures Deed Restrictions.

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

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

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

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

B. Noticing.

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

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

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

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

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

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

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

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

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

~~23.306.060—Neighbor Noticing.~~

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

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

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

~~23.306.070—Rooftop Decks and Balconies.~~

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

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

C. Changes of Use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23.322.080– Parking Layout and Design

A. Traffic Engineering Requirements.

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

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

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

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

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

1. *Side Setback Areas.*

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

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

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

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

3. *Multifamily Buildings.*

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

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

1. *Where Prohibited.* Except when otherwise allowed by this chapter, ground-level off-street parking spaces are not permitted within 20 feet of the lot's street frontage unless the parking is entirely within a building with walls.
2. *Corner Lots.* For a corner lot, the ZAB may approve a Use Permit to allow the parking within 20 feet of the street frontage facing the secondary street.
3. *C-W District.*
 - (a) Off-street automobile parking in the C-W district is not permitted between the front lot line and a main structure within a designated node.
 - (b) Outside of a designated node, off-street automobile parking may be allowed between the front lot line and a main structure with a Use Permit or AUP. If the project requires ZAB approval, a Use Permit is required. An AUP is required for all other projects.
 - (c) To approve the AUP or Use Permit, the review authority must find that one or more of the following is true:
 - i. Parking in the rear or on the side of the property is impractical because of the lot's depth and/or width.
 - ii. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses.
 - iii. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location.

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

G. Placement--ADU.

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

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

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

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

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

G.I. Screening.

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

TABLE 23.322-8. REQUIRED PARKING SPACE SCREENING

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

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

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

H.J. Landscape Buffers.

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

TABLE 23.322-9. REQUIRED LANDSCAPE BUFFERS

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

Note:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. *Addition, Major Residential.*

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

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

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

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

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

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

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

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

J. *"J" Terms.*

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

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

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

N. "N" Terms.

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

Section 18. Severability.

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

Section 19.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ADU POLICY ALTERNATIVES

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

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

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

23.306.030 Development Standards.

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

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

23.306.040 Permit Procedures

- B. Neighbor Noticing.

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

Key

Black Text: Recommended Draft Ordinance dated September 19, 2023

Red Text: Policy Alternative

Table 1. Current and Proposed ADU Ordinances and Source Comparison

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

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

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

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

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



September 13, 2023

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

I. Introduction

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

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

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

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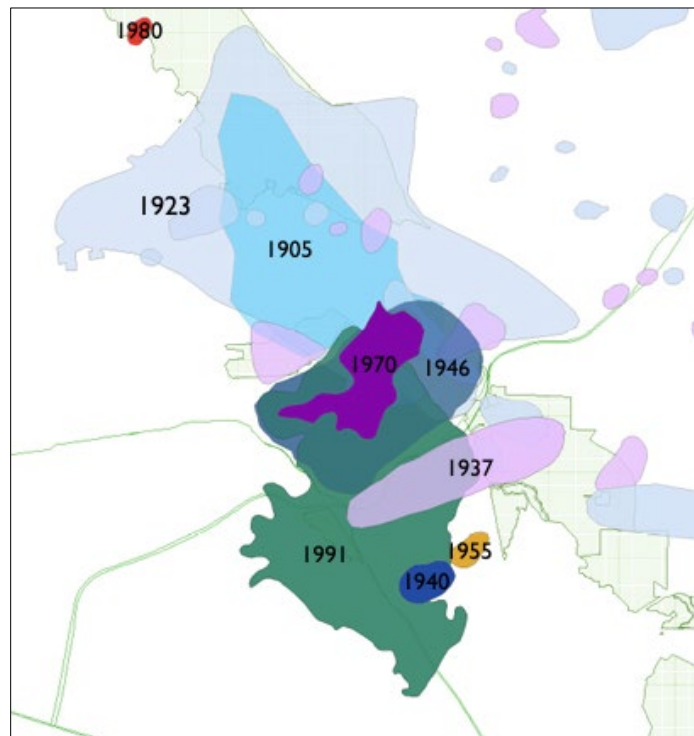
For these reasons, the Fire Department recommends that, in Berkeley’s Hillside Overlay areas, which correspond with Berkeley’s [Very High Fire Hazard Severity Zones 2 and 3](#), separation between structures on and across parcels should be increased to at least 25 feet. The Fire Department understands,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

II. Background

A. Berkeley’s Wildfire History

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

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



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

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

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

California Cities: Population Density per Square Mile

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

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

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

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

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

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

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

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

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

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



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

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

E. Challenges with Large Scale Evacuation of Berkeley

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

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



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

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

III. Hazard Mitigation Requires Increasing Defensible Space

F. Methodology for Hazard Mitigation in the WUI

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

As the HMM itself notes:

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

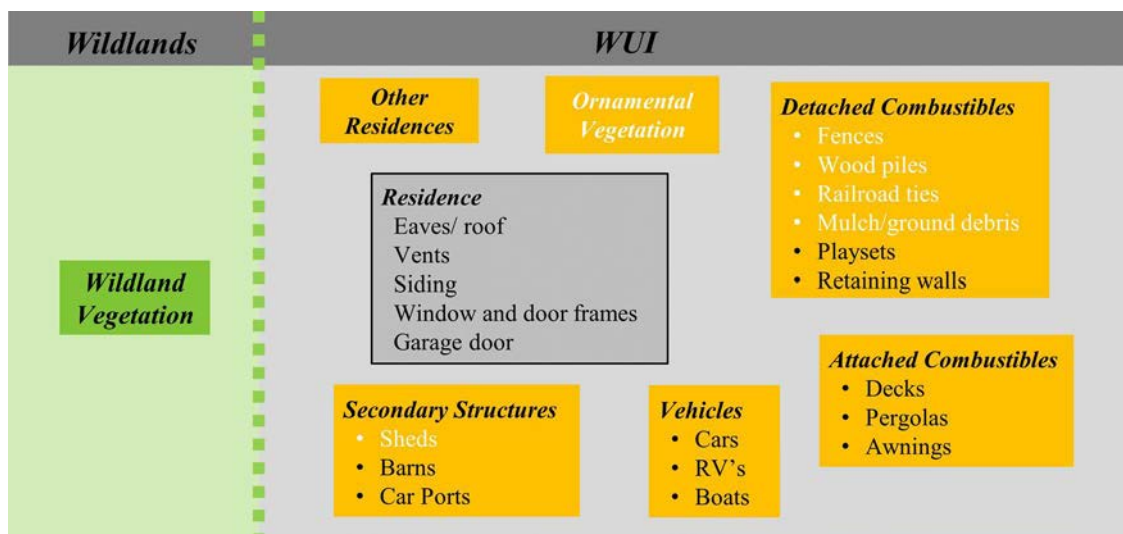


building industry were necessary to clarify and improve different implementations for retrofit solutions.” (Maranghides, et al., 2022)

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

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

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



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

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

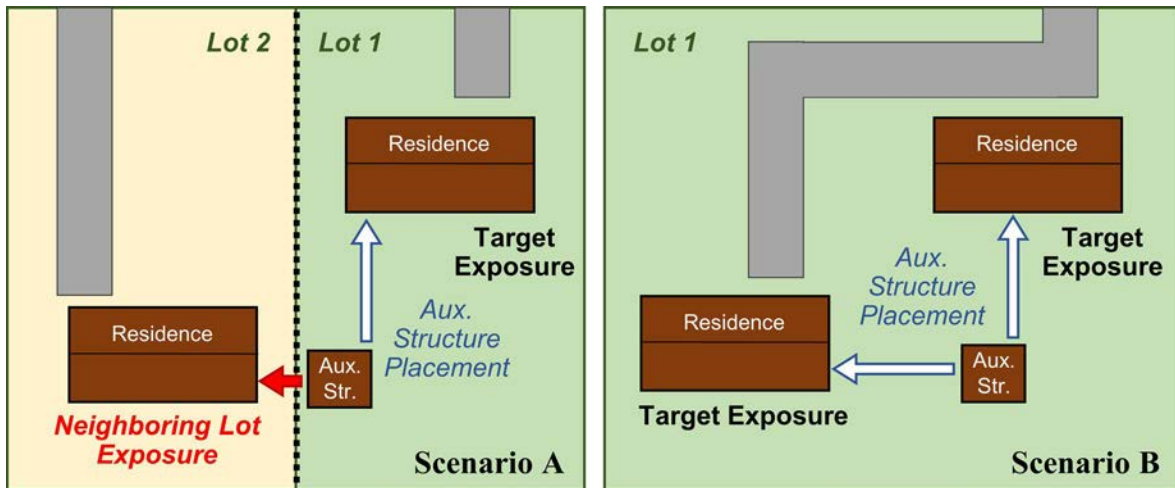
These three considerations are discussed below.



H. Parcel Boundaries

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

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



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

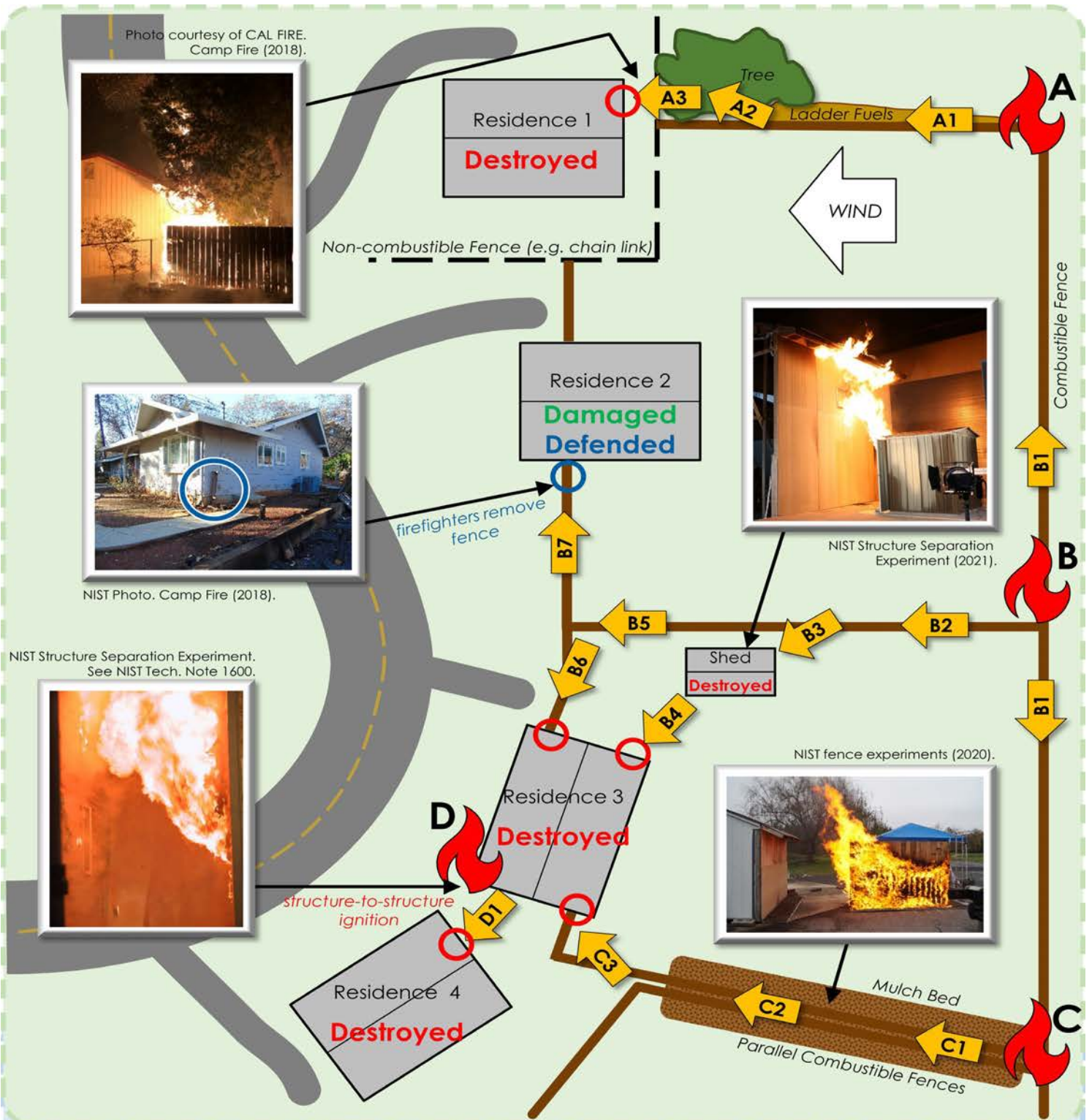
Best practices therefore dictate that Zoning ideally should consider separation distances across parcels in addition to separation distances within a parcel in order to minimize fire risk.



I. Linear Features

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

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



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

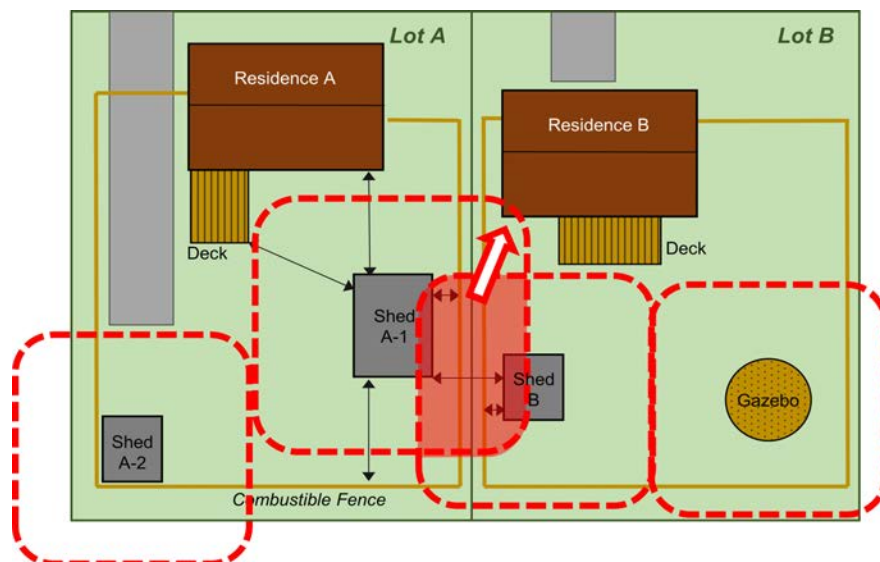
- A:** Spot fire ignites fence, burning along ladder fuels (A1) to larger vegetation (A2), and ignites Residence 1 on adjacent parcel (A3).
- B:** Fence ignition propagates fire on multiple parcels (B1, B2). Fence ignites shed (B3). Exposures from shed and fence ignite Residence 3 (B4, B6). Fence ignites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

J. Fuel Agglomeration

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



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



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

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

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

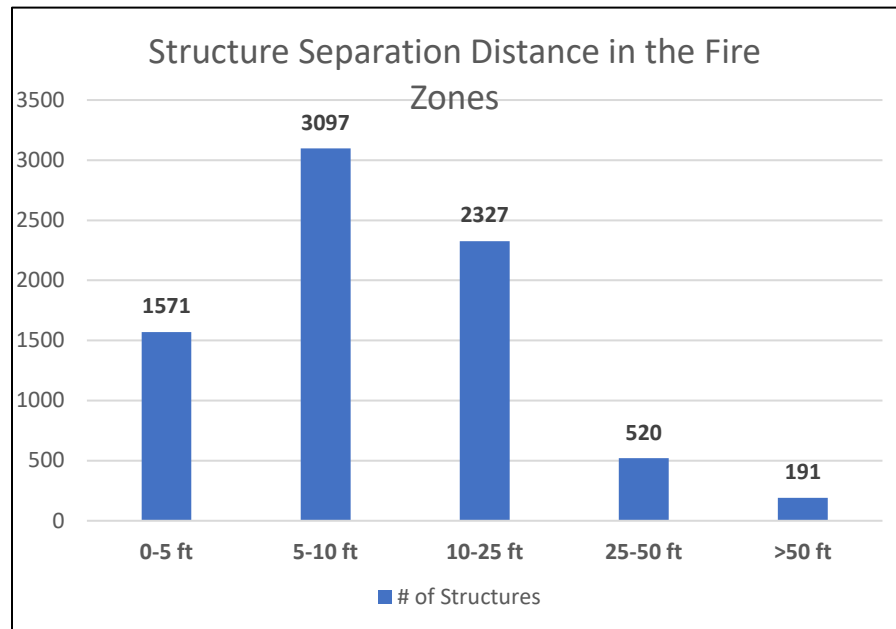
According to recognized industry practice, structure separation distance, or “SSD”, is a key metric in mitigating fire risk in WUI areas, such as those in Berkeley. There are two reasons for this. *“First, structures represent a significant density of fuels that impact fire spread and, in many cases,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

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

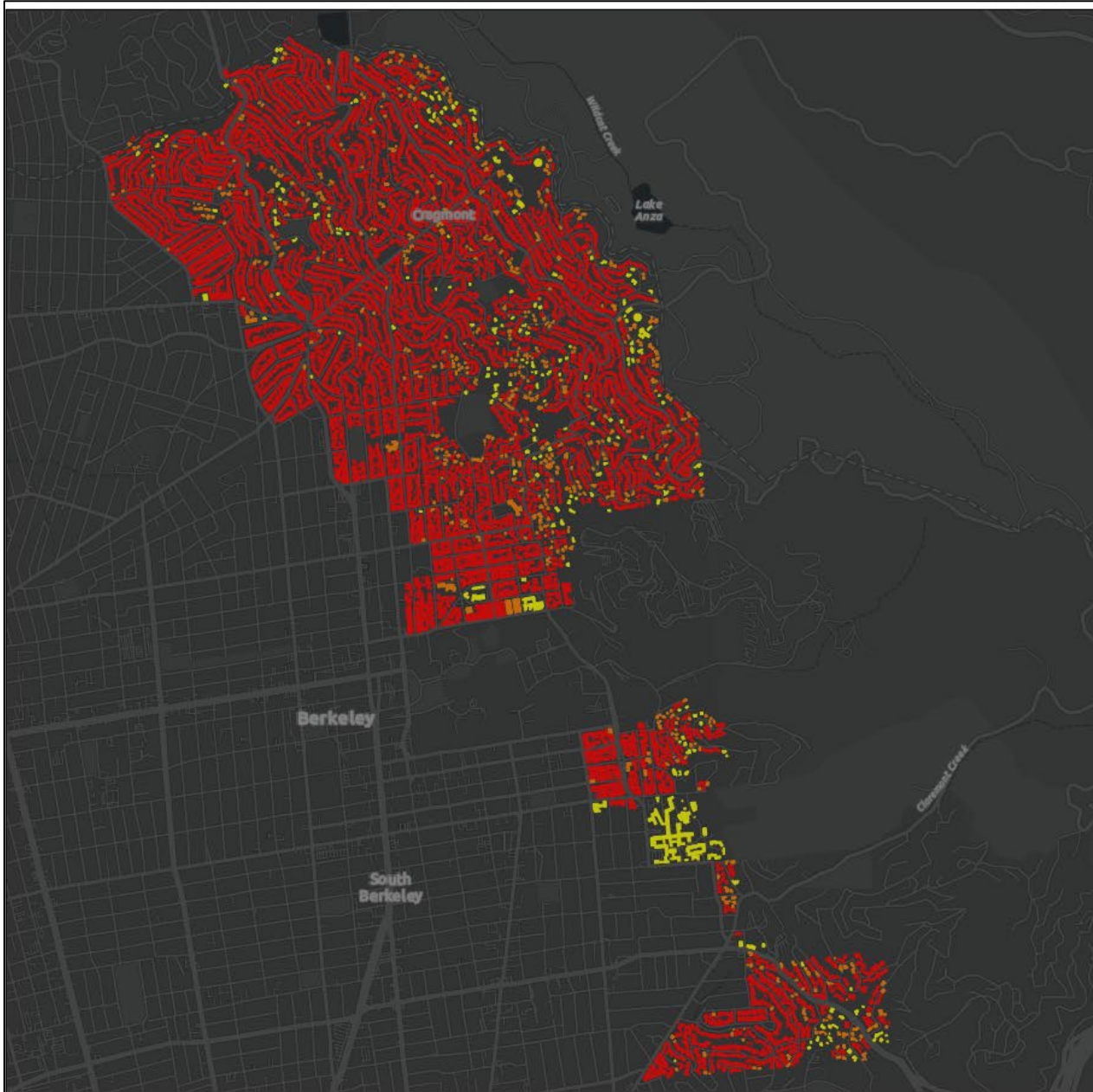
Category	SSD	Notes
Low Density	>50 ft	lower potential losses from individual structure ignitions, low potential for urban conflagration
Moderate Density	25 ft to 50 ft	greatest impact on structure ignition resistance by hardening for fire exposures from neighboring structures
High Density	< 25 ft	must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

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

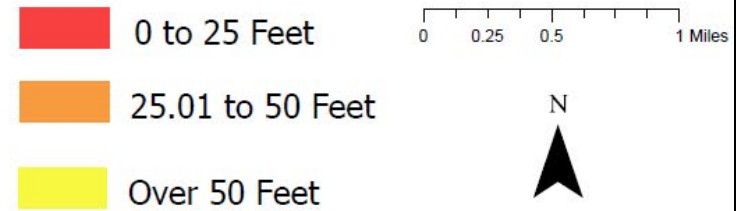
possible, as the more space between structures, the less likely structure-to-structure ignition will occur. Additional space also provides more access for firefighters to perform offensive or defensive firefighting activities such as deploying hoselines or cooling vertical and horizontal structural surfaces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



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



Structure density in Fire Zones 2 and 3



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

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

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

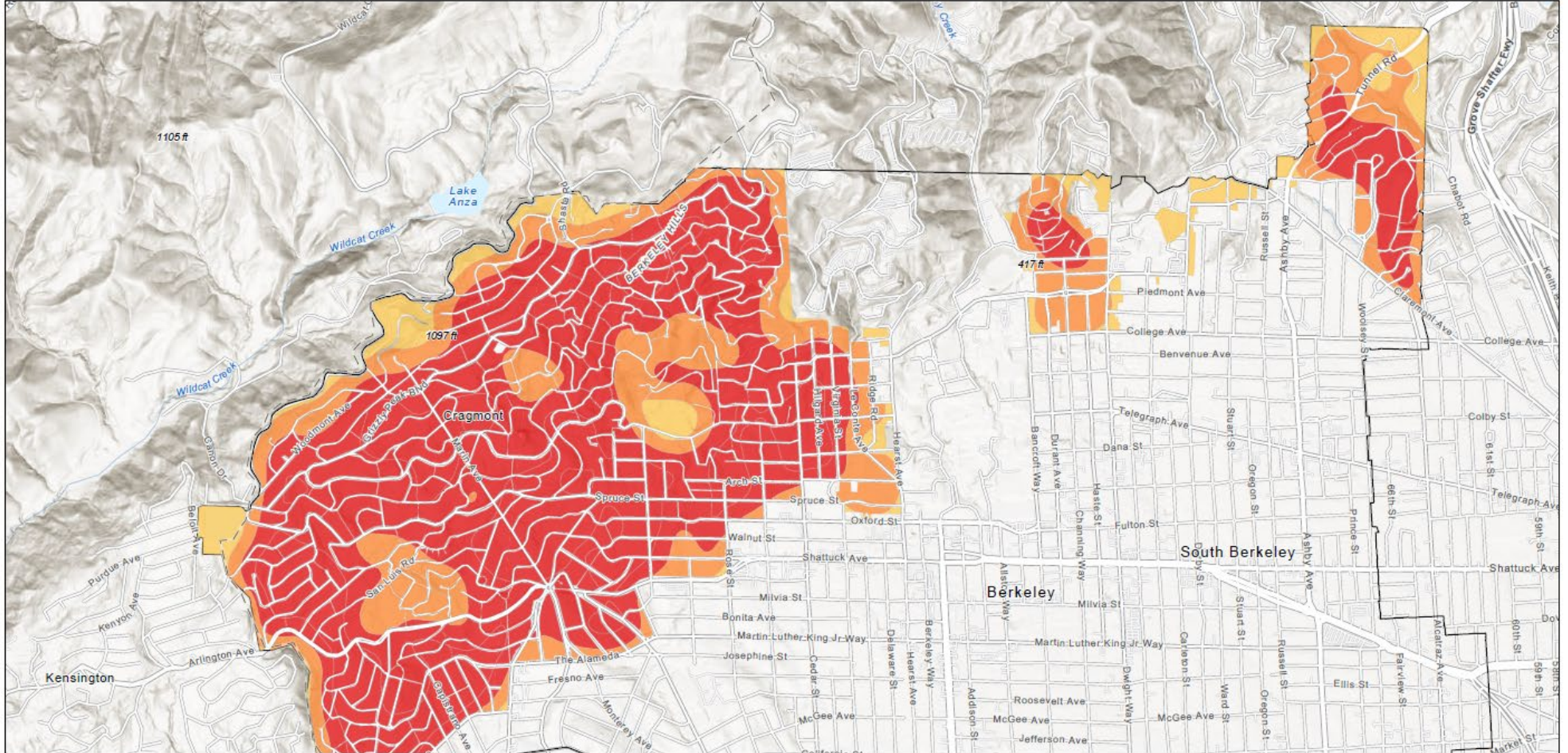
Type	WUI Type Name	Typical Housing Density (Hu/ac)
1	High Density Interface – Perimeter	2 to 8+
2	High Density Interface – Interior	2 to 8+
3	Medium Density Interface – Perimeter	<2
4	Medium Density Interface – Interior	<2
5	Medium Density Intermix	<2
6	Low Density Interface	<1
7	Medium Density Intermix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

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

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

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

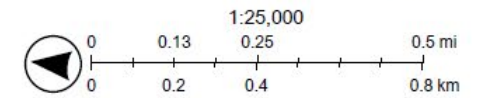
COB Fire Zone Structure Density



9/12/2023, DensityAnalysis_Buildings_in_Fire_Zone_2_and_3_Ver 3

LEGEND

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



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



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



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

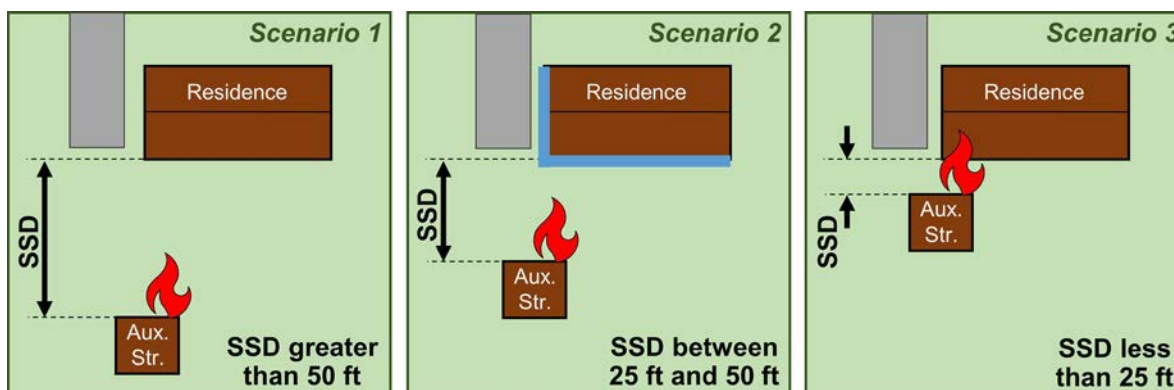


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In the Fire Department's view, the City must consider the role of SSD and HU/ac on structure-to-structure ignition in crafting policy that allows the intensification of the built environment in the community. As structures are moved farther apart from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



Scenario 1

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

Scenario 2

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

Scenario 3

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



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

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

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

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

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

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

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

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

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

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L. Fire Services are already strained^{viii}

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

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

Response Performance Summary – RY 20/21

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

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

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

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



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

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

VI. Conclusion

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

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

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

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

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

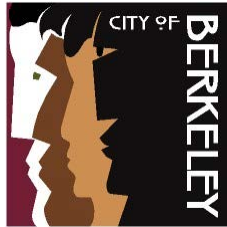
^{iv} NIST Technical Note 2205: WUI Structure/Parcel/Community Fire Hazard Mitigation Methodology; <https://doi.org/10.6028/NIST.TN.2205>

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

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

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

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



Office of the City Manager

PUBLIC HEARING
September 19, 2023

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

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

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

Revisions to the Recommended Draft Ordinance

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

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

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

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

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

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

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

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

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

Policy Alternatives

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

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

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

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

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

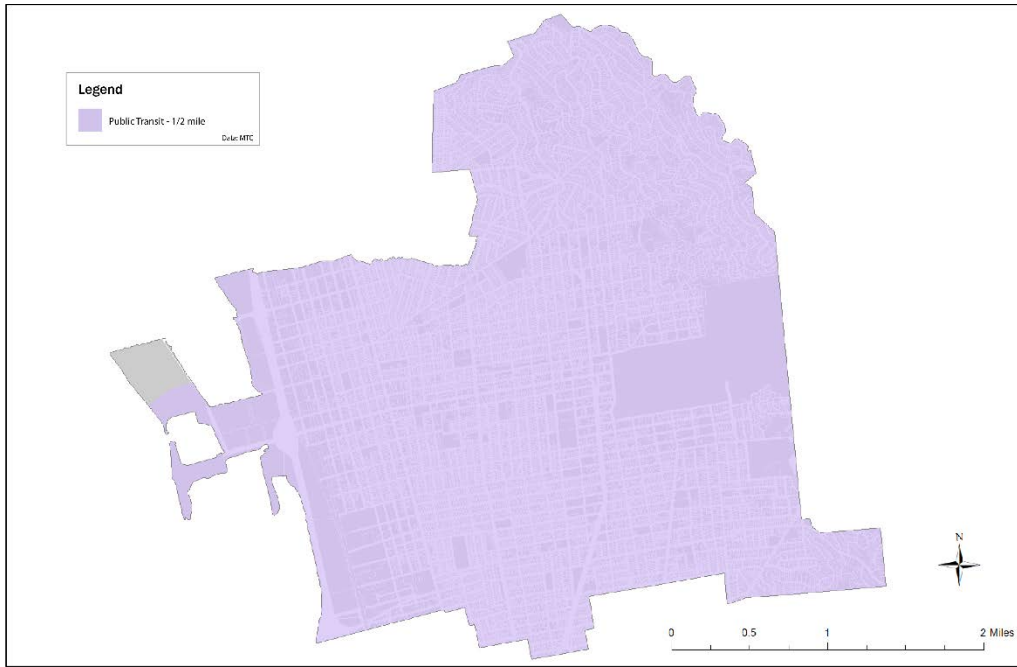
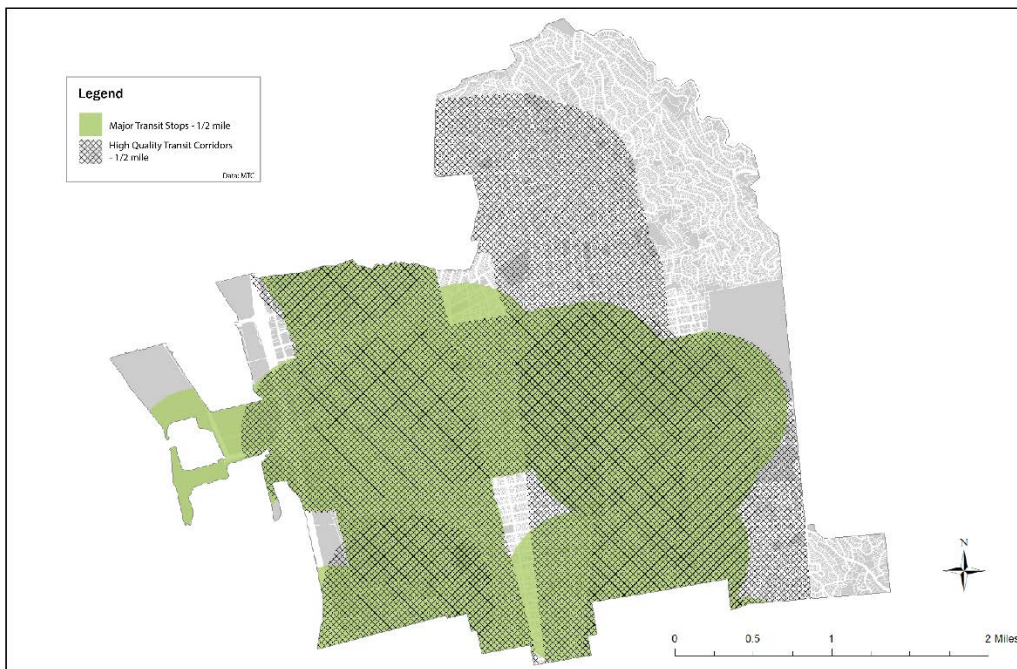


Figure 2: Areas within 1/2 mile of "Major Transit Stops" and "High Quality Transit Corridors"



ORDINANCE NO. -N.S.

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

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

Section 1. General Findings

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

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

Section 2. Specific Findings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. *Average Building Height.*

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

~~2. [Figure 23.106-4: Average Building Height.](#)~~

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

~~3. [Attached accessory dwelling units are not included in the average building height calculation.](#)~~

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

Sections:

23.306.010– Purposes

23.306.020– Applicability ~~and Definitions~~

23.306.030– ~~Development Standards~~ [Permit Procedures](#)

23.306.040– [Permit Procedures](#) ~~Development Standards~~

~~23.306.050– Deed Restrictions~~

~~23.306.060— Neighbor Noticing~~

~~23.306.070— Rooftop Decks and Balconies~~

23.306.010 Purposes.

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

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

23.306.020 Applicability and Definitions.

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

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

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

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

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

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

23.306.030 Permit Procedures.

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

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

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

23.306.0340 Development Standards.

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

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

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

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

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

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

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

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

	ADU¹	JADU
2+ bedrooms	1000-sf	
Maximum Size Within HOD	800-sf	500-sf
Maximum Height Outside of HOD	20 ft.	N/A
Maximum Height Within HOD	16 ft.	
Front Yard Setback	Same as underlying district	
Rear Setback	4 ft ³	
Side Setback	4 ft ³	
Required Off-Street Parking Outside of HOD	None ⁴	
Required Off-Street Parking Within HOD	The lesser of 1 space per bedroom or ADU ^{5,6}	None ⁶

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

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

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

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

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

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

B. Junior ADUs.

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

B. Projections.

C.

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

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

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

23.306.0450 Permit Procedures ~~Deed Restrictions.~~

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

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

B. Noticing.

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

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

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

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

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

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

~~23.306.060—Neighbor Noticing.~~

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

~~23.306.070—Rooftop Decks and Balconies.~~

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

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

C. Changes of Use.

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

2. *Manufacturing and R-SMU Districts.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23.322.080– Parking Layout and Design

A. Traffic Engineering Requirements.

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

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

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

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

D.E. Placement--Residential Districts.

1. Side Setback Areas.

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

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

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

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

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

G. Placement--ADU.

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

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

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

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

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

G.I. Screening.

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

TABLE 23.322-8. REQUIRED PARKING SPACE SCREENING

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

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

H.J. *Landscape Buffers.*

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

TABLE 23.322-9. REQUIRED LANDSCAPE BUFFERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. *Addition, Major Residential.*

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

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

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

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

J. "J" Terms.

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

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

N. "N" Terms.

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

Section 18. Severability.

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

Section 19.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ADU POLICY ALTERNATIVES

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

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

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

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

TABLE 23.306-2. ADU DEVELOPMENT STANDARDS

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

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

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

23.306.030 Development Standards.

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

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

23.306.040 Permit Procedures

B. Neighbor Noticing.

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

Key

Black Text: Recommended Draft Ordinance dated September 19, 2023

Red Text: Policy Alternative

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

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

Key

Black Text: Recommended Draft Ordinance dated September 19, 2023

Red Text: Policy Alternative

Table 1. Current and Proposed ADU Ordinances and Source Comparison

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

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

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

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



Office of the City Manager

PUBLIC HEARING

October 3, 2023

(Continued from September 19, 2023)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Planning and Development

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

RECOMMENDATION

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

SUMMARY

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

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

FISCAL IMPACTS OF RECOMMENDATION

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

CURRENT SITUATION AND ITS EFFECTS

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

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

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

Efficiency Kitchen Definition

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

Wildfire Hazard Evacuation Risk Mitigation Ordinance

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

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

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

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

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

State Law Updates

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

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

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

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

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

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

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

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

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

Proposed Ordinance

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

23.106 Rules of Measurement

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

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

23.306 Accessory Dwelling Units (Organization)

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

Table 1: Chapter 23.306 - Existing and Proposed Sections

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

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

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

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

23.306.020 Accessory Dwelling Units (Applicability)

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

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

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

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

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

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

23.306.030 Accessory Dwelling Units (Development Standards)

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

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

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

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

Table 3: Proposed Revisions to ADU Development Standards & Rationale

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

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

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

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

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




23.306.040 Accessory Dwelling Units (Permit Procedures)

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

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

Figure 2 – Existing ADU Notice (Front and Back)



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

Post and Mail Date:
Month X, 2023

NOTICE OF APPLICATION: ACCESSORY DWELLING UNIT (ADU)

BP#B2023-XXXXX
Address

Applicant Contact Information
Applicant Full Name
Phone number
Email address

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

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

NOTICE OF APPLICATION: Accessory Dwelling Unit (ADU)

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

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

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

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

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

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

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

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

23.322.020 Parking and Loading (Applicability)

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

23.322.080 Parking Layout and Design (Placement)

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

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

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

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

23.324.060 Exemptions to Nonconforming Uses, Structures, and Buildings

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

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

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

23.502.020 Defined Terms

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

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

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

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

BACKGROUND

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

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

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

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

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

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

CONTACT PERSON

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

Attachments:

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

ORDINANCE NO. -N.S.

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

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

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

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

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

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

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

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

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

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

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

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

A. *Average Building Height.*

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

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

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

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

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

Sections:

~~23.306.010– Purposes~~

~~23.306.020– Applicability and Definitions~~

~~23.306.030– Development Standards Permit Procedures~~

~~23.306.040– Permit Procedures Development Standards~~

~~23.306.050– Deed Restrictions~~

~~23.306.060– Neighbor Noticing~~

~~23.306.070– Rooftop Decks and Balconies~~

23.306.010 Purposes.

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

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

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

C. Expedite small-scale infill development.

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

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

23.306.020 Applicability and Definitions.

- A. The provisions of this chapter apply to zoning districts where residential uses are permitted, on lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.
- ~~B. For purposes of this Chapter the Hillside Overlay District (HOD) includes all lots within Berkeley's designated Very High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas that are zoned R-1H (Single-Family Residential—Hillside Overlay), R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), or ES-R (Environmental Safety-Residential).~~
- ~~B. Number of ADUs and JADUs Permitted Per Lot. See Table 23.306-1—ADU and Junior ADU Maximum Number of Units per Lot. Except as expressly modified by Chapter [12.99](#), the following number of ADUs and JADUs shall be the maximum number of accessory units permitted on lots subject to this Chapter.~~
- ~~C. Density Exemption. ADUs and Junior ADUs [are not included in](#) the minimum or maximum density established by the underlying zoning district.~~

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

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

<u>Group Living Accommodation</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 23.306-21: ADU ~~and JADU~~ Development Standards.

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

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

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

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

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

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

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

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

	ADU¹	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.~~

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

23.306.0450 Permit Procedures Deed Restrictions.

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

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

B. Neighbor Noticing.

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

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

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

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

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

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

~~9. 23.306.060 Neighbor Noticing.~~

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

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

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

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

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

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

C. Changes of Use.

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

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

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

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

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

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

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

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

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

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

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

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

23.322.080– Parking Layout and Design

A. Traffic Engineering Requirements.

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

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

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

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

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

1. *Side Setback Areas.*

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

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

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

3. *Multifamily Buildings.*

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

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

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

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

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

G. Placement--ADU.

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

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

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

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

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

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

G.I. Screening.

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

TABLE 23.322-8. REQUIRED PARKING SPACE SCREENING

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

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

H.J. Landscape Buffers.

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

TABLE 23.322-9. REQUIRED LANDSCAPE BUFFERS

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

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

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

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

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

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

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

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

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

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

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

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

9. *Addition, Major Residential.*

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

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

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

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

J. "J" Terms.

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

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

N. "N" Terms.

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

Section 18. Severability.

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

Section 19. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be

filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



October 17, 2022

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

Dear Jordan Klein:

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

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

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

Ordinance No. 7,797-N.S.

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

Jordan Klein, Director
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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).

Jordan Klein, Director
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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,



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:
 - o An attached ADU on a lot in any permissible zoning district shall have a height limitation no less than 25 feet.
 - o A detached ADU that is located either on a lot in any permissible zoning district that is within a 0.5 mile of a major transit stop or high-quality transit corridor as defined in Public Resources Code (PRC) Section 21155 or on a lot with an existing or proposed duplex or multi-family, multi-story (two or more stories) building shall have a height limitation of no less than 18 feet.

An additional two feet (totaling 20 feet maximum height) is allowed for a detached ADU on a lot in any permissible zoning district that is within 0.5 miles of a transit stop or high-quality transit corridor as defined in PRC Section 21155 to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.

2. **Prohibiting development standards that preclude 800 square foot ADUs.** Under AB 2221⁶, local agencies are prohibited from establishing lot coverage, floor area ratio, open space, or minimum lot size standards that would physically preclude construction of an 800 square foot ADU, including a minimum front setback.
3. **Required connections between a Junior ADU and the main dwelling unit.** SB 897 requires both a separate entrance to the Junior ADU from the main entrance to the structure and an interior connection to the main living area of the

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

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

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

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

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

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

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

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

Efficiency Kitchen Definition

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

Wildfire Hazard Evacuation Risk Mitigation Ordinance

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

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

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

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

Government code section 65852.2, subdivision (e) requires local agencies to ministerially approve building permit applications for the creation of ADUs within a residential or mixed-use zone.

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

DISCUSSION

To conform to State ADU law and respond to HCD’s letter, staff recommend amendments to Title 23 of the BMC that achieve the following purposes:

1. Remove standards that provide a distinction between parcels within and outside of the Hillside Overlay, and apply non-Hillside Overlay ADU standards citywide where residential uses are permitted⁹;
2. Bring the City’s zoning code into compliance with current State ADU law and guidance, including SB 897, AB 2221, and AB 2097; and
3. Clarify and/or correct minor technical edits associated with the related ordinance sections, and edit for consistency with existing BMC style guidelines.

23.106 Rules of Measurement

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

23.306 Accessory Dwelling Units (Organization)

The proposed ordinance simplifies the ADU Chapter by consolidating seven sections into four, maintaining consistency with other Chapters of Title 23 (**see Table 1**).

⁹ Staff will also recommend to City Council to repeal BMC Section 12.99. However, as this public hearing is only pertaining to Title 23 of the BMC, this action is not up for discussion this evening.

Table 1: Chapter 23.306 - Existing and Proposed Sections

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

23.306.010 Accessory Dwelling Units (Purpose)

The proposed ordinance adds a reference to the latest California Government Code Section 65852.1 and removes subsection (f) which states that the purpose of the chapter is to reduce potential impacts of new development in the Very High Fire Hazard Severity Zones (VHFHSZ), Wildland-Urban Interface Fire Areas, and Hillside Overlay. This allows for compliance with HCD's finding that the current ordinances do not meet the exceptions included in State law that allow for the creation of a separate set of regulations in the Hillside Overlay.

23.306.020 Accessory Dwelling Units (Applicability)

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

The proposed amendment includes a new subsection clarifying that ADUs and Junior ADUs do not count towards density calculations established by the underlying zoning districts. This is consistent with HCD guidance in the HCD ADU Handbook Update.¹⁰

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

¹⁰ HCD Accessory Dwelling Unit Handbook, <https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf>.

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

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

23.306.030 Accessory Dwelling Units (Development Standards)

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

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

Within subsection (C), staff propose technical edits to amend the provisions related to projections to align with other sections of the code, including permitting bay windows and balconies on attached ADUs outside of the Hillside Overlay as long as there remains at least a two-foot setback from property lines, as the code allows for non-ADUs of the same placement and size to have both. However, because detached ADUs are permitted to be built much closer to the property line than primary dwelling units (and attached ADUs), staff propose continuing to prohibit the projections of bay windows and balconies into setbacks for those types of ADUs citywide.

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

Table 3: Proposed Revisions to ADU Development Standards & Rationale

Basic Standard	Proposed Standards	Rationale/Intent
Building Height, Maximum	Detached, New Construction – 20 ft.	The maximum building height for Attached, New Construction has been increased from 20 ft. to 25 ft. to match State law (SB 897). The current maximum building height for Detached New Construction already exceeds the 18 ft. required by State law.
	Attached, New Construction – 25 ft.	
Lot Line Setbacks, Minimum	Front of Interior Lot – Same as underlying district	Staff propose adding a standard for front setbacks on through lots to ensure that there are standards for such parcels, consistent with existing regulations for Accessory Buildings.
	Front of Through Lot - Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer	
Building Separation for Detached ADU, Minimum	3 ft.	To conform with Building Code's definition of attached versus detached buildings, staff propose adding a minimum building separation standard (in addition to a Detached ADU supplemental standard – see below).
Required Off-Street Parking Spaces	See 23.322.030 – Required Parking Spaces	Move to BMC 23.322 – Parking and Loading to be consistent with other parking standards.
Supplemental Standard		
State Exemption ADU	No lot coverage, floor area ratio, open space, front setback, or minimum lot size standard in the underlying district shall preclude at least an 800 square foot accessory dwelling unit.	To match the State Law.
Junior ADU Shared Sanitation Facility	If a Junior ADU shares a sanitary facility with a single family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.	To match the State Law.
Junior ADU Floor Area	The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single family dwelling.	To clarify the rules of measurement for gross floor area if a sanitation facility is shared.
Detached or Attached ADU	If an ADU is located within 3 feet of an exterior wall of a main building, it is considered attached.	See the rationale/intent for establishing a Building Separation, Minimum (above).

- **AUP for Addition over 14 feet.** While this section does not regulate residential additions, staff note that attached ADUs proposed as residential additions over 14 feet would be required to receive AUP approval in order to reach their maximum allowable height (they can now go up to 25 feet – see Table 3).¹¹ Removing the AUP process would be in keeping with the State's intent to streamline the ADU development process and further remove barriers to

¹¹ Residential additions can go up to 14 ft., but require an AUP to go up to 28 ft.

development. The Planning Commission is asked to consider removing the AUP requirement for residential additions for attached ADUs.

23.306.040 Accessory Dwelling Units (Permit Procedures)

Under the current procedure, it is required that notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission of a building permit to the Planning Department, and shall include the project address, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor. The cost of materials, postage, and staff time is paid for by the applicant – currently a fixed fee of \$460.

The requirement for neighbor noticing presents a number of challenges for staff, applicants, and members of the public. ADU permits are building permits, and cannot be printed out or shared online with members of the public (unlike zoning permits). For neighbors interested in seeing proposed ADU plans, this means that they must visit the Permit Service Center in-person and look at the plans accompanied by a staff member. Additionally, ADU permits are non-discretionary permits, so members of the public ultimately do not have a means of providing feedback on or appealing a proposed ADU. Staff have found there is often an expectation from public posting or receiving notice of a proposed ADU that there is a public review process involved, and there is not.

- **Neighbor Noticing.** While staff made no changes to Neighbor Noticing, with the exception of moving it to the Permit Procedures section, staff are asking Planning Commission to consider removing the Neighbor Noticing requirement.

23.322.020 Parking and Loading (Applicability)

Per AB 2097, no off-street parking may be required for an ADU or a Junior ADU if the lot is located within a 0.5 mile of public transit, as defined in PRC Section 21155. The City of Berkeley's existing ADU ordinance already has provisions for reduced parking requirements within a 0.5 mile walking distance of public transit. To comply with AB 2097, staff recommend adding a location exemption for parking, which would state that "Off-street parking spaces are not required for new uses or buildings, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2." This change will also be brought as a part of the State Law Technical Edits ordinance amendments package, which is why it is shown in blue in **Attachment 1**.

Staff propose amending BMC Tables 23.322-1, 23.322-2, and 23.322-4 to specify off-street parking standards for ADUs in Residential, Commercial, and Manufacturing Districts (previously specified in Chapter 23.306). Staff also propose amending Table 23.322-1 to bring the residential off-street parking standards into compliance with State law by allowing for one parking space per ADU unless it is located within 0.5 miles of

public transit as defined in Section 21155 of the Public Resources Code or it satisfies the criteria defined in subdivision (d) of Government Code Section 65852.2.

BMC 23.322.080(E)(2) Other Setback Areas

This section, formerly referred as BMC 23.322.080(D)(2), is recommended to be amended to include the following standards:

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

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

23.324.060 Exemptions to Nonconforming Uses, Structures, and Buildings

Notably, in the current ADU ordinance, minor alterations in nonconforming setbacks, such as for windows and doors, as well as minor excavations, require an AUP. To reduce the amount of process, time, and money for staff and applicants seeking to make minor alterations to their ADUs, staff propose allowing "by-right" alterations to nonconforming existing structures or buildings that are proposed to be converted to an ADU. Staff proposes to add BMC 23.324.060(C) to include the following standards:

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

1. Alterations of a portion of a building or structure (including windows and other openings) within a minimum required setback.
2. Alterations of a portion of a building or structure (including windows and other openings) exceeding the height limit.

23.502.020 Defined Terms

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

Addition, Major Residential. The definition for “Addition, Major Residential” is recommended to be amended to add a subsection that exempts the floor area associated with an existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet, from qualifying. This would eliminate the requirement for an AUP to add an ADU or Junior ADU to a house, thus matching the State’s intent of streamlining the processing of ADU development locally.

Efficiency Kitchen. The proposed ordinance amends the definition of an “Efficiency Kitchen” by removing the requirement for a sink in response to HCD’s findings.

ENVIRONMENTAL REVIEW

The project is statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h).

NEXT STEPS

Staff recommend that Planning Commission adopt the proposed revisions. The next step will be to advance these proposed revisions – as well as repeal of Chapter 12.99 – to City Council.

Public safety remains a significant concern regarding increasing density in the Hillside Overlay. As stated in California Government Code Section 51175, the Legislature has found that wildfires pose a serious threat to the preservation of the public peace, health and safety. The legislature has determined that it is necessary that all levels of government work to implement preventive measures to ensure the preservation of the public peace, health, and safety.

Due to these state- and locally-recognized safety concerns, staff are working with the Fire Department to collect additional data on the health and safety impacts of increased development in the Hillside Overlay. On March 14, 2022, the Fire Department was authorized by the City Manager to execute a contract with KLD Engineering, P.C., for Evacuation and Response Time Modeling from April 1, 2023 through June 30, 2024 as part of an effort to collect data and forecast the number of vehicles and people that may need to be evacuated during a wildfire or other emergency.¹² The study will also be analyzing how major evacuation routes will operate under emergency conditions, and whether there would be any public safety impacts resulting from projected development of new ADUs, Junior ADUs, and their associated extra vehicles in the Very High Fire Hazard Severity Zone.

In addition to this study, the City is in the process of updating the Disaster and Safety Plan, which will similarly provide an opportunity to collect data and engage community

¹² Revised Agenda, Berkeley City Council Meeting, March 14, 2023. Item 4: Contract: KLD Engineering, P.C. for Evacuation and Response Time Modeling From: City Manager. <https://berkeleyca.gov/sites/default/files/city-council-meetings/2023-03-14%20REVISED%20Agenda%20Packet%20-%20Council%20%28WEB%29.pdf>

members, which could inform the making of findings to support the reinstatement of provisions or other controls on ADU production in the hills.

Staff plan to bring the Fire Department's study findings, as well as other potential research and community engagement findings, back to Planning Commission and City Council by summer 2024.

ATTACHMENTS

1. Draft Amended Ordinance
2. Ordinance No. 7,797-N.S. (Chapter 23.306), dated January 18, 2022.
3. Ordinance No. 7,799-N.S. (Chapter 12.99), dated January 25, 2022.
4. Letter from HCD - Review of Berkeley's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, § 65852.2), dated October 17, 2022.
5. Public Hearing Notice

NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL**Adoption of Zoning Ordinance Amendments to Title 23 and Repeal of Chapter 12.99 of the Berkeley Municipal Code to bring the Accessory Dwelling Unit (ADU) Ordinance into Compliance with State Law & Guidance**

The Department of Planning and Development is proposing Zoning Ordinance Amendments to Title 23 and the repeal of Chapter 12.99 of the Berkeley Municipal Code to respond to recent changes in Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (Junior ADU) State laws that took effect on January 1, 2023 and a letter from the California Department of Housing and Community Development (HCD) requiring the City of Berkeley take action to bring its Ordinance into compliance with State ADU Law. The amendments would modify the following sections: BMC Chapter 12.99 and Sections 23.106 (Rules of Measurement), 23.306 (Accessory Dwelling Unit (ADU) Ordinance), 23.322 (Parking and Loading), 23.324.060 (Exemptions to Nonconforming Uses, Structures, and Buildings), and 23.502.020 (Defined Terms) relating to ADUs. The proposed amendments also include conforming technical edits to the BMC (for example, renumbering of tables and figures).

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

The hearing will be held on **Tuesday, July 25, 2023 at 6:00 PM.** in the Berkeley Unified School District Board Room located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at www.berkeleyca.gov as of **July 13, 2023.** **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Zoe Covello, Assistant Planner, at 510-981-7418.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service

or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@berkeleyca.gov for further information.

Published: July 14, 2023 – The Berkeley Voice

Public Hearing required by BMC 23.412.050 and Govt Code 65853; notice provided according to Govt Code 65090 and BMC 23.404.040.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on July 13, 2023.

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Mark Numainville, City Clerk



Office of the City Manager

## ACTION CALENDAR

October 3, 2023

*(Continued from June 27, 2023)*

To: Honorable Mayor and Members of the City Council  
 From: Dee William-Ridley, City Manager  
 Submitted by: Sharon Friedrichsen, Budget Manager  
 Subject: Status Report - Berkeley's Financial Condition (FY 2012 – FY 2021):  
 Pension Liabilities and Infrastructure Need Attention

### INTRODUCTION

On May 24, 2022, the City Auditor submitted a Financial Conditions audit report<sup>1</sup> to City Council with recommendations to build on the City's financial strengths in order to: (1) help address the City's unfunded capital and deferred maintenance needs and pension liabilities; (2) help the City prepare for unforeseen economic challenges by assessing the risk of the reserves, and ensuring that enterprise funds can balance and avoid recurring shortfalls and (3) to update the City's debt policy to help strengthen the City's ability to assess its general obligation debt capacity.

The purpose of this information item is to update City Council on the status of implementation of the audit report's recommendations. This is the second status report regarding this audit. We previously issued a report on December 13, 2022.<sup>2</sup>

### CURRENT SITUATION AND ITS EFFECTS

The City Auditor's report included five recommendations. As of the writing of this report, two recommendations have been partly implemented and three recommendations have been started. Please see Attachment 1 for a detailed table of audit report recommendations and implementation progress. The next status report to Council is expected to be presented in May 2024.

<sup>1</sup> Audit-Berkeley's Financial Condition (FY 2012 - FY 2021): Pension Liabilities and Infrastructure Need Attention: <https://berkeleyca.gov/sites/default/files/documents/2022-05-24%20Item%2018%20Berkeley%E2%80%99s%20Financial%20Condition.pdf>

<sup>2</sup> <https://berkeleyca.gov/sites/default/files/documents/2022-12-13%20Item%2024%20Status%20Report%20-%20Berkeley%20s%20Financial.pdf>

**BACKGROUND**

The audit provides a high-level overview of the City's financial condition over 10 fiscal years. By broadening the scope of financial reporting to incorporate long-term financial trends, financial condition analysis can introduce long-term considerations into the budgeting process, clarify the City's fiscal strengths and weaknesses, and help highlight financial risks that the City needs to address including its unfunded capital and pension liabilities.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT**

There are no identifiable environmental effects or opportunities associated with the subject of this report.

**POSSIBLE FUTURE ACTION**

The City Manager's Office will continue to work on implementing the various recommendations, including conducting a risk assessment of the General Fund reserve and developing recommendations regarding fund balance for the various enterprise funds. The Finance Department will continue to assess the debt capacity threshold and update the debt management policy. In addition, the City Manager's Office will continue to assess Council fiscal policies and make recommendations regarding long-term funding strategies to address the City's pension and capital infrastructure liabilities.

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTIONS**

The audit recommendations are intended to build on the City's financial strengths and help mitigate risks associated with the City's unfunded liabilities.

**CONTACT PERSON**

Sharon Friedrichsen, Budget Manager, 510.981.7000

**Attachments:**

1. Audit Findings, Recommendations, and Status Updates

| Audit Title: Berkeley's Financial Condition (FY 2012-FY 2021): Pension Liabilities and Infrastructure Need Attention |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                        |
|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Issue Date: May 5, 2022                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                        |
| Finding                                                                                                              | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                     | Department   | Status of Audit Recommendations, Corrective Plan, and Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Previous status update |
| The COVID-19 pandemic slowed the City's progress toward its 2027 reserve funding goal.                               | 1.1 To better prepare the City for unforeseen economic challenges, we recommend that the City Manager complete the risk assessment required by the City's reserve policy as scheduled and propose to the City Council a plan to replenish the Stability and Catastrophic Reserves based on the results of the assessment. This may include revising the funding goal for 2027 to align with the City's financial reality and projected risk level. | City Manager | <u>Started:</u><br>Staff have entered into a contract with the Government Finance Officers Association (GFOA) for technical assistance with the analysis of the reserves policy. GFOA has developed a distinctive risk-based approach to analyzing reserves that considers specific risk conditions faced by a local government. This includes the use of "probability management technology" to assess risk and develop models regarding appropriate reserve levels. The consultant at the GFOA is currently building the model for the City's exposure to extreme events, such as floods, earthquakes, fires, high heat, and landslides, and developing a range of potential financial impacts from extreme events that would influence the reserves. | Started                |
| All of the City's enterprise funds faced at least one annual shortfall between FY 2016 and FY 2021.                  | 1.2 To ensure the City's enterprise funds can balance and avoid recurring annual shortfalls, we recommend the City Manager assess the appropriate fund balance for each of the City's enterprise funds, report findings to the City Council and explore financial policy options to manage enterprise fund balances.                                                                                                                               | City Manager | <u>Started:</u><br>City staff are conducting research and formed an internal working group to discuss current approaches utilized by departments and best practices as the first step in developing fund balance policies.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Started                |

|                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                    |                                                                                                                                                                                                                                                                                            |                    |
|----------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| The City's limit for general obligation bond debt is set at 15 percent of total assessed property value. | 2.1 To strengthen the City's debt management, we recommend that the Finance Department update the Debt Management Policy. The Finance Department may consider revising its current general obligation bond threshold of 15 percent of assessed property value or building upon the City's existing general obligation bond debt limit by considering additional debt capacity factors such as debt per capita, debt to personal income, and/or debt service payments as a proportion of General Fund revenues. | Finance Department | <u>Started:</u><br>The Finance Department has been working on updating the debt management policy, especially in light of current interest rates promulgated by the Federal Reserve Board. The updated debt management policy is scheduled to be considered by Council on June 27, 2023.   | Started            |
| The City has taken steps to increase pension funding.                                                    | 3.1 To maximize the benefit of the Section 115 Trust, we recommend that the City Manager present a plan for adoption by the City Council to assure sufficient contributions to the Trust. This may include taking the steps proposed by the Budget and Finance Committee to increase contributions to the Trust. It may also include a strategy to ensure that the City is able to meet its yearly contribution goals, such as allocating contributions at the beginning of the budget cycle.                  | City Manager       | <u>Partly Implemented:</u><br>The City budgeted funds for the Section 115 Trust and adopted fiscal policies to fund the Section 115 Trust as part of the FY 2023/24 biennial budget process. The City's actuary has recommended maintaining the target contribution goal of \$5.5 million. | Partly Implemented |
| The City reported \$1.2 billion in unfunded capital and deferred maintenance needs in FY 2021.           | 4.1 To address rising costs for unmet capital needs, we recommend that the City Manager collaborate with the Department of Public Works to implement a funding plan aimed at 1) reducing the City's unfunded capital and deferred maintenance needs, and 2) ensuring regular maintenance of city assets to prevent excessive deferred maintenance costs in the future. This may include prioritizing capital assets that generate the highest deferred maintenance costs.                                      | City Manager       | <u>Partly Implemented:</u><br>The City has updated its fiscal policies to include strategies, such as the use of investment revenues over the baseline budget, to increase funding for unfunded capital and deferred maintenance needs.                                                    | Partly Implemented |



Office of the City Manager

INFORMATION CALENDAR

October 3, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Sanctuary City Contracting Compliance Report for FY 2023

INTRODUCTION

City Council adopted ordinance 7,650-N.S., which is referred to as the Sanctuary City Contracting Ordinance (SCCO), in 2019. The SCCO states that the City shall not enter into a new, amended, or extended contract or agreement with any entity that provides United States Immigration and Customs Enforcement with data broker or extreme vetting services.

Section 13.105.040 requires the City Manager to report annually regarding compliance with section 13.105.030 for the prior year. Section 13.105.030 of the Berkeley Municipal Code details the prohibition on the use of City resources.

CURRENT SITUATION AND ITS EFFECTS

The Sanctuary City Contracting Ordinance establishes the City as a leader in social responsibility. The SCCO is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

## Report Requirements:

*(1) detail with specificity the steps taken to ensure compliance with Section 13.105.030:*

City solicitations include invitations for bids (IFB), requests for proposals (RFP), and requests for qualifications (RFQ). IFB, RFP, and RFQ public postings each contain the SCCO language. Signed compliance certificates are submitted with proposals and bid responses.

New and amended contracts and agreements include the Compliance Certificate attesting review of and compliance with the SCCO. Signed certificates are required as part of the City's contract documents.

*(2) disclose any issues with compliance, including any violations or potential violations of this Ordinance:*

The City's contract with A.G. Witt from 2021 for services related to preparing and submitting reimbursable expenses during the Covid-19 pandemic was identified as not having the signed SCCO compliance declaration.

No other issues were detected or brought forward during FY 2023.

*(3) detail actions taken to cure any deficiencies with compliance:*

A.G. Witt attested that they comply with the ordinance language, and this item was brought to Council at the December 13, 2022 City Council meeting, at which time a waiver was approved out of an abundance of caution. The waiver does not conflict with the intent of the ordinance because A.G. Witt does not provide data broker or extreme vetting services to the United States Immigration and Customs Enforcement Department.

#### BACKGROUND

This report is for FY 2022 and is hereby submitted on October 3, 2023 in advance of the November 2023 due date, and represents compliance issues with the Sanctuary City Contracting Ordinance discovered or brought forth between July 1, 2022 – June 30, 2023.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

#### POSSIBLE FUTURE ACTION

This report will be submitted annually.

#### CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

#### Attachments:

- 1: Staff Report - re: A.G. Witt Contract (December 13, 2022)
- 2: Resolution 70,635-N.S.





Office of the City Manager

CONSENT CALENDAR  
December 13, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Farimah Brown, City Attorney  
Subject: Waiver of the Sanctuary City Contracting Ordinance's Requirements for AG Witt, LLC Contract

RECOMMENDATION

Adopt a Resolution approving a waiver of the Sanctuary City Contracting ordinance's requirements for the City's FEMA Cost-Recovery Contract with AG Witt LLC.

FISCAL IMPACT

Likely none as the City will be seeking reimbursement through the Federal Emergency Management Agency (FEMA) Public Assistance Program for the costs of the AG Witt contract.

CURRENT SITUATION AND ITS EFFECTS

Since June 2020, AG Witt, LLC has been providing the City with support in developing and submitting reimbursement requests to the FEMA Public Assistance Program for costs incurred during the COVID-10 pandemic. Due to the urgency surrounding this process and the need to comply with federal contracting rules in place at the time, a Sanctuary City compliance certification was not obtained at the time the contract was initially entered into. Although AG Witt has attested that it does not provide any services prohibited by Chapter 13.105, a retroactive waiver is being sought out of an abundance of caution.

BACKGROUND

As part of the City's COVID-19 response, the City underwent a Request for Proposal process to retain a firm to provide disaster cost recovery consulting services. After a selection process that included interviews with the top two responders, the City's evaluation team consisting of representatives from the offices of the City Manager, City Auditor, City Attorney and the Office of Emergency Services, determined that the best qualified firm meeting the City's needs was AG Witt, LLC. In June 2020, the City entered into a contract with AG Witt.

The work AG Witt has done has been extremely helpful in developing policies and processes related to the COVID-19 response. AG Witt has helped the City to prepare

and submit cost reimbursement requests to the FEMA and the California Governor's Office of Emergency Services.

The Sanctuary City Contracting Ordinance prohibits contracting with an entity that provides “data broker” or “extreme vetting” services to the United States Immigration and Customs Enforcement Department unless a waiver is granted by the Council. An AG Witt LLC representative has attested that it does not provide any of the prohibited services and the City is unaware of any information that would contradict this statement. However, because a notice regarding the Sanctuary City Contracting ordinance was not included in the RFP process and the City did not obtain a formal Sanctuary City compliance certification from AG Witt, LLC, a retroactive waiver is being sought out of an abundance of caution.

The waiver does not conflict with the intent of the Ordinance, because AG Witt, LLC is not a data broker and is not engaged in “extreme vetting.” No reasonable alternative to the City’s actions existed at the time because the President of the United States had repeatedly threatened to withhold FEMA reimbursement to states and localities engaged in “Sanctuary City” activities, and the use of the Sanctuary City Contracting Ordinance notices and affidavit would have likely invited the Trump Administration to deny FEMA reimbursement for the substantial expenses incurred by the City in responding to the pandemic. The City has already applied for approximately \$500,000 in reimbursements and the City has no alternative source for this funding.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None

#### RATIONALE FOR RECOMMENDATION

Based on the information described above, the waiver is being sought out of an abundance of caution.

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CONTACT PERSON

Farimah Brown, City Attorney, (510) 981-6998

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

APPROVE A WAIVER OF THE SANCTUARY CITY CONTRACTING ORDINANCE'S REQUIREMENTS FOR THE CITY'S COST-RECOVERY CONTRACT WITH AG WITT, LLC

WHEREAS, Pursuant to Ordinance No. 7650-N.S. and Chapter 13.105, the Sanctuary City Contracting Ordinance, prohibits the City from doing business with a vendor that provides the United States Immigration and Customs Enforcement agency with "data broker" or "extreme vetting" services; and

WHEREAS, the City entered into a contract with AG Witt, LLC to provide valuable services related to the City's COVID -19 cost recovery efforts but a notice regarding the Sanctuary City Contracting ordinance was not included in the RFP process and the City did not obtain a signed declaration from AG Witt, LLC related to its compliance with the Ordinance; and

WHEREAS, a waiver is being sought out of an abundance of caution; and

WHEREAS, the waiver does not conflict with the intent of the Ordinance, because AG Witt, LLC has attested that it does not provide any of the services prohibited by the Ordinance; and

WHEREAS, no reasonable alternative to the City's actions existed at the time because the President of the United States had repeatedly threatened to withhold FEMA reimbursement to "Sanctuary Cities"; and

WHEREAS, the City has applied for significant reimbursements and has no alternative source for this funding; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a waiver of the Ordinance's requirements for the City's cost-recovery contract with AG Witt, LLC is approved.

RESOLUTION NO. 70,635-N.S.

APPROVE A WAIVER OF THE SANCTUARY CITY CONTRACTING ORDINANCE'S REQUIREMENTS FOR THE CITY'S COST-RECOVERY CONTRACT WITH AG WITT, LLC

WHEREAS, Pursuant to Ordinance No. 7650-N.S. and Chapter 13.105, the Sanctuary City Contracting Ordinance, prohibits the City from doing business with a vendor that provides the United States Immigration and Customs Enforcement agency with "data broker" or "extreme vetting" services; and

WHEREAS, the City entered into a contract with AG Witt, LLC to provide valuable services related to the City's COVID -19 cost recovery efforts but a notice regarding the Sanctuary City Contracting ordinance was not included in the RFP process and the City did not obtain a signed declaration from AG Witt, LLC related to its compliance with the Ordinance; and

WHEREAS, a waiver is being sought out of an abundance of caution; and

WHEREAS, the waiver does not conflict with the intent of the Ordinance, because AG Witt, LLC has attested that it does not provide any of the services prohibited by the Ordinance; and

WHEREAS, no reasonable alternative to the City's actions existed at the time because the President of the United States had repeatedly threatened to withhold FEMA reimbursement to "Sanctuary Cities"; and

WHEREAS, the City has applied for significant reimbursements and has no alternative source for this funding; and

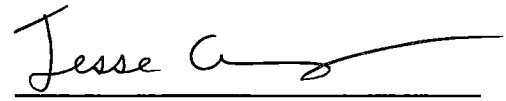
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a waiver of the Ordinance's requirements for the City's cost-recovery contract with AG Witt, LLC is approved.

The foregoing Resolution was adopted by the Berkeley City Council on December 13, 2022 by the following vote:

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

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk





Office of the City Manager

INFORMATION CALENDAR  
October 3, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jennifer Louis, Chief of Police  
 Subject: Update on the Implementation of Fair and Impartial Policing Task Force Recommendations

INTRODUCTION

On February 23<sup>rd</sup>, 2021 during a City Council Special Meeting, Council referred the recommendations from the Mayor's Fair and Impartial Policing (FIP) Task Force to the Berkeley Police Department for implementation. Quarterly updates were requested by Council and the last quarterly update was provided on June 27, 2023.

The following information summarizes the overall work undertaken by the City since the February 2021 direction from Council. Key updates since the last report in June include:

1. Berkeley City Council's referral to the budget process for \$100,000 for consultant work to design and assist with implementing a comprehensive Early Intervention and Risk Management System. This study could support the expansion of the existing departmental early warning system.
2. An update on implementation progress related to the Specialized Care Unit.
3. The finalizing of a contract with Citygate to conduct a departmental capacity study.

CURRENT SITUATION AND ITS EFFECTS

This report provides a quarterly update on the implementation of the Task Force recommendations. Implementation of the FIP Task Force recommendations remains a priority of the Berkeley Police Department. The Professional Standards Division is responsible for managing the project of implementing the recommendations.

Implementation of the recommendations has necessitated the amendment of departmental policies and the establishment of new protocols. As part of the process, members of BPD have met on several occasions with Council and Mayor representatives, Police Review Commission and now Police Accountability Board

members, FIP Task Force members, and the Police Accountability Board Subcommittee on FIP recommendation implementation. During these meetings, the substance and progress on the implementation of the recommendations were discussed and BPD has been provided feedback and background on the various intentions with each respective recommendation.

The Berkeley Police Department remains committed to equitable and unbiased policing. A policy in the form of a special order has been released to ensure that current and future members of the Berkeley Police Department carry forward and build upon this important foundational work initiated by the Fair and Impartial Task Force.

The following outlines the specific Task Force recommendations and the respective progress:

### **Implement a New Evidence-Based Traffic Enforcement Model**

#### **Task Force Recommendations:**

- **Focusing the basis for traffic stops on safety**

#### **Implementation:**

Officers have been provided data regarding primary collision factors and have been directed to enforce those violations wherever they are observed. In addition to focusing on the enforcement of primary collision factor violations, sworn personnel are also expected to make investigative stops related to criminal intelligence and information brought forth by the community or our investigations. BPD has implemented and conducted departmental training on a three-prong approach that focuses on primary collision factors, community member reports of dangerous driving or safety issues and community caretaking. Community caretaking considers safety violations that aren't always noted as the primary collision factor but can be a significant contributing factor in serious collisions.

#### **Status:**

Recommendation implementation is complete and evaluation and transparency efforts are ongoing. Training for all sworn personnel has concluded. The Traffic Division and the National Highway Traffic Safety Administration continuously collect and provide the Berkeley Police Department with data on primary collision factors and statistics on violations that impact public safety. This data provides officers with current information on what to educate the community on and what violations to focus enforcement towards. The department will continue to review and evaluate data on traffic offenses that affect community safety. This will drive the primary focus on ongoing enforcement and education efforts. Stop data related to this recommendation is shared with the public via BPD's Transparency Hub. Additionally, the focus of traffic enforcement has been formalized as a departmental directive contained within a special order.



**Task Force Recommendation:**

- **Use a clear, evidence-based definition for stops of criminal suspects**

**Implementation:**

The Police Department is establishing a precision based policing model that considers data and public safety. This model aims to reduce the number of stops that studies have shown had minimal impact on public safety.

Data driven-tools that enable close to real-time dashboard tracking of calls for service demands have been provided to the Community Services Bureau and Patrol Watch Commanders to help guide officers in their enforcement focus.

The Department implemented a system that employs a feedback loop with information flowing both ways. The system provides the tracking of calls for service with the goal of call analysis for patrol deployment strategies and also allows officers in the field to communicate their observations to the Community Service Bureau. This feedback loop provides information back to the Community Services Bureau and creates an accountability measure so strategies can be evaluated.

**Status:**

Recommendation implementation complete and ongoing efforts include the development of data-driven tools to enhance a precision-based policing model and approach to enforcement stops. The goal is to have data-driven approaches to violence prevention programs and real time crime and call analysis for patrol deployment strategies. Ensuring that we implement approaches that identify and work to reduce racial disparities will be a cornerstone to our evidence-based approaches. The Berkeley Police Department will continue to only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria. The Transparency Hub streamlines the collection and dissemination of police data. This system allows for exploration of different evidence-based approaches.

**Task Force Recommendation:**

- **Reaffirming and clarifying that the Berkeley Police Department will only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.**

**Implementation:**

Penal code 13519.4 is existing California law that prohibits racial profiling. BPD Policy 401 (Fair and Impartial Policing) also prohibits racial profiling. Section 401.2 explicitly states, "Officers shall not consider race, ethnicity, national origin,

gender, age, religion, sexual orientation/identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities...”

The above policies were reviewed in light of the task force recommendations and found to affirm and clarify police officer responsibilities in stops.

**Status:**

Recommendation implementation complete and ongoing efforts include: BPD will continue to conduct ongoing training in topics such as implicit bias, racial profiling, and procedural justice concepts. BPD will hold all members to Departmental Policies, especially those strictly and clearly prohibiting racial profiling. Further, stops will be information and evidence based. The BPD Data Analyst Team will continue to develop tools to focus internal efforts using evidence and information and share data publicly about enforcement and related results.

**Implement Procedural Justice Reforms**

**Task Force Recommendation:**

- **Refer amendments to existing BPD policy and the creation of an Early Intervention System (EIS) related to traffic, bike and pedestrian stops.**

**Implementation:**

The current Early Warning System was originally issued in 2004 and revised in 2008. The system mandates the monitoring of officer’s behavior and performance to include, but not limited to attendance, complaints, use of force incidents, and other factors. The Early Warning System serves as a program that identifies and address behavior or training issues before they become a disciplinary matter. Amendments have been made to the Department’s Early Warning System policy (Policy 1041) to include the monitoring of stop data for individual officers.

**Status:**

Implementation complete via issuance of updated policy reflecting recommendations. Pursuant to the FIP recommendation and after meeting with the FIP task Force stakeholders, language was added to the current Early Warning System policy to include data around traffic, bicycle, and pedestrian stops as a category that supervisors will consider for early intervention if merited. Ongoing efforts include implementing new systems for the monitoring of officer’s individual stop data by their respective supervisors. The Audits and Inspections Sergeant will also conduct separate and random quarterly audits of officer’s stop data, complaints, uses of force incidents, and body-worn camera videos and report the findings to the Chief of Police. Results of these audits are provided to

the Police Accountability Board. Additionally, the City Council has referred \$100,000 to the June, 2023 Budget Process to enter into a contract to design and assist with implementing a comprehensive Early Intervention and Risk Management System. We are currently in the planning stages of the RFP process in line with Council's referral.

**Task Force Recommendation:**

- **Adopt a policy to require written consent for all vehicle and residence searches and update the consent search form in alignment with best practice and community feedback.**

**Implementation:**

A revised written consent form has been created and amendments have been made to our existing search and seizure policy to require written consent for all consent searches. The Department implemented a redesigned Consent Search Form incorporating the collaborative feedback from multiple discussions with the Police Accountability Board.

**Status:**

Implementation completed via issuance of updated form reflecting recommendations.

**Task Force Recommendation:**

- **Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole.**

**Implementation:**

On February 10, 2021, updates were completed on Policy 311. Sections 311.5 and 311.6 were modified to reflect the above limitations to warrantless searches. The above policies were reviewed and modified in line with the task force recommendations and departmental goals to build trust and collaborate with the community to address crime and safety concerns.

**Status:**

Recommendation implemented. The update to Policy 311 limits the searches conducted on individuals on supervised release status. On April 18, 2022, the Public Safety Committee made a recommendation for a policy change to this recommendation. On July 26<sup>th</sup>, 2022 the City Council approved Policy 311 and on August 2<sup>nd</sup>, 2022 the policy was updated and released. The Department has trained on these updates and will continue to assess and review the impacts of these searches in consideration and support of the tenets of FIP.

**Task Force Recommendation:**

- **Address Profiling by Proxy (PAB Policy Development, Dispatcher Training).**

**Implementation:**

The Communications Center Operation Manual has been amended to address handling cases involving profiling by proxy. All dispatchers have reviewed the amended manual and are instructed to be cognizant and screen for profiling by proxy calls.

**Status:**

Recommendation implemented. Berkeley Police Department will continue to educate and train dispatchers on how to identify and address biased based reporting. Officers and supervisors are also expected to screen profiling by proxy calls. The Department as a whole will continue to seek out and train on anti-bias, implicit bias, and profiling by proxy topics to strengthen our ability to identify and address biased based reporting.

**Task Force Recommendation:**

- **Fire racist police officers identified through social media and other media screens.**

**Implementation:**

The following existing policies dictate procedures for investigating employees in this area; these policies adhere to due process and Government Section 3300:

*Policy 1029 (Employee Speech, Expression and Social Networking) provides accountability to employee personal social media posts. Section 1029.4(b) states "Speech or expression that, while not made pursuant to an official duty, is significantly link to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, or reputation of professionalism of the Berkeley police Department or its employee.*

*PR 232 (Controversial Discussion), PR 235 (Acts –Statements-By employees), PR 238 (Organizational Membership), and PR 250 (enforcement of Law, Impartiality) are also policies that provide accountability for any racist behaviors.*

The above policies were reviewed in light of the task force recommendations and found to provide necessary authority to investigate allegations of racism.

Departmental policy clearly identifies discrimination based upon a person's race as misconduct, and requires reporting and prompt investigating of any allegation

of racism. Any employee who becomes aware of or observes any discrimination on the basis of a protected class is required to notify a supervisor by the end of their shift or within 24 hours if they are off duty.

**Status:**

Recommendation implemented, however the Berkeley Police Department is committed to continuing to explore additional lawful methods to identify and address potentially racist behaviors or actions by our members. If at any time the police department becomes aware of any issues related to these concerns, the matter would be thoroughly investigated and employees will be held accountable.

**Task Force Recommendation:**

- **Require regular analysis of BPD stop, search, and use of force data;**

**Implementation:**

The Open Data Portal (ODP) is a public-facing website that gives the public access to police data and is accessible through the City's website. This allows for open and independent analysis and review to foster police accountability and transparency.

The Department will not only collect and report on stop, search and use of force data, but will regularly analyze the data via the Data Analyst Team. That analysis will at a minimum help direct policy, training, and resource allocation.

**Status:**

Implementation of recommendation complete and the Department will continue ongoing evaluation and data sharing. BPD is committed to transparency and is continuously exploring different ways to provide the public with access to more police data. The Data and Policy Analysis Team developed a Transparency Hub that will facilitate independent review and analysis of police data. This hub was launched after several community and internal stakeholder groups had an opportunity to view and collaborate on design. The Transparency Hub hosts BPD's Open Data Portal along with tools to help the public visualize and analyze the department's data, including interactive dashboards summarizing stop and search data, calls for service, and use of force data. The Transparency Hub updates in near-real time and gives the public access to datasets reaching further back in time than had been available. The 'Crime Mapper' page on the Transparency Hub that includes additional data on cases has been implemented and is now live.

**Task Force Recommendations:**

- **Make resources on police-civilian encounters more publicly available such as through RAHEEM.org;**
- **For any individual detained, BPD officers shall provide a business card with information on the commendation and complaint process with the Police Accountability Board and the Berkeley Police Department, Internal Affairs Bureau.**

**Implementation:**

BPD Officers shall offer business cards to all detained individuals with information, a QR code and links to the BPD website which provide community members with information on making a commendation or complaint about an interaction with BPD. In addition to the information on how to make a complaint, a link is provided to the ACLU webpage containing information on police-civilian encounters.

**Status:**

Recommendation implemented. All business cards will continue to be printed with the above information. These resources ensure police accountability as well as provide ways the community can comment on the service BPD has provided.

**Refer the following recommendations summarized below to the Reimagine Public Safety process****Task Force Recommendations:**

- **Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins; Conduct a baseline community survey**

**Implementation:**

BPD actively supported and participated in the work of the Reimagine Public Safety Task Force by providing data and information, answering questions, providing hands-on experience and discussing opportunities, impacts and effects of recommendations. Several community surveys were conducted by consultants as part of the overall Reimagine Public Safety process.

**Status:**

Initial implementation complete. To support feedback systems, the Berkeley Police Department will be seeking ongoing community input and feedback around reform efforts via the Transparency Hub.

**Acknowledge and reaffirm the following recommendations summarized below that are already underway****Task Force Recommendation:**

- **BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;**

**Implementation:**

The police department released the requested historical data in December of 2020. BPD stop, arrest, and calls for service data are regularly updated in the Open Data Portal and will be updated in near real time on the Transparency Hub.

**Status:**

Recommendation implemented.

**Task Force Recommendation:**

- **Fund and implement a specialized care unit (SCU) for mental health crises;**

**Implementation:**

After completing a competitive proposal process in the summer of 2022, and obtaining City Council approval on December 13, Bonita House has been selected as the provider for the Specialized Care Unit. In collaboration with HHCS and the City of Berkeley, Bonita House will implement the SCU pilot program using the recommendations from RDA (a consulting firm contracted by the city) as well as accompanying Steering Committee analysis.

**Status:**

SCU implementation continues to move forward and is managed by the Health, Housing and Community Services (HHCS) Department. HHCS continues to coordinate with Bonita House, other City departments, including the Fire and Police Department, and the SCU Steering Committee on a regular basis to receive program updates on the SCU as well as provide support for implementation. Since May 2023, Bonita House has welcomed four new staff members who will be working directly on the SCU team. These staff have received Bonita House's Crisis Academy classroom training and are shadowing current Bonita House crisis teams. HHCS expects the SCU program to launch in a limited capacity on September 5<sup>th</sup>.

**Task Force Recommendation:**

- **Conduct a Capacity Study of police calls and responses and use of officer time outside of casework.**

**Implementation:**

The City's Auditor's report was released which analyzed Computer Aided Dispatch data. Recommendations from this analysis were provided to the Police Department and findings were referred to the Reimagine Public Safety Task Force.

**Status:**

Implementation in progress. An assessment of overall staffing levels as well as patrol beat-specific analysis has been referred to the budget process via the Council's direction on Reimagining Public Safety. Internally the Data Analysts Team has been directed to continue their work to refine the way and type of data that is collected and analyze call response time to support the likely upcoming consultant work. Citygate has been selected to conduct a comprehensive police organizational workload study to assess our organizational structure, resource allocation, and geographical patrol boundaries analysis. A contract with Citygate is anticipated to be completed by the end of August and work will begin immediately after. Citygate's workload study will take approximately nine months.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

**POSSIBLE FUTURE ACTION**

The Police Department will continue to work toward the full implementation of the Task Force recommendations.

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTION**

Staff time and additional training time to be determined at a later date.

**CONTACT PERSON**

Jennifer Louis, Chief of Police, (510) 981-5700



Progress of the Implementation of FIP Recommendations

INFORMATION CALENDAR  
October 3, 2023

Supporting Materials:

1: Berkeley Police Policy and Training Materials

<https://cityofberkeley.info/safety-health/police/policy-training-materials>

2: California Legislative Information

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=13519.4.&nodeTreePath=7.5.1.2&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=13519.4.&nodeTreePath=7.5.1.2&lawCode=PEN)

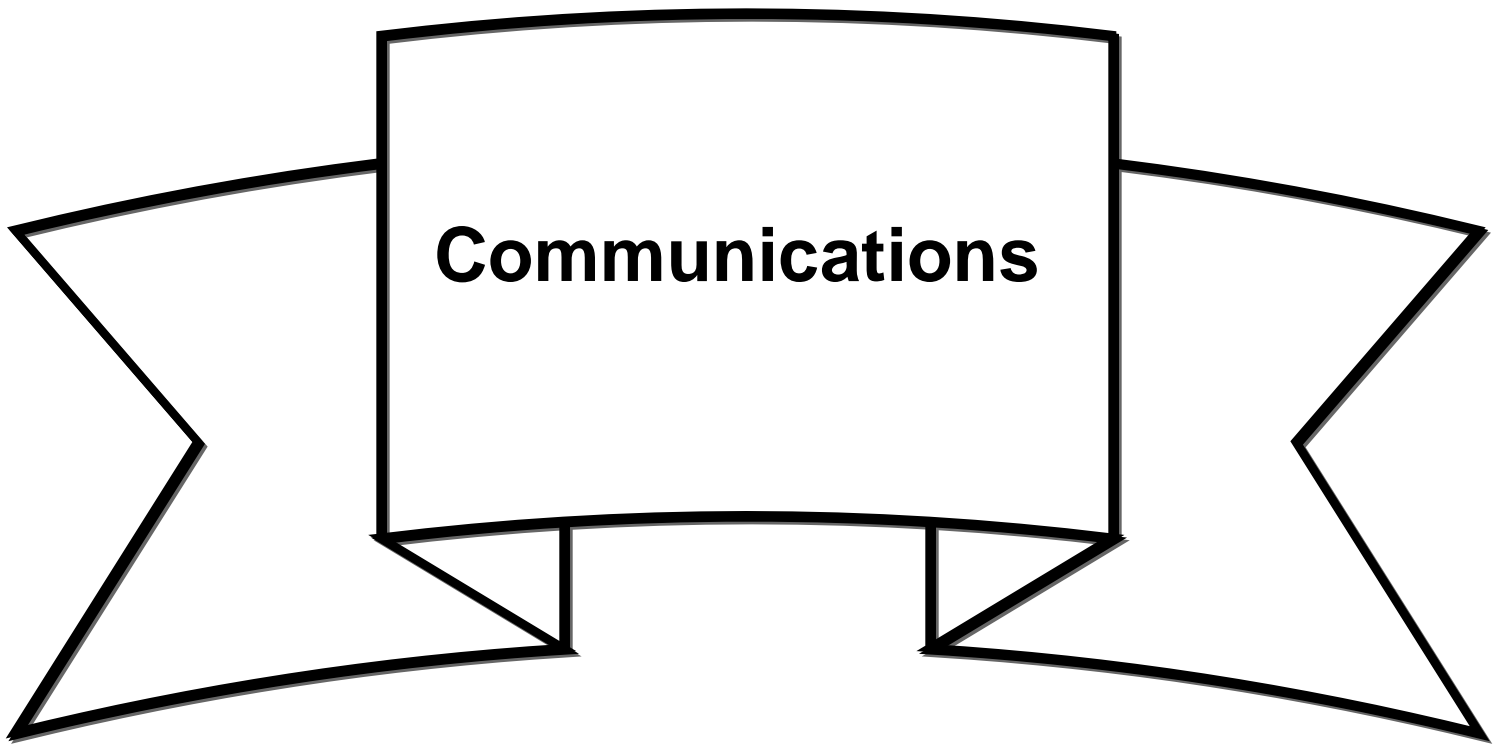
3. Reimagine Task Force and National Institute for Criminal Justice Reform (NICJR) Survey

<https://berkeley-rps.org/wp-content/uploads/2021/10/Berkeley-Community-Engagement-Report-v7.pdf>

4. RDA Consulting Final Report on Specialize Care Unit

[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_Commissions/Berkeley-MH-SCU\\_Final-Recommendations\\_FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/Berkeley-MH-SCU_Final-Recommendations_FINAL.pdf)





All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

**City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**Records Online**

<https://records.cityofberkeley.info/>

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3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF