

**ITEM 24**  
**Supplemental 2**

**Regular Council Meeting**  
**January 18, 2022**

**SUPPLEMENTAL  
AGENDA MATERIAL**

**for Supplemental Packet 2**

**B**

**Meeting Date:** January 18, 2022

**Item Number:** #24

**Item Description:** Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns

**Submitted by:** Councilmembers Sophie Hahn and Susan Wengraf

The options presented by staff have significant public safety implications for our two Districts. After significant research and consideration, and based on options presented by staff, we propose adoption of the attached version of Item 24.

We look forward to sharing our research and reasoning with the City Council at this evening's meeting, and appreciate our colleagues' consideration.



ORDINANCE NO. -N.S.

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

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

Section 1. Berkeley Municipal Code Chapter 23.306 is amended to read as follows (additions are shown in underlined text and deletions are shown in ~~strikethrough~~):

**23.306 Accessory Dwelling Units**

**Sections:**

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

**23.306.010 Purposes**

The purposes of this Chapter are to:

- A. Implement California Government Code Section 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in ~~high fire severity~~Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas, as designated in BMC Chapter 19.48 and as may be amended from time to time, ~~areas~~ 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.

A.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), or R-2AH (Restricted Multiple-Family Residential—Hillside Overlay).

~~1. **Exceptions.** The provisions of this chapter that permit ADUs and JADUs do not apply to lots in the R-1H (Single-Family Residential—Hillside Overlay), R-2H (Restricted Two-Family Residential—Hillside Overlay), or R-2AH (Restricted Multiple-Family Residential—Hillside Overlay) districts. In such districts, ADUs and JADUs shall only be permitted to the extent required by subdivision (e)(1) of Government Code section 65852.2.~~

**Commented [SH1]:** The delineation of area is placed here to avoid having it appear first in a footnote to the Development Standards chart, and for easier reference throughout the ordinances.

B. **Number of ADUs and JADUs Permitted Per Lot.** Except as expressly modified by Chapter 12.99, the following number of ADUs and JADUs shall be the maximum number of accessory units permitted on lots subject to this Chapter.

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

**23.102.010 – Permit Procedures**

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

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

**23.306.040 Development Standards**

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

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

	ADU <sup>1</sup>	JADU
Maximum Size <u>Outside of HOD</u> <sup>2-5</sup>		500 sf
Studio or 1 bedroom	850 sf	N/A
2 + bedrooms	1000 sf	
Maximum Size <u>Within HOD</u>	<u>800 sf</u>	<u>500 sf</u>
Maximum Height <u>Outside of HOD</u>	20 ft.	N/A
Maximum Height <u>Within HOD</u>	16 ft.	
Front Yard Setback	Same as underlying district	
Rear Setback	4 ft <sup>3</sup>	
Side Setback	4 ft <sup>3</sup>	
Required Off-Street Parking <u>Outside of HOD</u>	None <sup>4</sup>	
Required Off-Street Parking <u>Within HOD</u>	<u>The lesser of 1 space per bedroom or ADU</u> <sup>6, 7</sup>	<u>None</u> <sup>7</sup>

[1] An ADU converted from an Accessory Building or Accessory Structure legally established prior to December 1, 2021 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 determined by the Building Official and the Fire Marshal. 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 is non-compliant with the standards in this table is allowed a physical addition of no more than 150 square feet that complies with Maximum Height and Setback requirements in this table.

Commented [SH2]: Renumber

[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 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] For purposes of Table 23.306-1, "HOD" means lots that are within Fire Zones 2 or 3 (BMC 19.48.020, para. III.), but does not include lots located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts.~~

Commented [SH3]: Defined this under Section 23.36.020 B for the entire chapter

[6] 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.

Commented [SH4]: Renumber

[7] 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.

Commented [SH5]: Renumber

**B. Projections.**

1. Except as limited by Paragraph B.2 of this Section, architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows may not project into a setback.

2. No projections shall be allowed within the required setbacks on lots that are within the Hillside Overlay District. ~~Fire Zones 2 or 3 (BMC 19.48.020, para. III.) except on lots located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts.~~

Commented [SH6]: Area now designated through defined term at Section 23.306.020 B

**23.306.050 - Deed Restrictions**

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

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

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

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

### **23.306.060 – Neighbor Noticing**

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

**B. Content of Notice.** Notice shall provide the address of the project, allowable hours of construction, and a link to the City’s ADU webpage.

**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 rooftop decks and balconies shall be prohibited on lots that are within the Hillside Overlay District may not be designed, converted, or used as Usable Open Space. Fire Zones 2 or 3 (BMC~~

**Commented [SH7]:** *Usable Open Space.* Outdoor space, including natural and landscaped ground areas, pools, patios, decks and balconies designed for active or passive recreational use and which is accessible to the occupants of a building on the same lot.

~~19.48.020, para. III.) except on lots located within the R 2H (Restricted Two Family Residential Hillside Overlay), R 2AH (Restricted Multiple Family Residential Hillside Overlay), R 3H (Multiple Family Residential Hillside Overlay), or R 4H (Multi Family Residential) districts.~~



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

**12.99 Wildfire Hazard Evacuation Risk Mitigation Ordinance**

**Sections**

12.99.010 Title and Purposes

12.99.020 Applicability

12.99.030 Total Number of Units Permitted

**12.99.010 Title and Purposes**

A. This Chapter may be referred to as the "Wildfire Hazard Evacuation Risk Mitigation Ordinance."

B. The purposes of this chapter are to permit and promote the construction of accessory dwelling units and junior accessory dwelling units while protecting human life and health, promoting the public health, safety, and general welfare, and minimizing public and private losses due to dangerous conditions in specific areas.

C. Government Code 65852.2, subdivision (a)(1)(A) allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."

D. The Hillside Overlay District, as defined in BMC 23.306.020 B, has unique conditions and hazards that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety:

1. Wildfires, earthquakes and landslides put residents of the Hillside Overlay District at significant risk.

2. The Hayward fault bisects the Hillside Overlay District.

3. Due to the maze of narrow, steep, and winding streets, the Hillside Overlay District has extremely poor emergency access, egress and egress evacuation conditions. Safety is compromised by a substandard street infrastructure that has limited accessibility for emergency responders as well as inadequate capacity for fast and reliable escape. A majority of street widths in the ~~North Berkeley Hillside Overlay District hills~~ have substandard widths, and difficulty of navigation in most areas is exacerbated by one or more conditions including steep slopes, sharp curves, and acute-angled corners.

4. A study published by UC Berkeley researchers concluded that in the best-case scenario, if each household evacuated from the Berkeley hills with one vehicle, estimated evacuation time would be two hours and 245 vehicles would be exposed to immediate fire danger. However, if each household evacuated

with 1.7 vehicles, evacuation time would increase to three hours and 782 vehicles would be exposed to immediate fire danger. Doubling the number of households in these areas through the addition of just one ADU or JADU, assuming only one evacuation vehicle per household, would likely produce similar outcomes to the 1.7 vehicle-per-household evacuation scenario, likely with a larger total number of residents at risk.

5. Berkeley's Hillside Overlay District is comprised of the most difficult-to-access and evacuate areas in Berkeley's Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas. In addition, the Hayward Fault traverses the full length of these zones, with violent (Level 9 of 10) shaking predicted in the US Geologic Services Hayward Fault earthquake scenario (HayWired). Scientists at UC Berkeley's Seismology Lab have determined that the Hayward Fault is probably California's most dangerous, with a 31.7% chance of a 6.7 magnitude or greater earthquake in the next 26 years.

- 6. The City's Hazard Mitigation Plan, adopted December 10, 2019, identifies Earthquake and Wildland-Urban Interface Fire as "Likely" and "Catastrophic" events. Increasing density and intensity by permitting both one ADU and one JADU (2 total) in addition to the primary home, on every parcel zoned residential in the Hillside Overlay District, representing a 200% increase in units allowed on most parcels, or in a very high fire hazard severity zone will seriously exacerbate the already very extremely hazardous conditions that currently exist with respect to traffic flow and public safety in the likely event of a catastrophic wildfire or earthquake, necessitating reasonable limitations that reduce exposure to hazardous conditions.

**12.99.020 Applicability**

A. Lots within the Hillside Overlay District (HOD), as defined in BMC 23.306.020 B, A lot that meets all of the following criteria shall be subject to the provisions of this Chapter.

1. Lots that are located within the very high fire hazard severity zone ("Fire Zone 2" or "Fire Zone 3") as designated in paragraph III. of Berkeley Municipal Code Section 19.48.020; and

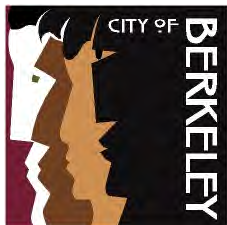
2. Lots that are not located within the R 2H (Restricted Two-Family Residential Hillside Overlay), R 2AH (Restricted Multiple-Family Residential Hillside Overlay), R 3H (Multiple-Family Residential Hillside Overlay), or R 4H (Multi-Family Residential) districts.

Commented [SH8]: Using consistent definition

**12.99.030 Total Number of Units Permitted**

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

Section 3. 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.



Councilmember Lori Droste

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** January 18, 2022

**Item Number:** 24

**Item Description:** “Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns” (City Manager)

**Submitted by:** Councilmember Droste (District 8)

Presenting alternative language for a potential local ordinance enacting Chapter 12.99 (Accessory Dwelling Units in Wildfire Hazard Areas) and amending Chapter 23.306 (Accessory Dwelling Units), with the goal of more precisely tailoring restrictions to balance well-justified evacuation concerns with the need for additional homes and fair housing approaches.



Vice Mayor Lori Droste

## **SUPPLEMENTAL AGENDA MATERIAL FOR SUPPLEMENTAL PACKET #2**

### **ITEM #24 “Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns” (CITY MANAGER)**

#### **ACTION CALENDAR**

January 18, 2022

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Vice Mayor Lori Droste

**SUBJECT:** Supplemental Agenda Material for Supplemental Packet #2 “Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns”

#### **RECOMMENDATION**

*(This supplementary material incorporates by reference the Current Situation And Its Effects, Background, Environmental Sustainability and Climate Impacts, Rationale For Recommendation, and other background information found in Item 24, with additional recommendations and rationales enumerated below.)*

Conduct a public hearing and upon conclusion, adopt first reading of a *modified* local ordinance enacting Chapter 12.99 (Accessory Dwelling Units in Wildfire Hazard Areas) (per the modifications in this supplemental) and amending Chapter 23.306 (per the remainder of the content in Item 24 from this agenda, with a small modification described below).

The purposes of this modified Chapter 12.99 and Chapter 23.306 are as follows:

1. **Preserve use of City of Berkeley Fire Zone 2 and Fire Zone 3 as the maximum geographical extent of where ADU/JADU restrictions will apply, consistent with the third alternative for BMC 12.99.020.A (Presented on pages 23-24 of 34 in Item 24).**

*Rationale: This option uses Berkeley-specific Fire Zones 2 and 3 because shifting to the State-determined CalFire Very High Fire Hazard Severity Zones would limit local flexibility/control and creates a “moving target” that will be updated on an unpredictable schedule beyond the City’s control.*

2. **Adopt a 26-foot pavement width as the cut-off for enhanced restrictions on ADUs/JADUs.**

*Rationale: The 26-foot width cutoff not only captures most the streets in the highest elevation, high gradient, and fire risk-prone areas of hills, it also correlates well with whether a street is part of or located near a rectilinear and interconnected street grid (versus more curvilinear and hierarchical street layouts that are less easily evacuated).*

3. **Incorporate proposed ordinance revisions that are intended to:**

- a. Preserve the intent of the proposed ordinance options to reduce aggregate risks to life/safety by limiting the rate of household growth in areas subject to severe wildfire hazards and characterized by dangerously limited means of egress.
- b. Refine language in the proposed ordinance to better reflect roadway conditions in the Berkeley hills (i.e., by revising references to “highway” access).
- c. Broaden the proposed restrictions so that they also apply to all unpaved roadways in Fire Zones 2 and 3 and to roadways that are sufficiently wide but lack two distinct routes out of the fire zones along roadways of sufficient width.
- d. Reflect existing City GIS data by using standards based on full pavement width.
- e. Eliminate calls for subjective/discretionary judgements precluded by State law.

Additionally, increased risks to life safety due to population increases in areas of high fire risk are exacerbated if not overshadowed by the risks presented by inappropriate on-street parking, high fuel loads, and lax enforcement of existing building maintenance requirements. Therefore, in addition to the ordinance options revisions listed above, it is further recommended that the following items be referred to the the City Manager for consideration and development of relevant policies and ordinances:

1. **Update the City’s Disaster Preparedness and Safety Element (of the General Plan) and Local Hazard Mitigation Plan**

Prioritize updating Berkeley’s Disaster Preparedness and Safety Element as it has not undergone a truly comprehensive update in over 20 years. While the provisions of this ordinance is to prohibit JADUs *and* ADUs in high risk fire zones, only one permit was issued for this combination in 2020. Instead of addressing development in fire zone areas in a piecemeal approach via the ADU ordinance, the City of Berkeley needs to take a wide-scale, holistic

approach to mitigating risk that may arise from development in fire-prone areas. By *also* taking into account other currently permitted development (building a single family home or large scale additions, for example), Berkeley can more appropriately address evacuation concerns and population density in the Wildland Urban Interface.

**2. Increase “red curbing” in areas of high fire risk**

The usable area of Berkeley’s narrow hillside streets is further narrowed by the presence of parked cars, which in some cases park partly on the sidewalk, constricting both vehicle and pedestrian rights-of-way. Not only does on-street parking present a direct risk during an evacuation, it also increases response times for emergency vehicles. It is recommended that the City explore options for increasing red-curbing in areas with high fire risk to: reduce obstructions, encourage use of existing off-street parking, and incentivize alternatives to driving.

While the fire chief currently has the ability to “red curb” narrow streets in the hills, Council wishes to convey its full support of this policy and encourage a robust and streamlined implementation to save as many lives as possible in case of a fire or other natural disaster.

**3. Enhance fire/building codes and requirements for clearing excessive and fire-prone vegetation, step up enforcement, and offer incentives for voluntary action**

Although the State, Berkeley, and other jurisdictions are taking steps to require greater use of fire-safe building and landscape practices, the City should step up enforcement and could consider even stricter requirements. Similarly, the City could consider requirements for the swift and complete removal of particularly dangerous species such as eucalyptus and Monterey pine. Finally, the City could consider provision of incentives, grants, or revolving loan funds for building hardening, installation of fire-resistant vegetation/hardscape, plant debris removal, and/or vegetation thinning.<sup>1</sup>

**Ordinance Language**

Below is alternative BMC 12.99.020.A language proposed by this supplemental for Council’s consideration, using 26 feet as the street width criterion. The section regarding use of Fire Zones 2 and 3 is taken from the December 14th version found on page 7 of 33 of Item 24. The section regarding zones that are excluded from the additional restrictions is also taken from the December 14th version found on page 7 of 33. All deletions from and additions to language in staff’s original language are indicated with ~~strikeout~~ and double underline, respectively. Non-substantive changes made for grammatical consistency/clarity are highlighted light gray.

BMC 12.99.020.A

A. Any lot that meets all of the following criteria shall be subject to the provisions of this Chapter

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<sup>1</sup> <https://www.latimes.com/environment/story/2019-10-03/wildfire-defense-fire-proof-home-hardening-sprinklers>

1. ~~Lots that are~~The lot is located within a very high fire hazard severity zone (“Fire Zone 2” or “Fire Zone 3”) as designated by the Director of Forestry and Fire Protection pursuant to California Government Code section 51178. If the California Government Code is amended such that the Director of Forestry and Fire Protection is no longer required to designate very high fire hazard severity zones, the City Manager, in consultation with the Fire Marshal, shall identify an appropriate substitute designation, which the City Manager shall cause to be published and updated on the City’s website no later than June 30 of each calendar year; and
2. ~~Lots that are~~The lot is not located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), R-4H (Multi-Family Residential) districts, R-SH (Residential High Density Subarea—Hillside Overlay), C-NSH (North Shattuck Commercial—Hillside Overlay), or C-NH (Neighborhood Commercial— Hillside Overlay) districts; and
3. The lot is not located on a cul-de-sac, cove, or court that is directly connected to a roadway with a curb-to-curb pavement width of 42 feet or greater.
3. ~~Either~~Any of the following apply to the lot:
  - a. The lot is located on a street with an unpaved roadway.
  - b. The lot is located on a street with a paved roadway where the curb-to-curb paved width is less than 26 feet.
  - c. The lot lacks vehicular access to at least two distinct routes leading to an area within Berkeley City Limits but outside of both Fire Zone 2 and Fire Zone 3; both routes must feature paved roadways with a curb-to-curb width of at least 26 feet along the entirety of the route leading out of Fire Zones 2 and 3.
- a. ~~Lots that lack distinct means of vehicular access as follows:~~
  - i. ~~The two (2) distinct means of vehicular access, as measured from the lot frontage to the point of intersection with the highway, shall not overlap with each other; and~~
  - ii. ~~Each distinct means of vehicular access shall contain a paved or unpaved road of at least twenty four (24) feet in width, exclusive of sidewalks, landscaping, and parking lanes;~~
- or
- b. ~~Lots that are on streets less than 26 feet wide.~~

Below is a minor change to Footnote 1 in Table 23.306-1 ADU and JADU Development Standards to remove discretionary requirements that would not be consistent with state law.<sup>2</sup> The single underline is in the original and has been preserved. Strikeout has been added to indicate that this text would be removed (i.e., no longer added to the ordinance).


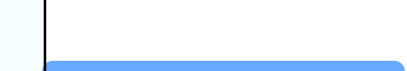

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<sup>2</sup> Definition of “objective” standards per Government Code 65589.5.(h)(8) as amended by SB 330. [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=65589.5](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=65589.5)

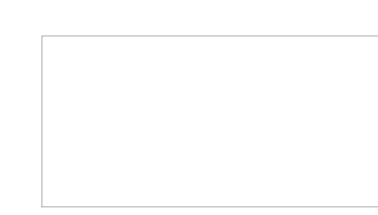




[1] An ADU converted from an Accessory Building or Accessory Structure legally established prior to December 1, 2021 that does not comply with the Maximum Height, Size, and/or Rear and Side Setback requirements is allowed to maintain non-conformity to the same dimensions of the existing Accessory Building or Accessory Structure, ~~provided that the existing side and rear setbacks are sufficient for fire and safety as determined by the Building Official and the Fire Marshal.~~ Any physical additions to the existing Accessory Building or Accessory Structure shall comply with the development standards in this table.

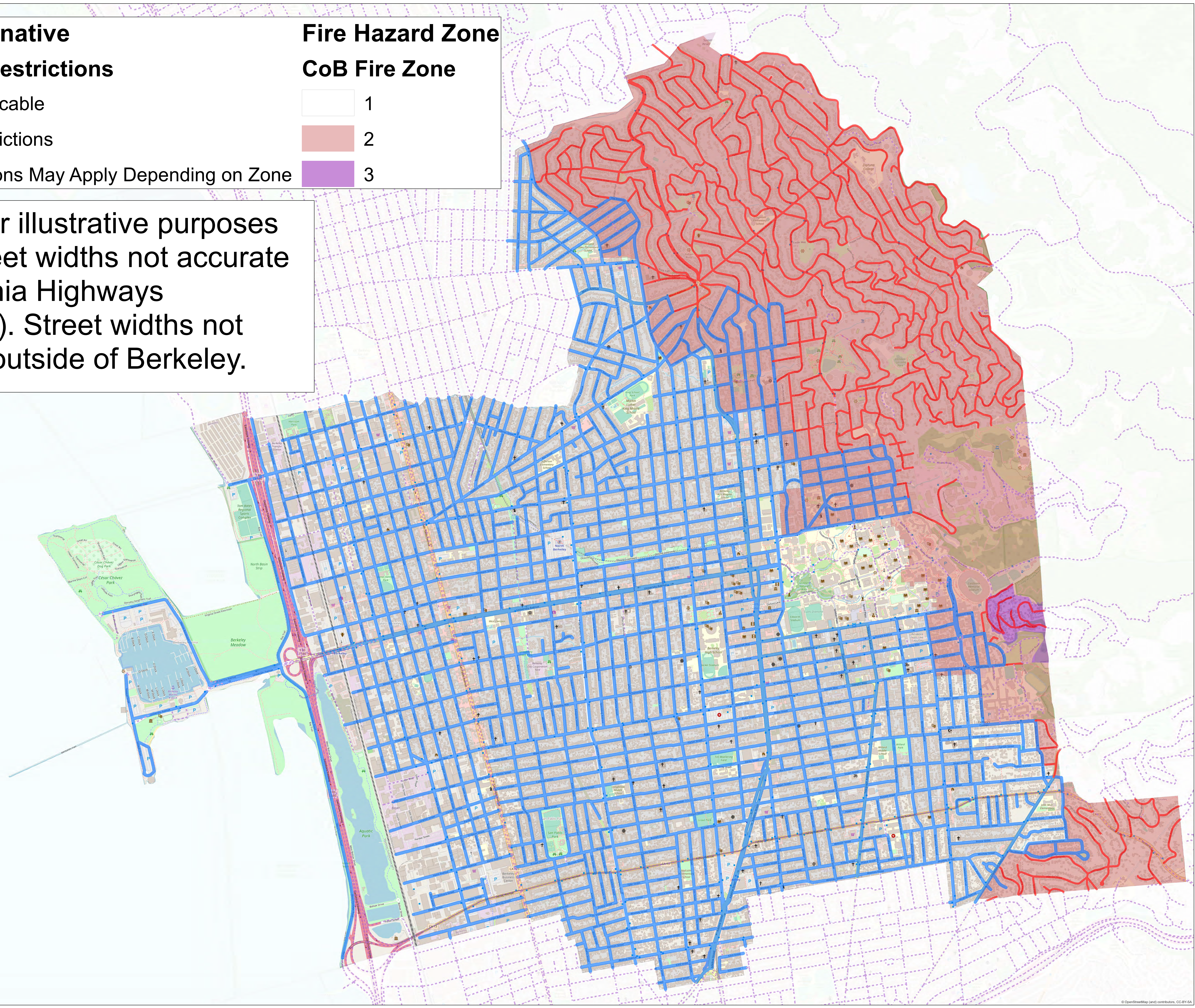
### Droste Alternative JADU/ADU Restrictions

-  Not applicable
-  No Restrictions
-  Restrictions May Apply Depending on Zone

### Fire Hazard Zone CoB Fire Zone

-  1
-  2
-  3

**\*Map is for illustrative purposes only.\*** Street widths not accurate or California Highways (CalTrans). Street widths not accurate outside of Berkeley.



### CoB Streets Width (26ft cutoff) Fire Hazard Zone

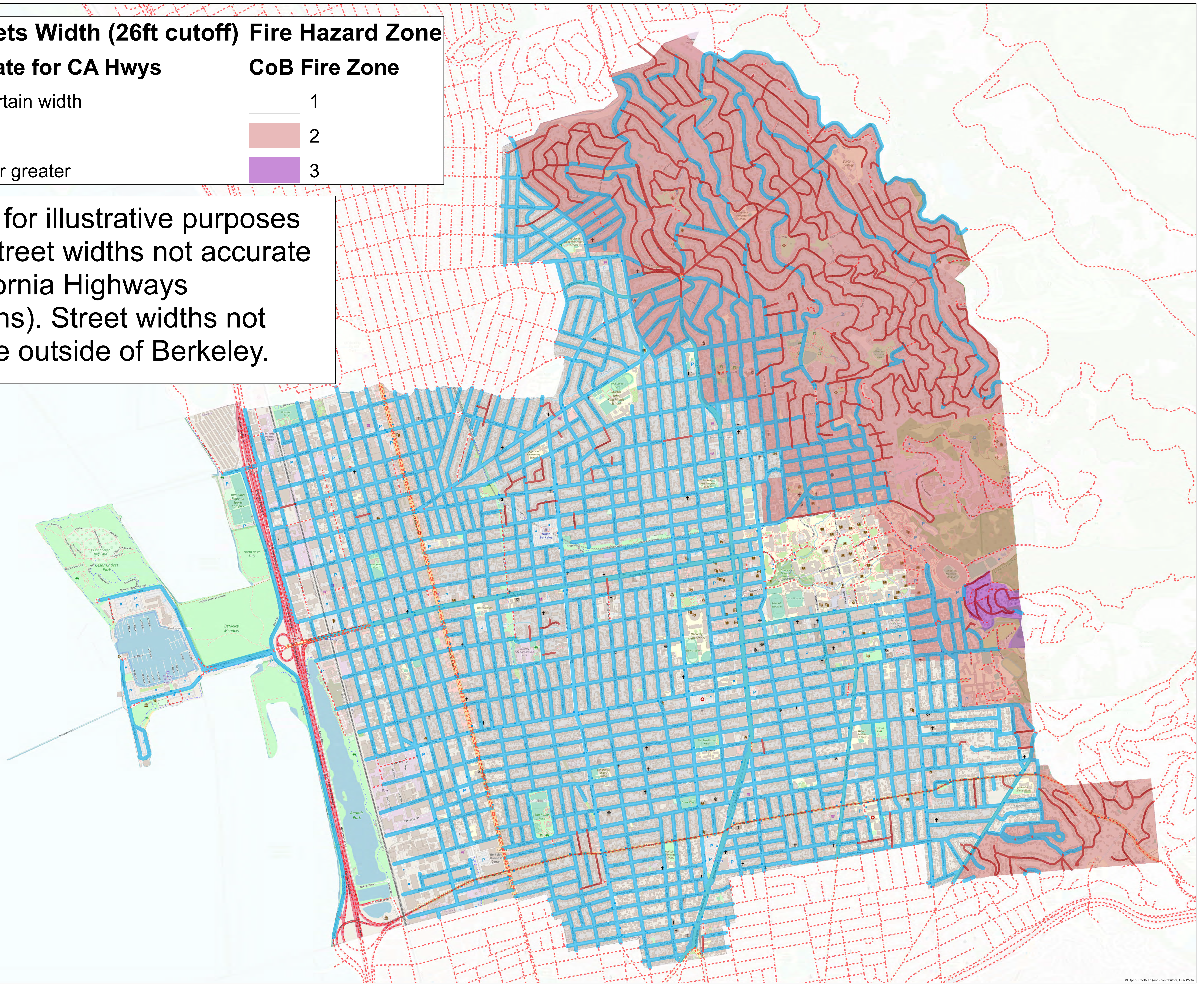
Not accurate for CA Hwys

### CoB Fire Zone

- - - Uncertain width
- <26ft
- 26ft or greater

- 1
- 2
- 3

**\*Map is for illustrative purposes only.\*** Street widths not accurate or California Highways (CalTrans). Street widths not accurate outside of Berkeley.



### CoB Streets Width (33ft cutoff) Fire Hazard Zone

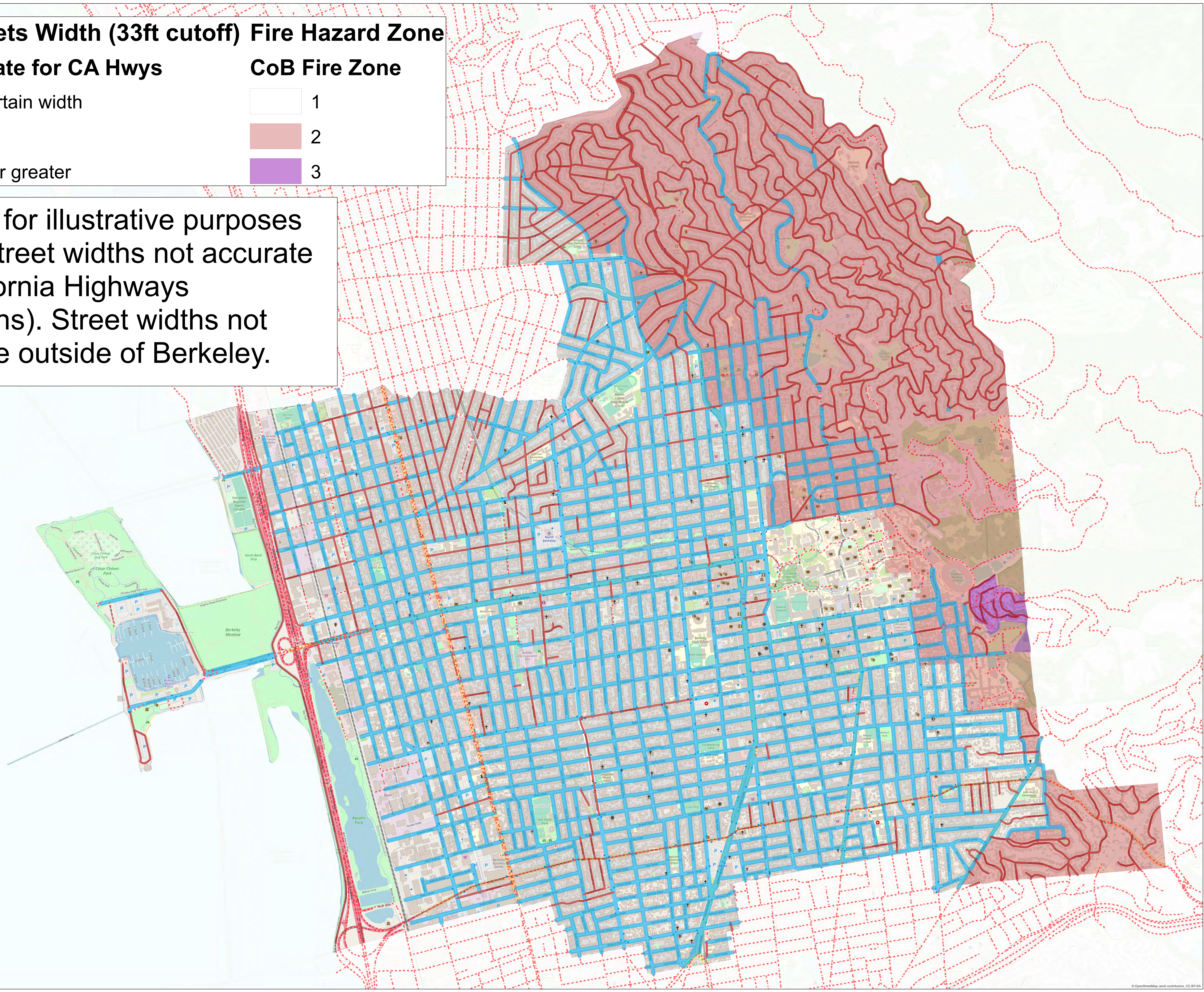
Not accurate for CA Hwys

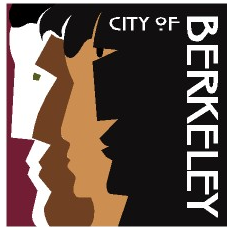
### CoB Fire Zone

- - - Uncertain width
- <33ft
- 33ft or greater

- 1
- 2
- 3

**\*Map is for illustrative purposes only.\*** Street widths not accurate or California Highways (CalTrans). Street widths not accurate outside of Berkeley.





Office of the City Manager

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** December 14, 2021

**Item Number:** 47

**Item Description:** Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns

**Submitted by:** Jordan Klein, Planning & Development Director  
Farimah Faiz Brown, City Attorney

This revised version of the proposed ordinance clarifies that the public safety restrictions related to wildfire evacuation risk do not apply within the following zoning districts:

R-SH (Residential High Density Subarea—Hillside Overlay), C-NSH (North Shattuck Commercial—Hillside Overlay), and C-NH (Neighborhood Commercial—Hillside Overlay)

It also removes two erroneous references to a Council referred road width threshold of 33 feet.



Office of the City Manager

PUBLIC HEARING  
December 14, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Abe Roman, Fire Chief, Fire and Emergency Services Department  
Jordan Klein, Director, Planning and Development Department

Subject: Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of a local ordinance enacting Chapter 12.99 (Accessory Dwelling Units in Wildfire Hazard Areas) and amending Chapter 23.306.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

On October 26, 2021, City Council considered Planning Commission's recommendations for a local ADU Ordinance and directed the City Manager to develop a set of narrowly-focused public safety regulations that apply to Accessory Dwelling Units (ADUs). These regulations are to address public safety issues that arise from new development, residents and dwelling units in fire-prone areas.

The proposed ordinance incorporates all of the recommendations referred to the City Manager and City Attorney by the Council on October 26, 2021 in a manner that is narrowly tailored to achieve the public safety goal of preventing fatalities during a wildfire evacuation. This staff report includes an array of alternatives for consideration by the Council, should it wish to narrow or expand the scope of the proposed ordinance.

BACKGROUND

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, and that the wildfire front is not the only source of risk, since embers and firebrands travel far beyond the area impacted by the fire front, and pose a risk of ignition to structures and fuels on a site for a longer time. In that same statute the legislation has determined that it is necessary that all levels of government, including local

governments work to implement preventive measures to ensure the preservation of the public peace, health, or safety. The ability to evacuate people safely during a wildfire is a major challenge in Berkeley. The trend of increasing the density of households even in recognized Very High Fire Hazard Severity Zones as mandated by existing State ADU law demands that the City impose more restrictive fire and public safety requirements as allowed by Gov. Code 51175 and other laws in order to mitigate difficult and dangerous evacuation conditions.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Studies have shown that the total acreage of vegetation burned in California over the decades since the late 1980s has consistently increased over time. One study concluded that the estimated 7.08 million acres burned in the time period from 2009-2018 is approximately 259% more than the acreage burned during the period from 1989-1998 (2.73 million acres) (Buechi, Cameron, Heard, Plantinga, & Weber, 2021)<sup>1</sup>. All other variables being equal, this increase in burned acreage will also equate to a corresponding increase in carbon dioxide released to the environment due to wildfires. Measures taken to prevent wildfires, slow the development of wildfires once they are ignited, make wildfires easier to suppress, or prevent the diversion of valuable firefighting resources from rescue missions and allow them to concentrate on suppressing the wildfire will have the effect of reducing this emission of carbon dioxide.

### RATIONALE FOR RECOMMENDATION

The wildland fire problem throughout the State of California and the western region of the United States has become progressively worse over the past 30-40 years. The duration of what was once considered a 'wildfire season' has extended to the point that wildfire events occur throughout most of the calendar year. This tends to blur any distinct lines between adjacent fire seasons. As a result, wildfire activity has become more of a cycle and less of a 'season'. Recent wildfire incidents since 2017 have consistently set records for fire size, intensity and rate of spread. Scientific evidence suggests that our current extreme drought conditions that make vegetation more susceptible to ignition and the fire weather conditions which lead to extreme fire behavior and make fire control difficult are due in large part to global climate change.

Formal studies confirm that the overall severity of the wildfire problem in the state has steadily increased over the past 30-40 years and recent wildfire incidents in California since 2017 have consistently set records for fire size, intensity and rate of spread. The difficulty of controlling recent wildfires is evidenced by the number of structures being lost in wildfires despite the record expenditure of public funds on fire control efforts and in the anecdotal reports of experienced firefighters.

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<sup>1</sup> Buechi, Hanna; Cameron, Dick; Heard, Sarah; Plantinga, Andrew J; Weber, Page "Long-Term Trends in Wildfire Damages in California", 2020: <https://emlab.ucsb.edu/sites/default/files/documents/wildfire-brief.pdf>

The October 20, 1991 Oakland-Berkeley firestorm (known officially as the Tunnel-Oakland Hills fire), resulted in 25 fatalities due to evacuation challenges posed by winding narrow roads in the Oakland Hills bordering Berkeley. In light of these risks, since 2007, Fire Zone 3, (which comprises the Panoramic Hill neighborhood zoned as the Environmental Safety-Residential District), has been subject to safety restrictions including requirements for the installation and retrofit of fire sprinklers. Today, the Berkeley Fire Department believes that based on deteriorating wildfire conditions throughout the state that the wildland fire problem in Fire Zone 2 is now very similar to the wildland fire problem in Fire Zone 3.

The geographic area designated as Fire Zone 2 shares most of the wildfire characteristics present within Fire Zone 3. Both areas are recognized by the City and the Director of the California Department of Forestry and Fire Protection as Very High Fire Hazard Severity Zones (VHFHSZ) and share similar fire weather. Both areas have narrow, winding and steeply graded roads and streets. Both areas have abundant vegetation intermixed with structures. The topography of both areas is steep which creates the potential for rapidly advancing slope-driven fires. The original parcel subdivisions created narrow but deep lots in both Fire Zones. This tends to crowd adjacent structures and greatly reduces the amount of defensible space available to provide for wildfire safety. Many of the streets average less than 26 feet in width, resulting in choke points where two vehicles are unable to pass each other in the presence of any parking lane. The main factor that the two areas do not share is the condition of a single means of evacuation and access by road that exists in Fire Zone 3. The majority of street segments in Fire Zone 2 have access to more than one evacuation and access route. However, given the dramatic increase in the severity of the wildfire problem it is believed that even the availability of a second or additional access routes, which is typical in Fire Zone 2, cannot mitigate all of the factors previously listed that may contribute to a catastrophic wildfire.

The hazard posed by winding, narrow streets in the wildfire-prone areas is likely to increase substantially with increased density of human life, structures and vehicles and any resulting increase in evacuation traffic. Increasing the number of households living on a given parcel is highly likely to result in an increase in the number of separate vehicles evacuating from that parcel. A parcel containing a single-family home, a JADU and an ADU, occupied by three households, is more likely to generate three separate evacuation vehicles than a single-family home occupied by a single household.

In a study performed at UC Berkeley, researchers modeled a wildfire evacuation scenario in the Berkeley Hills. According to their model, if each household in the Berkeley Hills used only one vehicle to evacuate, then the estimated evacuation time would be less than 2 hours, and 245 vehicles would be exposed to immediate fire danger. However, if each household took 1.7 vehicles to evacuate, that would increase evacuation time to three hours and expose 782 vehicles to fire. If all households evacuate with three vehicles, exposed vehicles reach 2,497 (11% of the total). The



report concluded that reducing the number of personal vehicles (and thereby reducing traffic congestion) was one of the most impactful measures that could prevent wildfire fatalities by ensuring that all households are able to evacuate safely.<sup>2</sup>

By the same reasoning, preventing an increase in the number of households living within the Very High Fire Hazard Severity Zone will have a direct impact upon the risk of exposure of evacuating vehicles to wildfire risk.

On October 26, 2021, the City Council directed the City Manager and City Attorney to take action to address these hazards as follows:

*For the Hillside Overlay District (HOD), in light of the public hazards and life safety concerns, we refer to the City Manager and City Attorney for staff analysis and recommendations for a potential ordinance, Councilmember Wengraf's full list of recommendations (including the number of ADUs on a parcel) as well as the issue of ADU limitations where there is one access and egress route with a goal of returning within a month or less.*

Councilmember Wengraf's Supplemental item listed the following recommendations:

**1. Allow one accessory dwelling unit on parcels in the HOD by either:**

*A. conversion of existing space (garage, basement or attic) to an ADU no larger than 800 sq. feet*

*or*

*B. conversion of existing internal space for JADU no larger than 500 sq. feet*

*or*

*C. one detached ADU of 800 sq. feet*

**2. Prohibit roof-top decks and balconies for fire safety**

**3. Prohibit all protrusions into the four-foot rear or side setback to maintain defensible space**

**4. Maintain 16-foot maximum height for ADUs**

**5. Allow parking in the front yard setback in coordination with ministerial ADU permit**

~~Additionally, on page 4 of her supplemental item, Councilmember Wengraf uses a street width narrower than 33 feet as grounds for restricting the development of multiple ADUs per parcel.~~ The proposed ordinance applies in Fire Zones 2 and 3 and incorporates all of the recommendations set forth in the Council referral. The primary effect of the

<sup>2</sup> Zhao, Bingyu, PhD Wong, Stephen D, PhD "Developing Transportation Response Strategies for Wildfire Evacuations via an Empirically Supported Traffic Simulation of Berkeley, California" 2021: <https://escholarship.org/uc/item/70p6k4rf>

proposed ordinance would be to reduce the number of ADUs per parcel from two (one ADU and one JADU) to one (either an ADU or a JADU) and thereby limit the number of separate households likely to flee a wildfire event, which would result in fewer vehicles and a lower likelihood that escaping vehicles would be exposed to wildfire risk due to traffic congestion during the evacuation. Fire Zones 2 and 3 are the formally recognized Very High Fire Hazard Severity Zone in the City of Berkeley, for purposes of Government Code 51179. Certain portions of Fire Zone 2 near the campus of the University of California are zoned for multi-family housing and do not share the narrow, winding streets and related hazardous conditions present in the hilly portions of the VHFHSZ; those areas not zoned for single-family housing are excluded to ensure that these protections are narrowly tailored.

#### ALTERNATIVE ACTIONS CONSIDERED

This report includes alternative options for City Council consideration. These options, which would revise the proposed language of Chapter 12.99, are outlined below, and each option could be used to further narrow the scope of the proposed ordinance. There is also an implementation concern regarding the prohibition on “rooftop decks and balconies” which are not defined terms for purposes of ministerial approval of zoning certificates.

#### **Replace Fire Zone 2 and 3 with State Recommended VHFHSV**

The proposed ordinance uses the boundary of Fire Zones 2 and 3 to designate the areas in which additional restrictions apply to the development of ADUs for wildfire safety purposes. As an alternative, the Council could narrow the applicability of the Ordinance by relying upon the State-Recommended VHFHSV boundaries, which would exclude a portion of Fire Zone 2 in the northwest corner of the locally-adopted VHFHSV.

Government Code Section 51178 requires that the state Director of Forestry and Fire Protection identify Very High Fire Hazard Severity Zones throughout the state, and submit those recommendations to the local jurisdictions where those VHFHSZs are located. Government Code Section 51179 provides that the local jurisdiction may, in turn, designate additional areas that where their inclusion within the VHFHSZ is necessary for effective fire suppression in the area. These locally-adopted VHFHSZs are then transmitted to the state and become the official VHFHSZ for the area until such time as they are modified upon review, which takes place every five years, per Government Code Section 51181.

The City lawfully exercised its authority under Government Code 51179 to modestly expand the boundary of the Very High Fire Hazard Severity Zone originally identified by the Director of Forestry and Fire Protection (adopted on January 1, 2011, repealed and re-enacted on December 3, 2019). The City’s determinations of the boundaries Fire Zones 2 and 3 were based upon substantial evidence in the record that inclusion of these areas is necessary for effective fire protection within the area.

Relying upon the state recommended VHFHSZ rather than Fire Zones 2 and 3 (the applicable and lawfully established VHFHSZ) would have the effect of excluding certain narrow streets and streets that lack two distinct means of egress that are located outside of the state-recommended VHFHSZ but within the locally-adopted VHFHSZ. It would also pose implementation problems associated with the fact that the state-recommended VHFHSZ was not adopted by the City and therefore is not in use anywhere, parcels on the boundary may dispute whether or not the state-recommended VHFHSZ does or does not apply.

Below is alternative language for Council's consideration:

**BMC 12.99.020 A**

A. A lot that meets the following criteria shall be subject to the provisions of this Chapter.

1. ~~Lots that are located within a very high fire hazard severity zone ("Fire Zone 2" or "Fire Zone 3") as designated in paragraph III. of Berkeley Municipal Code Section 19.48.020 as designated by the Director of Forestry and Fire Protection pursuant to California Government Code section 51178. If the California Government Code is amended such that the Director of Forestry and Fire Protection is no longer required to designate very high fire hazard severity zones, the City Manager, in consultation with the Fire Marshal, shall identify an appropriate substitute designation, which the City Manager shall cause to be published and updated on the City's website no later than June 30 of each calendar year;~~  
and

2. ~~Lots that are not located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential), R-SH (Residential High Density Subarea—Hillside Overlay), C-NSH (North Shattuck Commercial—Hillside Overlay), or C-NH (Neighborhood Commercial—Hillside Overlay) districts.~~

**Further Narrow Applicability based on Street Width or Egress**

The proposed ordinance would apply protections to parcels that are within the Fire Zone 2 or 3, which includes areas that contain narrow streets or have only one distinct means of egress. Council could further narrow the applicability of the fire safety restrictions by applying them only to parcels that are *both* located within Fire Zone 2 or 3 *and* where at least one other Applicability criterion is met, either the street width requirement or the absence of multiple distinct means of egress. This would reduce the number of parcels where ADUs are limited to one ADU or one JADU, thereby increasing the number of parcels with three separate dwelling units which could be occupied by three separate households in the area prone to wildfire risk.

Below is alternative language for Council's consideration:

**BMC 12.99.020.A**

A. A lot that meets all of the following criteria shall be subject to the provisions of this Chapter.

1. Lots that are located within a very high fire hazard severity zone ("Fire Zone 2" or "Fire Zone 3") as designated in paragraph III. Of Berkeley Municipal Code Section 19.48.020; and
2. Lots that are not located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), ~~or R-4H (Multi-Family Residential)~~, R-SH (Residential High Density Subarea—Hillside Overlay), C-NSH (North Shattuck Commercial—Hillside Overlay), or C-NH (Neighborhood Commercial—Hillside Overlay) districts; and
3. Either of the following:
  - a. Lots that lack distinct means of vehicular access as follows:
    - i. The two (2) distinct means of vehicular access, as measured from the lot frontage to the point of intersection with the highway, shall not overlap with each other; and
    - ii. Each distinct means of vehicular access shall contain a paved or unpaved road of at least twenty-four (24) feet in width, exclusive of sidewalks, landscaping, and parking lanes;
  - or
  - b. Lots that are on streets less than 33 feet wide.

**Further Narrow Street Width**

~~The Council referral used 33 feet as a threshold for street width, below which protections would apply in the Hillside District Overlay.~~ In the alternative, Council could further narrow the applicability of the fire safety restrictions by using a narrower street width criterion. City staff has mapped streets where the average width is below 26 feet, and has also mapped streets where the average width is below 24 feet. These widths were selected because they limit vehicle access when combined with a parking lane. The ordinance could impose requirements on streets where the condition and width of the road is such that a 20-foot fire lane cannot be maintained; however implementation of a street width criterion for applicability will be greatly facilitated by the use of a width that has already been mapped and is readily accessible to staff.

The use of a narrower street width as part of the criteria for applicability of the fire safety restrictions would reduce the number of parcels where ADUs are limited to one ADU or one JADU, thereby increasing the number of parcels with three separate dwelling units which could be occupied by three separate households in the area prone to wildfire risk.

Below is alternative language for Council's consideration, using 26 feet as the street width criterion.

**BMC 12.99.020.A**

A. A lot that meets all of the following criteria shall be subject to the provisions of this Chapter.

1. Lots that are located within a very high fire hazard severity zone ("Fire Zone 2" or "Fire Zone 3") as designated in paragraph III. Of Berkeley Municipal Code Section 19.48.020; and
2. Lots that are not located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), ~~or R-4H (Multi-Family Residential)~~, R-SH (Residential High Density Subarea—Hillside Overlay), C-NSH (North Shattuck Commercial—Hillside Overlay), or C-NH (Neighborhood Commercial—Hillside Overlay) districts; and
3. Either of the following:
  - a. Lots that lack distinct means of vehicular access as follows:
    - i. The two (2) distinct means of vehicular access, as measured from the lot frontage to the point of intersection with the highway, shall not overlap with each other; and
    - ii. Each distinct means of vehicular access shall contain a paved or unpaved road of at least twenty-four (24) feet in width, exclusive of sidewalks, landscaping, and parking lanes;
  - or
  - b. Lots that are on streets less than 26 feet wide.

**Implementation Concerns regarding "rooftop decks and balconies"**

The terms "rooftop decks and balconies" as used in the list of items referred by the City Council, do not reflect defined terms that can be used by Land Use Planning staff to ministerially approve or deny applications for zoning certificates. It is not clear whether this language is intended to include all forms of exterior elevated elements, such as attached exterior decks; if the language is not intended to incorporate what is commonly referred to as a "deck," staff will need to devise a clearer definition distinguishing a balcony from a deck.

**CONTACT PERSON**

Steven Buckley, Land Use Planning Manager, Planning and Development Department,  
510-981-7411

Steven Riggs, Fire Marshall, Fire Department, 510-981-5584

Attachments:

1: Ordinance

2: Public Hearing Notice

ORDINANCE NO. -N.S.

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

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

Section 1. Berkeley Municipal Code Chapter 23.306 is amended to read as follows (additions are shown in underlined text and deletions are shown in ~~strike through~~):

**23.306 Accessory Dwelling Units**

**Sections:**

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

**23.306.010 Purposes**

The purposes of this Chapter are to:

- A. Implement California Government Code Section 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in high fire severity areas 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**

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.

~~1. **Exceptions.** The provisions of this chapter that permit ADUs and JADUs do not apply to lots in the R-1H (Single Family Residential—Hillside Overlay), R-2H (Restricted Two Family Residential—Hillside Overlay), or R-2AH (Restricted Multiple Family Residential—Hillside Overlay) districts. In such districts, ADUs and JADUs shall only be permitted to the extent required by subdivision (e)(1) of Government Code section 65852.2.~~

**B. Number of ADUs and JADUs Permitted Per Lot.** Except as expressly modified by Chapter 12.99, the following number of ADUs and JADUs shall be the maximum number of accessory units permitted on lots subject to this Chapter.

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

### **23.102.010 – Permit Procedures**

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

1. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a Building Permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.
2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code Section 65852.2(e)(1).



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

**23.306.040 Development Standards**

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

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

	ADU <sup>1</sup>	JADU
Maximum Size <u>Outside of HOD</u> <sup>2,5</sup>		500 sf
Studio or 1 bedroom	850 sf	N/A
2 + bedrooms	1000 sf	
Maximum Size <u>Within HOD</u>	<u>800 sf</u>	<u>500 sf</u>
Maximum Height <u>Outside of HOD</u>	20 ft.	N/A
Maximum Height <u>Within HOD</u>	<u>16 ft.</u>	
Front Yard Setback	Same as underlying district	
Rear Setback	4 ft <sup>3</sup>	
Side Setback	4 ft <sup>3</sup>	
Required Off-Street Parking <u>Outside of HOD</u>	None <sup>4</sup>	
Required Off-Street Parking <u>Within HOD</u>	<u>The lesser of 1 space per bedroom or ADU</u> <sup>6,7</sup>	<u>None</u> <sup>7</sup>

[1] An ADU converted from an Accessory Building or Accessory Structure legally established prior to December 1, 2021 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 determined by the Building Official and the Fire Marshal. 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 is non-compliant with the standards in this table is allowed a physical addition of no more than 150 square feet that complies 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 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] For purposes of Table 23.306-1, 'HOD' means lots that are within Fire Zones 2 or 3 (BMC 19.48.020, para. III.), but does not include lots located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside

Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), ~~or~~ R-4H (Multi-Family Residential), R-SH (Residential High Density Subarea—Hillside Overlay), C-NSH (North Shattuck Commercial—Hillside Overlay), or C-NH (Neighborhood Commercial—Hillside Overlay) districts.

[6] 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.

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

## B. Projections.

1. Except as limited by Paragraph B.2 of this Section, architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows may not project into a setback.

2. No projections shall be allowed within the required setbacks on lots that are within Fire Zones 2 or 3 (BMC 19.48.020, para. III.) except on lots located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), ~~or~~ R-4H (Multi-Family Residential), R-SH (Residential High Density Subarea—Hillside Overlay), C-NSH (North Shattuck Commercial—Hillside Overlay), or C-NH (Neighborhood Commercial—Hillside Overlay) districts.

### **23.306.050 - Deed Restrictions**

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

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

B. **ADUs Developed by a Qualified Nonprofit Developer.** An ADU built or developed by a “qualified nonprofit corporation” may be sold or conveyed separately from the Main Building to a “qualified buyer,” as such terms are defined in subdivision (b) of Section 65852.26 of the California Government Code. The ADU must be held

pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:

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

### **23.306.060 – Neighbor Noticing**

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

**B. Content of Notice.** Notice shall provide the address of the project, allowable hours of construction, and a link to the City's ADU webpage.

**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, rooftop decks and balconies shall be prohibited on lots that are within Fire Zones 2 or 3 (BMC 19.48.020, para. III.) except on lots located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential), R-SH (Residential High Density Subarea—Hillside Overlay), C-NSH (North Shattuck

Commercial—Hillside Overlay), or C-NH (Neighborhood Commercial—Hillside Overlay) districts.

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

**12.99 Wildfire Hazard Evacuation Risk Mitigation Ordinance**

**Sections**

12.99.010 Title and Purposes

12.99.020 Applicability

12.99.030 Total Number of Units Permitted

**12.99.010 Title and Purposes**

A. This Chapter may be referred to as the “Wildfire Hazard Evacuation Risk Mitigation Ordinance.”

B. The purposes of this chapter are to permit and promote the construction of accessory dwelling units and junior accessory dwelling units while protecting human life and health, promoting the public health, safety, and general welfare, and minimizing public and private losses due to dangerous conditions in specific areas.

C. Government Code 65852.2, subdivision (a)(1)(A) allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."

D. The Hillside Overlay District has unique conditions and hazards that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety:

1. Wildfires, earthquakes and landslides put residents of the Hillside Overlay District at significant risk.

2. The Hayward fault bisects the Hillside Overlay District.

3. Due to the maze of narrow, winding streets, the Hillside Overlay District has extremely poor emergency access and egress conditions. Safety is compromised by a substandard street infrastructure that has limited accessibility for emergency responders as well as inadequate capacity for fast and reliable escape. A majority of street widths in the North Berkeley hills have substandard widths.

4. A study published by UC Berkeley researchers concluded that in the best-case scenario, if each household evacuated from the hill 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.

E. Increasing density and intensity by permitting both one ADU and one JADU (2 total) in addition to the primary home, on every parcel zoned residential in the Hillside Overlay District or in a very high fire hazard severity zone will seriously exacerbate the already very hazardous conditions that currently exist, necessitating reasonable limitations that reduce exposure to hazardous conditions.

**12.99.020 Applicability**

A. A lot that meets all of the following criteria shall be subject to the provisions of this Chapter.

1. Lots that are located within the very high fire hazard severity zone (“Fire Zone 2” or “Fire Zone 3”) as designated in paragraph III. of Berkeley Municipal Code Section 19.48.020; and

2. Lots that are not located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), ~~or~~ R-4H (Multi-Family Residential), R-SH (Residential High Density Subarea—Hillside Overlay), C-NSH (North Shattuck Commercial—Hillside Overlay), or C-NH (Neighborhood Commercial—Hillside Overlay) districts.

**12.99.030 Total Number of Units Permitted**

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

Section 3. 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.



Office of the City Manager

PUBLIC HEARING

January 25, 2022

*(continued from January 18, 2022)*

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Abe Roman, Fire Chief, Fire and Emergency Services Department  
Jordan Klein, Director, Planning and Development Department

Subject: Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of a local ordinance enacting Chapter 12.99 (Accessory Dwelling Units in Wildfire Hazard Areas) and amending Chapter 23.306.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

On October 26, 2021, City Council considered Planning Commission's recommendations for a local ADU Ordinance and directed the City Manager to develop a set of narrowly-focused public safety regulations that apply to Accessory Dwelling Units (ADUs). These regulations are to address public safety issues that arise from new development, residents and dwelling units in fire-prone areas.

The proposed ordinance incorporates all of the recommendations referred to the City Manager and City Attorney by the Council on October 26, 2021 in a manner that is narrowly tailored to achieve the public safety goal of preventing fatalities during a wildfire evacuation. This staff report includes an array of alternatives for consideration by the Council, should it wish to narrow or expand the scope of the proposed ordinance.

BACKGROUND

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, and that the wildfire front is not the only source of risk, since embers and firebrands travel far beyond the area impacted by the fire front, and pose a risk of ignition to structures and fuels on a site for a longer time. In that same statute the legislation has determined that it is necessary that all levels of government, including local

governments work to implement preventive measures to ensure the preservation of the public peace, health, or safety. The ability to evacuate people safely during a wildfire is a major challenge in Berkeley. The trend of increasing the density of households even in recognized Very High Fire Hazard Severity Zones as mandated by existing State ADU law demands that the City impose more restrictive fire and public safety requirements as allowed by Gov. Code 51175 and other laws in order to mitigate difficult and dangerous evacuation conditions.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Studies have shown that the total acreage of vegetation burned in California over the decades since the late 1980s has consistently increased over time. One study concluded that the estimated 7.08 million acres burned in the time period from 2009-2018 is approximately 259% more than the acreage burned during the period from 1989-1998 (2.73 million acres) (Buechi, Cameron, Heard, Plantinga, & Weber, 2021)<sup>1</sup>. All other variables being equal, this increase in burned acreage will also equate to a corresponding increase in carbon dioxide released to the environment due to wildfires. Measures taken to prevent wildfires, slow the development of wildfires once they are ignited, make wildfires easier to suppress, or prevent the diversion of valuable firefighting resources from rescue missions and allow them to concentrate on suppressing the wildfire will have the effect of reducing this emission of carbon dioxide.

#### RATIONALE FOR RECOMMENDATION

The wildland fire problem throughout the State of California and the western region of the United States has become progressively worse over the past 30-40 years. The duration of what was once considered a 'wildfire season' has extended to the point that wildfire events occur throughout most of the calendar year. This tends to blur any distinct lines between adjacent fire seasons. As a result, wildfire activity has become more of a cycle and less of a 'season'. Recent wildfire incidents since 2017 have consistently set records for fire size, intensity and rate of spread. Scientific evidence suggests that our current extreme drought conditions that make vegetation more susceptible to ignition and the fire weather conditions which lead to extreme fire behavior and make fire control difficult are due in large part to global climate change.

Formal studies confirm that the overall severity of the wildfire problem in the state has steadily increased over the past 30-40 years and recent wildfire incidents in California since 2017 have consistently set records for fire size, intensity and rate of spread. The difficulty of controlling recent wildfires is evidenced by the number of structures being lost in wildfires despite the record expenditure of public funds on fire control efforts and in the anecdotal reports of experienced firefighters.

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<sup>1</sup> Buechi, Hanna; Cameron, Dick; Heard, Sarah; Plantinga, Andrew J; Weber, Page "Long-Term Trends in Wildfire Damages in California", 2020: <https://emlab.ucsb.edu/sites/default/files/documents/wildfire-brief.pdf>

The October 20, 1991 Oakland-Berkeley firestorm (known officially as the Tunnel-Oakland Hills fire), resulted in 25 fatalities due to evacuation challenges posed by winding narrow roads in the Oakland Hills bordering Berkeley. In light of these risks, since 2007, Fire Zone 3, (which comprises the Panoramic Hill neighborhood zoned as the Environmental Safety-Residential District), has been subject to safety restrictions including requirements for the installation and retrofit of fire sprinklers. Today, the Berkeley Fire Department believes that based on deteriorating wildfire conditions throughout the state that the wildland fire problem in Fire Zone 2 is now very similar to the wildland fire problem in Fire Zone 3.

The geographic area designated as Fire Zone 2 shares most of the wildfire characteristics present within Fire Zone 3. Both areas are recognized by the City and the Director of the California Department of Forestry and Fire Protection as Very High Fire Hazard Severity Zones (VHFHSZ) and share similar fire weather. Both areas have narrow, winding and steeply graded roads and streets. Both areas have abundant vegetation intermixed with structures. The topography of both areas is steep which creates the potential for rapidly advancing slope-driven fires. The original parcel subdivisions created narrow but deep lots in both Fire Zones. This tends to crowd adjacent structures and greatly reduces the amount of defensible space available to provide for wildfire safety. Many of the streets average less than 26 feet in width, resulting in choke points where two vehicles are unable to pass each other in the presence of any parking lane. The main factor that the two areas do not share is the condition of a single means of evacuation and access by road that exists in Fire Zone 3. The majority of street segments in Fire Zone 2 have access to more than one evacuation and access route. However, given the dramatic increase in the severity of the wildfire problem it is believed that even the availability of a second or additional access routes, which is typical in Fire Zone 2, cannot mitigate all of the factors previously listed that may contribute to a catastrophic wildfire.

The hazard posed by winding, narrow streets in the wildfire-prone areas is likely to increase substantially with increased density of human life, structures and vehicles and any resulting increase in evacuation traffic. Increasing the number of households living on a given parcel is highly likely to result in an increase in the number of separate vehicles evacuating from that parcel. A parcel containing a single-family home, a JADU and an ADU, occupied by three households, is more likely to generate three separate evacuation vehicles than a single-family home occupied by a single household.

In a study performed at UC Berkeley, researchers modeled a wildfire evacuation scenario in the Berkeley Hills. According to their model, if each household in the Berkeley Hills used only one vehicle to evacuate, then the estimated evacuation time would be less than 2 hours, and 245 vehicles would be exposed to immediate fire danger. However, if each household took 1.7 vehicles to evacuate, that would increase evacuation time to three hours and expose 782 vehicles to fire. If all households evacuate with three vehicles, exposed vehicles reach 2,497 (11% of the total). The



report concluded that reducing the number of personal vehicles (and thereby reducing traffic congestion) was one of the most impactful measures that could prevent wildfire fatalities by ensuring that all households are able to evacuate safely.<sup>2</sup>

By the same reasoning, preventing an increase in the number of households living within the Very High Fire Hazard Severity Zone will have a direct impact upon the risk of exposure of evacuating vehicles to wildfire risk.

On October 26, 2021, the City Council directed the City Manager and City Attorney to take action to address these hazards as follows:

*For the Hillside Overlay District (HOD), in light of the public hazards and life safety concerns, we refer to the City Manager and City Attorney for staff analysis and recommendations for a potential ordinance, Councilmember Wengraf's full list of recommendations (including the number of ADUs on a parcel) as well as the issue of ADU limitations where there is one access and egress route with a goal of returning within a month or less.*

Councilmember Wengraf's Supplemental item listed the following recommendations:

**1. Allow one accessory dwelling unit on parcels in the HOD by either:**

*A. conversion of existing space (garage, basement or attic) to an ADU no larger than 800 sq. feet*

*or*

*B. conversion of existing internal space for JADU no larger than 500 sq. feet*

*or*

*C. one detached ADU of 800 sq. feet*

**2. Prohibit roof-top decks and balconies for fire safety**

**3. Prohibit all protrusions into the four-foot rear or side setback to maintain defensible space**

**4. Maintain 16-foot maximum height for ADUs**

**5. Allow parking in the front yard setback in coordination with ministerial ADU permit**

Additionally, on page 4 of her supplemental item, Councilmember Wengraf uses a street width narrower than 33 feet as grounds for restricting the development of multiple ADUs per parcel.

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<sup>2</sup> Zhao, Bingyu, PhD Wong, Stephen D, PhD "Developing Transportation Response Strategies for Wildfire Evacuations via an Empirically Supported Traffic Simulation of Berkeley, California" 2021: <https://escholarship.org/uc/item/70p6k4rf>

The proposed ordinance applies in Fire Zones 2 and 3 and incorporates all of the recommendations set forth in the Council referral. The primary effect of the proposed ordinance would be to reduce the number of ADUs per parcel from two (one ADU and one JADU) to one (either an ADU or a JADU) and thereby limit the number of separate households likely to flee a wildfire event, which would result in fewer vehicles and a lower likelihood that escaping vehicles would be exposed to wildfire risk due to traffic congestion during the evacuation. Fire Zones 2 and 3 are the formally recognized Very High Fire Hazard Severity Zone in the City of Berkeley, for purposes of Government Code 51179. Certain portions of Fire Zone 2 near the campus of the University of California are zoned for multi-family housing and do not share the narrow, winding streets and related hazardous conditions present in the hilly portions of the VHFHSZ; those areas not zoned for single-family housing are excluded to ensure that these protections are narrowly tailored.

#### ALTERNATIVE ACTIONS CONSIDERED

This report includes alternative options for City Council consideration. These options, which would revise the proposed language of Chapter 12.99, are outlined below, and each option could be used to further narrow the scope of the proposed ordinance. There is also an implementation concern regarding the prohibition on “rooftop decks and balconies” which are not defined terms for purposes of ministerial approval of zoning certificates.

#### **Replace Fire Zone 2 and 3 with State Recommended VHFHSV**

The proposed ordinance uses the boundary of Fire Zones 2 and 3 to designate the areas in which additional restrictions apply to the development of ADUs for wildfire safety purposes. As an alternative, the Council could narrow the applicability of the Ordinance by relying upon the State-Recommended VHFHSV boundaries, which would exclude a portion of Fire Zone 2 in the northwest corner of the locally-adopted VHFHSV.

Government Code Section 51178 requires that the state Director of Forestry and Fire Protection identify Very High Fire Hazard Severity Zones throughout the state, and submit those recommendations to the local jurisdictions where those VHFHSZs are located. Government Code Section 51179 provides that the local jurisdiction may, in turn, designate additional areas that where their inclusion within the VHFHSZ is necessary for effective fire suppression in the area. These locally-adopted VHFHSZs are then transmitted to the state and become the official VHFHSZ for the area until such time as they are modified upon review, which takes place every five years, per Government Code Section 51181.

The City lawfully exercised its authority under Government Code 51179 to modestly expand the boundary of the Very High Fire Hazard Severity Zone originally identified by the Director of Forestry and Fire Protection (adopted on January 1, 2011, repealed and re-enacted on December 3, 2019). The City’s determinations of the boundaries Fire

Zones 2 and 3 were based upon substantial evidence in the record that inclusion of these areas is necessary for effective fire protection within the area.

Relying upon the state recommended VHFHSZ rather than Fire Zones 2 and 3 (the applicable and lawfully established VHFHSZ) would have the effect of excluding certain narrow streets and streets that lack two distinct means of egress that are located outside of the state-recommended VHFHSZ but within the locally-adopted VHFHSZ. It would also pose implementation problems associated with the fact that the state-recommended VHFHSZ was not adopted by the City and therefore is not in use anywhere, parcels on the boundary may dispute whether or not the state-recommended VHFHSZ does or does not apply.

Below is alternative language for Council's consideration:

**BMC 12.99.020 A**

A. *A lot that meets the following criteria shall be subject to the provisions of this Chapter.*

1. *Lots that are located within a very high fire hazard severity zone (~~"Fire Zone 2" or "Fire Zone 3"~~) as designated in paragraph III. of Berkeley Municipal Code Section 19.48.020 as designated by the Director of Forestry and Fire Protection pursuant to California Government Code section 51178. If the California Government Code is amended such that the Director of Forestry and Fire Protection is no longer required to designate very high fire hazard severity zones, the City Manager, in consultation with the Fire Marshal, shall identify an appropriate substitute designation, which the City Manager shall cause to be published and updated on the City's website no later than June 30 of each calendar year; and*
2. *Lots that are not located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts.*

**Further Narrow Applicability based on Street Width or Egress**

The proposed ordinance would apply protections to parcels that are within the Fire Zone 2 or 3, which includes areas that contain narrow streets or have only one distinct means of egress. Council could further narrow the applicability of the fire safety restrictions by applying them only to parcels that are *both* located within Fire Zone 2 or 3 *and* where at least one other Applicability criterion is met, either the street width requirement or the absence of multiple distinct means of egress. This would reduce the number of parcels where ADUs are limited to one ADU or one JADU, thereby increasing the number of parcels with three separate dwelling units which could be occupied by three separate households in the area prone to wildfire risk.

Below is alternative language for Council's consideration:

***BMC 12.99.020.A***

*A. A lot that meets all of the following criteria shall be subject to the provisions of this Chapter.*

- 1. Lots that are located within a very high fire hazard severity zone ("Fire Zone 2" or "Fire Zone 3") as designated in paragraph III. Of Berkeley Municipal Code Section 19.48.020; and*
- 2. Lots that are not located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts; and*
- 3. Either of the following:*
  - a. Lots that lack distinct means of vehicular access as follows:*
    - i. The two (2) distinct means of vehicular access, as measured from the lot frontage to the point of intersection with the highway, shall not overlap with each other; and*
    - ii. Each distinct means of vehicular access shall contain a paved or unpaved road of at least twenty-four (24) feet in width, exclusive of sidewalks, landscaping, and parking lanes;*
  - or*
  - b. Lots that are on streets less than 33 feet wide.*

**Further Narrow Street Width**

The Council referral used 33 feet as a threshold for street width, below which protections would apply in the Hillside District Overlay. In the alternative, Council could further narrow the applicability of the fire safety restrictions by using a narrower street width criterion. City staff has mapped streets where the average width is below 26 feet, and has also mapped streets where the average width is below 24 feet. These widths were selected because they limit vehicle access when combined with a parking lane. The ordinance could impose requirements on streets where the condition and width of the road is such that a 20-foot fire lane cannot be maintained; however implementation of a street width criterion for applicability will be greatly facilitated by the use of a width that has already been mapped and is readily accessible to staff.

The use of a narrower street width as part of the criteria for applicability of the fire safety restrictions would reduce the number of parcels where ADUs are limited to one ADU or one JADU, thereby increasing the number of parcels with three separate dwelling units which could be occupied by three separate households in the area prone to wildfire risk.

Below is alternative language for Council's consideration, using 26 feet as the street width criterion.

***BMC 12.99.020.A***

- A. *A lot that meets all of the following criteria shall be subject to the provisions of this Chapter.*
1. *Lots that are located within a very high fire hazard severity zone (“Fire Zone 2” or “Fire Zone 3”) as designated in paragraph III. Of Berkeley Municipal Code Section 19.48.020; and*
  2. *Lots that are not located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts; and*
  3. *Either of the following:*
    - a. *Lots that lack distinct means of vehicular access as follows:*
      - i. *The two (2) distinct means of vehicular access, as measured from the lot frontage to the point of intersection with the highway, shall not overlap with each other; and*
      - ii. *Each distinct means of vehicular access shall contain a paved or unpaved road of at least twenty-four (24) feet in width, exclusive of sidewalks, landscaping, and parking lanes;*
    - or*
    - b. *Lots that are on streets less than 26 feet wide.*

### **Implementation Concerns regarding “rooftop decks and balconies”**

The terms “rooftop decks and balconies” as used in the list of items referred by the City Council, do not reflect defined terms that can be used by Land Use Planning staff to ministerially approve or deny applications for zoning certificates. It is not clear whether this language is intended to include all forms of exterior elevated elements, such as attached exterior decks; if the language is not intended to incorporate what is commonly referred to as a “deck,” staff will need to devise a clearer definition distinguishing a balcony from a deck.

#### CONTACT PERSON

Steven Buckley, Land Use Planning Manager, Planning and Development Department,  
510-981-7411

Steven Riggs, Fire Marshall, Fire Department, 510-981-5584

#### Attachments:

- 1: Ordinance
- 2: Public Hearing Notice

ORDINANCE NO. -N.S.

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

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

Section 1. Berkeley Municipal Code Chapter 23.306 is amended to read as follows (additions are shown in underlined text and deletions are shown in ~~strikethrough~~):

**23.306 Accessory Dwelling Units**

**Sections:**

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

**23.306.010 Purposes**

The purposes of this Chapter are to:

- A. Implement California Government Code Section 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in high fire severity areas 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**

- 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.
1. ~~**Exceptions.** The provisions of this chapter that permit ADUs and JADUs do not apply to lots in the R-1H (Single-Family Residential—Hillside Overlay), R-2H (Restricted Two-Family Residential—Hillside Overlay), or R-2AH (Restricted Multiple-Family Residential—Hillside Overlay) districts. In such districts, ADUs and JADUs shall only be permitted to the extent required by subdivision (e)(1) of Government Code section 65852.2.~~

**B. Number of ADUs and JADUs Permitted Per Lot.** Except as expressly modified by Chapter 12.99, the following number of ADUs and JADUs shall be the maximum number of accessory units permitted on lots subject to this Chapter.

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

### **23.102.010 – Permit Procedures**

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

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

**23.306.040 Development Standards**

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

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

	ADU <sup>1</sup>	JADU
Maximum Size <u>Outside of HOD</u> <sup>2, 5</sup>		500 sf
Studio or 1 bedroom	850 sf	N/A
2 + bedrooms	1000 sf	
Maximum Size <u>Within HOD</u>	800 sf	500 sf
Maximum Height <u>Outside of HOD</u>	20 ft.	N/A
Maximum Height <u>Within HOD</u>	16 ft.	
Front Yard Setback	Same as underlying district	
Rear Setback	4 ft <sup>3</sup>	
Side Setback	4 ft <sup>3</sup>	
Required Off-Street Parking <u>Outside of HOD</u>	None <sup>4</sup>	
Required Off-Street Parking <u>Within HOD</u>	The lesser of 1 space per bedroom or ADU <sup>6, 7</sup>	None <sup>7</sup>

[1] An ADU converted from an Accessory Building or Accessory Structure legally established prior to December 1, 2021 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 determined by the Building Official and the Fire Marshal. 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 is non-compliant with the standards in this table is allowed a physical addition of no more than 150 square feet that complies 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 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] For purposes of Table 23.306-1, ‘HOD’ means lots that are within Fire Zones 2 or 3 (BMC 19.48.020, para. III.), but does not include lots located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside



Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts.

[6] 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.

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

## **B. Projections.**

1. Except as limited by Paragraph B.2 of this Section, architectural Architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows may not project into a setback.

2. No projections shall be allowed within the required setbacks on lots that are within Fire Zones 2 or 3 (BMC 19.48.020, para. III.) except on lots located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts.

## **23.306.050 - Deed Restrictions**

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

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

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

1. Delineation of all areas of the property that are for the exclusive use of a cotenant;

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

### **23.306.060 – Neighbor Noticing**

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

**B. Content of Notice.** Notice shall provide the address of the project, allowable hours of construction, and a link to the City's ADU webpage.

**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, rooftop decks and balconies shall be prohibited on lots that are within Fire Zones 2 or 3 (BMC 19.48.020, para. III.) except on lots located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts.

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

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

**Sections**

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

**12.99.010 Title and Purposes**

- A. This Chapter may be referred to as the “Wildfire Hazard Evacuation Risk Mitigation Ordinance.”
  
- B. The purposes of this chapter are to permit and promote the construction of accessory dwelling units and junior accessory dwelling units while protecting human life and health, promoting the public health, safety, and general welfare, and minimizing public and private losses due to dangerous conditions in specific areas.
  
- C. Government Code 65852.2, subdivision (a)(1)(A) allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."
  
- D. The Hillside Overlay District has unique conditions and hazards that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety:
  - 1. Wildfires, earthquakes and landslides put residents of the Hillside Overlay District at significant risk.
  
  - 2. The Hayward fault bisects the Hillside Overlay District.
  
  - 3. Due to the maze of narrow, winding streets, the Hillside Overlay District has extremely poor emergency access and egress conditions. Safety is compromised by a substandard street infrastructure that has limited accessibility for emergency responders as well as inadequate capacity for fast and reliable escape. A majority of street widths in the North Berkeley hills have substandard widths.
  
  - 4. A study published by UC Berkeley researchers concluded that in the best-case scenario, if each household evacuated from the hill 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.
  
- E. Increasing density and intensity by permitting both one ADU and one JADU (2 total) in addition to the primary home, on every parcel zoned residential in the Hillside Overlay District or in a very high fire hazard severity zone will seriously exacerbate the already very hazardous conditions that currently exist, necessitating reasonable limitations that reduce exposure to hazardous conditions.

**12.99.020 Applicability**

A. A lot that meets all of the following criteria shall be subject to the provisions of this Chapter.

1. Lots that are located within the very high fire hazard severity zone (“Fire Zone 2” or “Fire Zone 3”) as designated in paragraph III. of Berkeley Municipal Code Section 19.48.020; and

2. Lots that are not located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts.

**12.99.030 Total Number of Units Permitted**

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

Section 3. 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.

**NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL  
AMENDMENTS TO ACCESSORY DWELLING UNIT (ADU) ORDINANCE**

The City Council will consider adopting a local ordinance regarding Accessory Dwelling Units (ADUs). The proposed Municipal Code amendments are consistent with Government Code Sections 65852.2 and 65852.22 and include local regulations for the size, location, and other development standards for ADUs and address public safety measures in portions of the hillside area. The amendments would apply throughout the City. This action is considered exempt from the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations (CEQA Guidelines) Class 3, New Construction or Conversion of Small Structures.

The hearing will be held on **Tuesday, December 14, 2021 at 6:00 p.m.** The hearing will be held via videoconference pursuant to Government Code Section 54953(e) and the state declared emergency.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of December 2, 2021. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to [council@cityofberkeley.info](mailto:council@cityofberkeley.info) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

For further information, please contact Alene Pearson, Principal Planner, Planning and Development Department at (510) 981-7489, or by e-mail at [apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info).

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. 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@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

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City Clerk shall publish a notice at least 10 days prior to the date of the public hearing with the date, hour, and place of the public hearing for annual levy and collection of assessments in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Section 6061 of the Government Code.

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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 December 2, 2021.

  
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Mark Numainville, City Clerk

