



Office of the City Manager

ACTION CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Timothy Burroughs, Director, Department of Planning and Development  
 Subject: Urgency Ordinance Amending Accessory Dwelling Unit (ADU) Ordinance to Comply with New State Law and Establish Interim Limits on Development; Amending BMC Chapter 23C.24

RECOMMENDATION

Adopt an urgency ordinance amending Berkeley Municipal Code Chapter 23C.24 (Accessory Dwelling Units) to comply with new State law and establish interim limits on ADU development pending further analysis, deliberation and adoption of local regulations, in order to help ensure public safety.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

[Assembly Bill 881<sup>1</sup>](#), (see *Attachment 2*) signed by Governor Newsom on October 9, 2019, requires local jurisdictions to relax or eliminate restrictions on the development of accessory dwelling units (ADUs). The intent behind the new law is to increase statewide production of ADUs by requiring every jurisdiction to ministerially approve projects, apply only a specific set of development standards identified in the State law, and implement shortened permitting timelines. New regulations go into effect on January 1, 2020. A local ordinance will be null and void if it is not in compliance with new State law. The new State law effectively means that as long as an ADU application meets the development standards included in AB 881, the application must be approved over the counter with a Zoning Certificate.

Like cities throughout California, Berkeley's existing ADU Ordinance (<https://www.codepublishing.com/CA/Berkeley/>), found in Berkeley Municipal Code (BMC) Chapter 23C.24, does not conform to new State law. The Planning Commission began the standard process for adopting permanent Zoning Ordinance amendments to bring the BMC into compliance with State requirements, receiving a briefing from staff on the new regulations at its November 6, 2019 meeting (see *Attachment 3*). However,

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<sup>1</sup> [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB881](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB881);  
 Note that only Section 1.5 of the Bill is in effect as of January 1, 2020.

the new law is complex and will require additional meetings and public input, including a public hearing, prior to recommending amendments to the City Council, a process expected to take up to six months.

Since the City does not have time to complete this process prior to January 1, 2020, absent an urgency ordinance, State law would govern Berkeley's land use regulation as it relates to ADUs. Among other implications, this would mean that Berkeley's current prohibition on ADUs in certain areas of the city, due to health and safety concerns, would no longer be in effect.

This is of particular concern in Berkeley Fire Zones 2 and 3 (*see Attachment 4*), especially in consideration of recent PG&E Public Safety Power Shutoff events and heightened awareness of fires in California. Updates to the [2019 Local Hazard Mitigation Plan<sup>2</sup>](#) and adopted City Council referrals regarding development in the wildland-urban interface and ADU parking requirements in the hills directly reflect concern for evacuation planning and public safety in the event of a natural disaster.

Existing and new State ADU regulations<sup>3</sup> acknowledge the importance of these concerns, allowing cities to designate areas where ADUs are restricted based on potential impacts to traffic flow and public safety. In Berkeley's existing ordinance, ADUs are not allowed in the ES-R (Environmental Safety – Residential) District (Berkeley Fire Zone 3) due to fire hazards and limited emergency access/egress. Similarly, ADUs located in the Hillside Overlay, which includes almost all of Berkeley Fire Zone 2 (*see Attachment 5*), currently require an Administrative Use Permit (AUP) and approval by the Fire Department on lots that front on a street with less than 26 feet of pavement width. The Planning Commission and staff in the Planning and Fire Departments have begun and will continue to discuss Zoning Ordinance amendments that both address local conditions and are in compliance with new State law. However, these amendments will not be adopted by January 1, 2020.

**After January 1, 2020, Berkeley will not have the authority to apply discretionary standards such as AUP requirements on ADU locations. Therefore, the proposed urgency ordinance would temporarily impose non-discretionary restrictions in order to maximize public safety.**

State law allows a jurisdiction to adopt urgency ordinances to protect the public health, safety and welfare of its residents. The proposed urgency ordinance would continue to meet the health and safety goals of Berkeley's existing protections by prohibiting ADUs in Berkeley Fire Zone 3, and on roads in Berkeley Fire Zone 2 that are less than 26 feet in width. This urgency ordinance would foster public safety for the following reasons:

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<sup>2</sup> [https://www.cityofberkeley.info/uploadedFiles/Fire/Level\\_3\\_-\\_General/City%20of%20Berkeley%202019%20Final%20Draft%20LHMP%20-%20COMPLETE%2009-19-19%20Reduced.pdf](https://www.cityofberkeley.info/uploadedFiles/Fire/Level_3_-_General/City%20of%20Berkeley%202019%20Final%20Draft%20LHMP%20-%20COMPLETE%2009-19-19%20Reduced.pdf)

<sup>3</sup> See California Government Code Section 65852.2(a)(1)(A)

- Berkeley's current ordinance already prohibits ADUs in Berkeley's Fire Zone 3. This area is exceptionally vulnerable to fire and earthquake hazards and is characterized by substandard vehicular access, steep slopes, inadequate water pressure, proximity to the Hayward Fault, and proximity to vegetated wildlands. It is also within the State's Very High Fire Hazard Severity Zone (see *Attachment 6*).
- Many of the City's narrow streets fall within the boundaries of Berkeley's Fire Zone 2 (see *Attachment 4*). The existing AUP requirement for ADUs in Berkeley's Fire Zone 2 was implemented in consultation with the Fire Department to address accessibility challenges on narrow and curving roads. Fire response requires deployment of hoses and other equipment that restrict vehicle and pedestrian movement along roads. Roads narrower than 26 feet are likely to be obstructed by the operations required by fire and emergency medical responses.

In addition, Fire Department operations are impacted by increased density in Fire Zones 2 and 3 because:

- Increased density translates to an increased number of people that may need assistance in the event of an emergency and increased numbers of people trying to evacuate narrow and windy roads. Berkeley does not want to replicate conditions experienced in the Oakland firestorm of 1991.
- Accessibility issues could be exacerbated by increased density if new residents own cars and park on the street. This is a likely outcome, as off-street parking is not required for ADUs, and replacement off-street parking for primary dwelling units will not be required as of January 1, 2020.

The existing AUP requirement for ADUs in Fire Zone 2 has allowed the Fire Department to require mitigations that protect public safety. Since these protections are discretionary and are not part of new State law, Berkeley will need to amend its Zoning Ordinance to add these requirements to a ministerial review process. As the Planning Commission begins working on such permanent Zoning Ordinance amendments, staff will consult with the California Department of Housing and Community Development (HCD) and the City Attorney to propose a set of objective standards that meet the Fire Department's needs and provide clarity to applicants who live in Fire Zone 2.

In the interim, City Council is asked to adopt this urgency ordinance to maximize public safety in Fire Zones 2 and 3. The new regulations would take effect immediately upon adoption, pursuant to California Government Code Section 65858. As drafted, it would apply prospectively to projects submitted after January 1, 2020. California Government Code [Section 65858](#) provides that urgency ordinances expire forty-five (45) days following their adoption unless the Council adopts an extension for up to a total of one year during that initial period. Staff would return to the Council meeting of January 21,

2020 for this purpose. An urgency ordinance and an extension thereof requires eight affirmative votes of a nine member legislative body to be adopted.

#### BACKGROUND

California's State Legislature has passed significant packages of housing-related laws in the last three legislative sessions in order to address the State's housing crisis. This year's housing package included over 20 housing-focused bills that affect a variety of regulations throughout the Berkeley Municipal Code (BMC) including those pertaining to ADUs and Junior ADUs.

#### ENVIRONMENTAL SUSTAINABILITY

ADUs have the potential to decrease vehicles miles traveled and greenhouse gas emissions and increase availability of housing near campus, transit and jobs.

#### RATIONALE FOR RECOMMENDATION

Adoption of the proposed urgency ordinance on January 1, 2020 is needed to ensure public safety in the City of Berkeley.

#### ALTERNATIVE ACTIONS CONSIDERED

Council could take no action and allow the development standards for ADUs imposed by AB 881 go into effect on January 1, 2020.

#### CONTACT PERSON

Alene Pearson, Principal Planner, Department of Planning and Development, 510-981-7489

#### Attachments:

- 1: Draft Ordinance
- 2: Section 1.5 of Assembly Bill (AB) 881
- 3: Planning Commission Staff Report on New ADU Legislation (November 2019)
- 4: Berkeley Fire Zone Map
- 5: Hillside Overlay and Fire Zone 3 Map
- 6: Berkeley Hillside Conditions Map

ORDINANCE NO. -N.S.

URGENCY ORDINANCE AMENDING ACCESSORY DWELLING UNIT (ADU) ORDINANCE TO COMPLY WITH NEW STATE LAW AND ESTABLISH INTERIM LIMITS ON DEVELOPMENT; BERKELEY MUNICIPAL CODE CHAPTER 23C.24

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

Section 1. Findings

- a. A severe housing crisis exists in the state with the demand for housing outpacing supply.
- b. Accessory dwelling units (ADUs) provide flexible opportunities for infill housing.
- c. On October 9, 2019, Governor Newsom signed into law Assembly Bill (AB) 881 which is intended to increase the state's supply of affordable housing by facilitating the construction of ADUs and Junior ADUs.
- d. AB 881 amends California Government Code Section 65852.2 and, among other limitations on local authority, requires cities, counties, and utility districts to significantly relax regulation of ADUs by requiring a 60-day ministerial approval of ADUs on all lots that allow residential uses. These amendments to California Government Code Section 65852.2 become effective January 1, 2020.
- e. California Government Code Section 65852.2(a)(4), as amended, provides that any existing local ADU ordinance failing to meet the requirements of the new state law shall be null and void unless and until the local agency adopts a new ordinance complying with California Government Code Section 65852.2. In the absence of a valid local ordinance, the new state law instead provides a set of default standards governing local agencies' regulation and approval of ADUs.
- f. Berkeley's current ADU Ordinance, adopted by City Council on May 29, 2018, protects fire hazard areas by 1) prohibiting ADUs in the Environmental Safety-Residential District and 2) requiring discretionary review and approval by the Fire Department of ADUs in the Hillside Overlay. These measures were adopted in order to mitigate impacts to public safety.
- g. Amendments to Government Code section 65852.2, effective January 1, 2020, provide no protections for fire hazard areas and provide no mechanism for discretionary review. However, as amended, Government Code section 65852.2 will allow jurisdictions to prohibit ADUs from areas where their allowance would create an impact to public safety.
- h. Because Government Code section 65852.2 takes effect on January 1, 2020, ADUs would be permitted in high fire risk zones without discretionary review unless the City adopts an ADU ordinance that limiting the construction of ADUs in such zones that complies with the requirements of Government Code section 65852.2 before its effective date. The potential for construction of ADUs in high fire risk zones without discretionary review creates a current and immediate threat to the public health, safety, and welfare, and the approval of Zoning Certificates or building permits in such high fire risk zones would result in such an immediate threat to public health, safety, and welfare.

Section 2. That Berkeley Municipal Code Chapter 23C.24 is amended to read as follows:

## **Chapter 23C.24 Accessory Dwelling Units**

### **Sections:**

[23C.24.010](#) Applicability of Regulations

[23C.24.020](#) Purposes

[23C.24.030](#) Permit Procedures

~~[23C.24.040](#) Special Provisions~~

~~[23C.24.050](#) Development Standards~~

~~[23C.24.060](#) Modification of Development Standards with an Administrative Use Permit~~

~~[23C.24.070](#) Findings~~

### **23C.24.010 Applicability of Regulations**

The provisions of this Chapter apply to all lots that are ~~occupied by one legally established Single Family Dwelling~~ zoned for residential use except 1) in the following zoning districts: Environmental Safety-Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MU-LI), and Unclassified (U) ; and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay.

### **23C.24.020 Purposes**

The purposes of this Chapter are to:

- A. Implement California Government Code Section [65852.2](#) and [65852.22](#),~~as it may be amended from time to time.~~
- B. Increase overall supply and range of housing options in Berkeley ~~while maintaining residential character of neighborhoods.~~
- ~~C. Minimize impacts of new Accessory Dwelling Units on neighboring properties.~~
- C. Expedite small-scale infill development ~~on lots with Single Family Dwellings, particularly where development potential is otherwise limited.~~

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.

### **23C.24.030 Permit Procedures**

~~Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section 65852.2 and 65852.22. The Zoning Officer shall issue a Zoning Certificate to establish an Accessory Dwelling Unit in compliance with this Chapter if all requirements of Section 23C.24.050 and other applicable requirements of this Title are met. The Zoning Officer may approve an Administrative Use Permit to establish an Accessory Dwelling Unit that is not in compliance with Section 23C.24.050.A or Sections 23C.24.050.C through F, subject to the findings in Section 23C.24.070. (Ord. 7599-NS § 2 (part), 2018)~~

### ~~23C.24.040 Special Provisions~~

~~A.—An Accessory Dwelling Unit may be created as follows:~~

~~1.—Conversion of Existing Space: Within the existing dimensions of the exterior walls and/or roof of a Primary Dwelling Unit or an existing legally established Accessory Structure or Accessory Building (e.g., the building envelope does not change), in which case Sections 23C.24.050.C through F do not apply.~~

~~2.—Expansion of Existing Space: By extending the existing dimensions of the exterior walls and/or roof of a Primary Dwelling Unit or an existing legally established Accessory Structure or Accessory Building (e.g., the building envelope changes). Section 23C.24.040.A.1 applies to conversion of nonconforming existing space.~~

~~3.—New Building: By constructing a new detached building or by constructing a new Primary Dwelling Unit with an Accessory Dwelling Unit.~~

~~B.—Only one Accessory Dwelling Unit is allowed on a lot.~~

~~C.—An Accessory Dwelling Unit may not be subdivided, whether by land or air rights, condominium or other mechanism, and may not be sold, transferred, or otherwise conveyed separately or independently from the Primary Dwelling Unit or other portions of the property.~~

~~D.—The owner of a property that has an Accessory Dwelling Unit must reside in either the Primary Dwelling Unit or the Accessory Dwelling Unit. Prior to issuance of a Building Permit, all owners of record of the subject property shall sign and file a Declaration of Restrictions with the County Recorder, in a form satisfactory to the Zoning Officer, that makes any transfer of the property specifically subject to the restrictions contained in this Chapter and requires that either the Primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property. Non-occupancy by an owner for periods of up to three years is allowed before the property will be found to be in noncompliance with this requirement.~~

~~E.—Accessory Dwelling Units are not subject to Design Review.~~

~~F.—Verification of neighbor preapplication contact is required for Accessory Dwelling Units subject to an Administrative Use Permit. Signatures must be collected from all adjacent and abutting lots that have residential occupants, regardless of zoning district.~~

~~G.—Accessory Dwelling Unit projections allowed into yards are subject to Main Building development standards set forth in Table 23D.04.030.~~

~~H.—An Accessory Dwelling Unit is not required to be equipped with fire sprinklers if sprinklers are not required for the Primary Dwelling Unit, consistent with California Government Code Section 65852.2.~~

~~I.—An Accessory Dwelling Unit is not considered a new residential use for the purposes of calculating utility connection fees or capacity charges, consistent with California Government Code Section 65852.2. (Ord. 7599-NS § 2 (part), 2018)~~

#### ~~23C.24.050 Development Standards~~

~~A.—Fire Access Requirement: An Accessory Dwelling Unit is not allowed on a lot with frontage on a roadway with less than 26 feet in pavement width, unless an Administrative Use Permit is approved, subject to the findings specified in Section 23C.24.070 A.~~



~~B.— Unit Size: The Gross Floor Area of an Accessory Dwelling Unit may be no greater than 850 square feet.~~

~~C.— Height: An Accessory Dwelling Unit that is created by New Building or by Expansion to an Accessory Structure or Accessory Building or by Expansion of a Primary Dwelling Unit cannot exceed the following height limits:~~

~~1.— 14 feet Maximum Height.~~

~~2.— 18 feet Maximum Height with an Administrative Use Permit.~~

~~3.— 14 feet Average Height in the Hillside Overlay District with an Administrative Use Permit.~~

~~4.— 18 feet Average Height in the Hillside Overlay with an additional Administrative Use Permit.~~

~~D.— Setbacks:~~

~~1.— An Accessory Dwelling Unit must be located outside the required front yard setback.~~

~~2.— An Accessory Dwelling Unit must be set back at least 4 feet from the rear and side property lines unless an Administrative Use Permit is approved.~~

~~3.— An Accessory Dwelling Unit constructed above a garage shall have a required rear and side setback of no less than five feet, subject to the provisions in Chapters 23C.04 and 23C.08.~~

~~E.— Usable Open Space: The subject lot shall meet the usable open space requirements of the applicable zoning district unless an Administrative Use Permit is approved.~~

~~F.— Lot Coverage: The subject lot shall meet the lot coverage requirements of the applicable zoning district unless an Administrative Use Permit is approved.~~

~~G.— Parking Requirements:~~

~~1.— Parking is not required for an Accessory Dwelling Unit.~~

~~2. If creation of an Accessory Dwelling Unit requires the removal of a required off-street parking space for the Primary Dwelling Unit, a replacement off-street parking space must be provided.~~

~~3. Replacement parking is not subject to the applicable standards of Section 23D.12.050 nor Section 23D.12.080, and may be located within the required front and side setbacks when located within an existing driveway that does not comply with these standards. (Ord. 7599-NS § 2 (part), 2018)~~

#### ~~23C.24.060 Modification of Development Standards with an Administrative Use Permit~~

~~An Accessory Dwelling Unit that does not conform to the development standards in Section 23C.24.050.C through F may be permitted with an Administrative Use Permit subject to the applicable findings in Section 23C.24.070. (Ord. 7599-NS § 2 (part), 2018)~~

#### ~~23C.24.070 Findings~~

~~A. In order to approve an Administrative Use Permit under Section 23C.24.050.A to allow an Accessory Dwelling Unit on a lot with frontage on a roadway with less than 26 feet of pavement width, the Zoning Officer must be provided with evidence that the Fire Chief has determined that the project will meet minimum fire safety requirements.~~

~~B. In order to approve an Administrative Use Permit under Section 23C.24.050.C through F, the Zoning Officer must find on the basis of substantial evidence that the Accessory Dwelling Unit would not be detrimental to the residential character of the neighborhood, would not unreasonably obstruct sunlight, air, or views, and would not introduce unreasonable privacy impacts to the immediate neighbors. (Ord. 7599-NS § 2 (part), 2018)~~

#### Section 3. Votes Required, Immediate Effectiveness

Based on the findings and evidence in Section 1 of this Urgency Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This ordinance shall go into effect immediately upon a four-fifths vote of the City Council, in satisfaction of the Charter of the City of Berkeley and Government Code Section 65858.

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**Assembly Bill No. 881**

## CHAPTER 659

An act to amend, repeal, and add Section 65852.2 of the Government Code, relating to housing.

[ Approved by Governor October 09, 2019. Filed with Secretary of State  
October 09, 2019. ]

## LEGISLATIVE COUNSEL'S DIGEST

AB 881, Bloom. Accessory dwelling units.

(1) The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions. Existing law requires the ordinance to designate areas where accessory dwelling units may be permitted and authorizes the designated areas to be based on criteria that includes, but is not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

This bill would instead require a local agency to designate these areas based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. The bill would also prohibit a local agency from issuing a certificate of occupancy for an accessory dwelling unit before issuing a certificate of occupancy for the primary residence.

(2) Existing law requires an ordinance providing for the creation of accessory dwelling units, as described above, to impose standards on accessory dwelling units, including, among other things, lot coverage. Existing law also requires such an ordinance to require that the accessory dwelling units be either attached to, or located within, the living area of the proposed or existing primary dwelling, or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

This bill would delete the provision authorizing the imposition of standards on lot coverage and would prohibit an ordinance from imposing requirements on minimum lot size. The bill would revise the requirements for an accessory dwelling unit by providing that the accessory dwelling unit may be attached to, or located within, an attached garage, storage area, or an accessory structure, as defined.

(3) Existing law prohibits a local agency from requiring a setback for an existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit. Existing law requires that an accessory dwelling unit that is constructed above a garage have a setback of no more than 5 feet.

This bill would instead prohibit a setback requirement for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit. The bill would also instead require a setback of no more than 4 feet for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(4) Existing law provides that replacement offstreet parking spaces, required by a local agency when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, may be located in any configuration on the same lot as the accessory dwelling unit, except as provided.

This bill would instead prohibit a local agency from requiring the replacement of offstreet parking spaces when a garage, carport, or covered parking structure is demolished or converted, as described above.

(5) Existing law requires a local agency to ministerially approve or deny a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit within 120 days of receiving the application.

This bill would instead require a local agency to ministerially approve or deny a permit application for the creation of an accessory dwelling unit or junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. The bill would authorize the permitting agency to delay acting on the permit application if the permit application is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, as specified.

(6) Existing law prohibits a local agency from utilizing standards to evaluate a proposed accessory dwelling unit on a lot that is zoned for residential use that includes a proposed or existing single-family dwelling other than the criteria described above, except, among one other exception, a local agency may require an applicant for a permit to be an owner-occupant of either the primary or accessory dwelling unit as a condition of issuing a permit.

This bill, until January 1, 2025, would prohibit a local agency from imposing an owner-occupant requirement, as described above.

(7) Existing law authorizes a local agency to establish minimum and maximum unit size limitations on accessory dwelling units, provided that the ordinance permits an efficiency unit to be constructed in compliance with local development standards.

This bill would prohibit a local agency from establishing a minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit, as defined. The bill would also prohibit a local agency from establishing a maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than 850 square feet, and 1,000 square feet if the accessory dwelling unit contains more than one bedroom. The bill would also instead prohibit a local agency from establishing any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size for either attached or detached dwelling units that prohibits at least an 800 square foot accessory dwelling unit that is at least 16 feet in height and with a 4-foot side and rear yard setbacks.

(8) Existing law prohibits a local agency from imposing parking standards for an accessory dwelling unit if, among other conditions, the accessory dwelling unit is located within  $\frac{1}{2}$  mile of public transit.

This bill would make that prohibition applicable if the accessory dwelling unit is located within  $\frac{1}{2}$  mile walking distance of public transit, and would define public transit for those purposes.

(9) Existing law requires a local agency to ministerially approve an application for a building permit to create within a zone for single-family use one accessory dwelling unit per single family lot of the unit that is contained within the existing space of a single-family residence or accessory structure when specified conditions are met, including that the side and rear setbacks are sufficient for fire safety.

This bill would instead require ministerial approval of an application for a building permit within a residential or mixed-use zone to create the following: (1) one accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if certain requirements are met; (2) a detached, new construction accessory dwelling unit that meets certain requirements and would authorize a local agency to impose specified conditions relating to floor area and height on that unit; (3) multiple accessory dwelling units within the portions of an existing multifamily dwelling structure provided those units meet certain requirements; or (4) not more than 2 accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to certain height and rear yard and side setback requirements.

(10) Existing law prohibits a local agency, special district, or water corporation from considering an accessory dwelling unit to be a new residential use for purposes of calculating fees or capacity charges.

This bill would establish an exception from the above-described prohibition in the case of an accessory dwelling unit that was constructed with a new single-family home.

(11) Existing law requires a local agency to submit a copy of the adopted ordinance to the Department of Housing and Community Development and authorizes the department to review and comment on the ordinance.

This bill would instead authorize the department to submit written findings to the local agency as to whether the ordinance complies with the statute authorizing the creation of an accessory dwelling unit, and, if the department finds that the local agency's ordinance does not comply with those provisions, would require the department to notify the local agency within a reasonable time. The bill would require the local agency to consider the department's findings and either amend its ordinance to comply with those provisions or adopt it without changes and include specified findings. If the local agency does not amend its ordinance or does not adopt those findings, the bill would require the department to notify the local agency and authorize it to notify the Attorney General that the local agency is in violation of state law, as provided. The bill would authorize the department to adopt guidelines to implement uniform standards or criteria to supplement or clarify the provisions authorizing accessory dwelling units.

(12) Existing law defines the term "accessory dwelling unit" for these purposes to mean an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons.

This bill would revise the definition to additionally require an accessory dwelling unit be located on a lot with a proposed or existing primary residence in order for the provisions described above to apply.

(13) This bill would incorporate additional changes to Section 65852.2 of the Government Code proposed by SB 13 to be operative only if this bill and SB 13 are enacted and this bill is enacted last.

(14) By increasing the duties of local agencies with respect to land use regulations, this bill would impose a state-mandated local program.

(15) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(16) This bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SEC. 1.5.** Section 65852.2 of the Government Code is amended to read:

**65852.2.** (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

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

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.



(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Neighborhood" has the same meaning as set forth in Section 65589.5.

(7) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

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

(11) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

- (1) The accessory dwelling unit was built before January 1, 2020.
- (2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
- (o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.



**Planning and Development Department**  
Land Use Planning Division

## STAFF REPORT

DATE: November 6, 2019

TO: Members of the Planning Commission

FROM: Alene Pearson, Principal Planner  
Katrina Lapira, Assistant Planner

SUBJECT: 2019 State Housing Legislation

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### BACKGROUND

California's State Legislature has passed significant packages of housing-related laws in the last three legislative sessions in order to address the State's housing crisis. This year's housing package included over 20 housing-focused bills that affect a variety of regulations including Accessory Dwelling Units (ADUs), density bonus, and streamlined permitting.

Jurisdictions across the State are working to understand new regulations, many of which take effect on January 1, 2020. Berkeley staff are consulting with the City Attorney and other municipalities to understand requirements. A number of land use law firms have provided summaries<sup>1</sup> of the new legislation (*see Attachments 1 through 3*) and guidance documents from California Department Housing and Community Development (HCD) are forthcoming. This report provides an initial analysis, identifies areas where the Planning Commission will be making recommendations, and discusses overlap with Council Referrals.

Laws affect land use policies, implementation procedures and specific zoning standards. Planning Commission will ultimately recommend Zoning Ordinance (ZO) amendments to City Council for consideration. This report summarizes four important bills (*see Attachments 4 through 7*) affecting housing policies and practices:

- AB-881 -- Accessory Dwelling Units
- AB-1763 -- Density Bonuses
- AB-1485 -- Streamlining
- SB-330 -- Housing Crisis Act of 2019

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<sup>1</sup> Summaries are provided for informational purposes only. The City of Berkeley has not consulted with authors or firms about content or analysis.

**AB-881 -- Accessory Dwelling Units**

As of January 1, 2020, a new set of ADU regulations take effect statewide. Local ordinances are superseded by these regulations, except where noted. The list below outlines main points of the new law – providing references to some Government Code sections (GC) and highlighting opportunities to refine local ordinances.

1. **Allowable Lots:** ADUs are allowed in all districts that allow residential uses. ADUs would be allowed on lots that include a proposed or existing dwelling unit.

*Local ordinances can restrict ADUs from areas 1) without adequate water and sewer service and 2) in areas where ADUs create impacts to traffic flow and public safety. GC 65852.2 (a)(1)(A)*

2. **Approval Process:** Jurisdictions must ministerially approve or disapprove building permit applications for ADUs within 60-days of receiving a complete application. If an ADU building permit is associated with an application for a new primary dwelling unit, ministerial approval of the ADU can be delayed until there is an action on the permit for the primary dwelling unit.

3. **Development Standards:** ADUs will have to adhere to and can impose only the following development standards (unless modified by local ordinance as set forth in italics below):

- Maximum height of 16 feet
- Rear and side setbacks of 4 feet
- Maximum size:
  - A detached ADU shall not exceed 1200 square feet
  - An attached ADU shall not exceed 50% of the floor area of an existing or proposed primary dwelling unit. GCS 65852.2 (a)(1)(D)(iv)

*Local ordinances can reduce maximum ADU size to no less than 850 square feet for a studio and 1-bedroom ADU and no less than 1000 square feet for ADUs with more than one bedroom.*

*Local ordinances can impose development standards on ADUs that prevent adverse impacts to any real property listed in the California Register of Historic Resources. GC 65852.2 (a)(1)(B)(i)*

*Local ordinances can impose development standards for lot coverage and open space as long as those standards allow for at least an 800 square foot ADU that is 16 feet in height. GC 65852.2 (c)(2)(C).*

4. **Parking:** Replacement parking for the primary dwelling unit is not required if the ADU physically replaces the location of an existing garage, carport or covered parking structure.

**5. Sprinklers:** Fire sprinklers are required for the ADU if they are required for the primary dwelling unit.

**6. Fees**

- a. No **impact fees** may be levied on ADUs that are less than 750 square feet. For ADUs larger than 750 square feet, impact fees must be **proportional** to the square footage of the primary dwelling unit. GC 65852.2 (f)(3)
- b. ADUs shall not be considered new residential uses for the purposes of calculating **connection fees or capacity charges** for utilities, unless the ADU is created with a newly constructed primary dwelling unit. GC 65852.2 (f)(2).
- c. ADUs carved out of existing dwelling units shall not require new or separate **utility hook-ups**. All other ADUs may require new hook-ups and will be charged **utility fees** proportionate to its size and/or burden. GC 65852.2 (f)(4),(5).

*Local Ordinance: Cities can charge fees to cover costs associated with meeting the new 60-day timeline. Fees can include costs incurred adopting new ADU ordinances. GC 65852.2 (a)(3)*

**7. Owner Occupancy, Rental and Sale of ADUs:** Properties with ADUs cannot require owner-occupancy of the ADU or the primary dwelling unit. ADUs can be rented separate from the primary dwelling unit, but the rental term shall be for 30-days or more. GC 65852.2 (e)(4). ADUs may not be sold separately from primary dwelling unit. GC 65852.2 (a)(1)(D)(i)

**8. Number of ADUs**

- a. **Single Family (Primary) Dwelling Unit:** One ADU is allowed on all lots with one primary dwelling unit. The ADU can be attached to the primary dwelling unit or can be a detached structure. In addition, the lot can have a Junior ADU (J-ADU) attached to either the ADU or the primary dwelling unit.
- b. **Multifamily Dwelling Units**  
Attached: Multiple ADUs can be created within existing areas of multifamily dwellings that are not used as livable space (i.e. storage rooms, basements, garages, attics). At a minimum, one ADU is allowed. At a maximum, the number of ADUs cannot exceed 25% of the number of multifamily dwelling units. GC 65852.2 (e)(1)(C)(i),(ii)  
Detached: There can be no more than two detached ADUs on lots with multifamily dwellings, subject to the abovementioned development standards. GC 65852.2 (e)(1)(D)

**9. Non-conforming Structures:** If an ADU is constructed in the same location and to the same dimensions as an existing non-conforming structure, it does not have to comply with the rear and side setbacks. GC 65852.2 (a)(1)(D)(vii). Additionally, the jurisdiction cannot require the correction of nonconforming zoning conditions in order to ministerially approve an ADU. GC 65852.2 (e)(2).

Berkeley Context:

- *Planning Commission Action:* As of January 1, 2020, Berkeley's ADU Ordinance will be considered null and void. Until Berkeley's ADU Ordinance is updated to reflect new law, State regulations will be in effect. Staff is working on amendments for Planning Commission consideration. As part of this effort, a J-ADU Ordinance will be adopted.
- *Referrals:* Listed below are requests from City Council referrals that pertain to ADUs (see Attachment 8). Some requests have been resolved with the passage of AB-881, others are included in AB-881 – but need additional consideration and refinement from the City -- and some topics are not included in AB-881. Over the next few months, Planning Commission will be considering these items while developing Berkeley's new ADU Ordinance.

AB-881 Dictates Action with New Regulations:

- Reconsider the owner-occupancy requirements (May 15, 2018)
- Rectify ADU regulations for demolition and conversion of legally non-confirming structures (May 15, 2018)
- Consider allowing multiple ADUs on a lot (May 15, 2018)
- Consider allowing ADUs for multifamily dwellings (May 15, 2018)
- Clarify regulations for ADUs created through residential additions (Sept 13, 2018)

AB-881 Provides Guidance and Requires City Action:

- Adopt a J-ADU ordinance (May 2, 2017)
- Consider public safety issues in the Very High Fire Zone (Feb 27, 2018)
- Reconsider off-street parking regulations on narrow roads (Sept 13, 2018)

These are not included in AB-881:

- Consider incentives for affordability restrictions (May 15, 2018)
- Consider incentives for universal design (September 13, 2018)
- Require signed receipt of information on rent control, tenant protections and short term rental rules when ADU permits are issued (Sept 13, 2018)

**AB-1763 -- Density Bonuses**

AB-1763 modifies GC 65915 to include 100% affordable housing projects<sup>2</sup>. Under the new law, projects that provide 20% of their units to moderate income households<sup>3</sup> and 80% of their units to lower income households<sup>4</sup> will be eligible for State Density Bonus. Under this program, 100% affordable projects do not have to provide off-street parking. Projects that are more than half a mile from major transit stops<sup>5</sup> receive an 80% density bonus. Projects that are within half a mile of major transit stop have no maximum density,

<sup>2</sup> 100% affordable housing projects include all (base and bonus) units, except manager's unit(s)

<sup>3</sup> Moderate income households: 120-80% of the Area Median Income (AMI)

<sup>4</sup> Lower income households: Less than 80% of the AMI

<sup>5</sup> Major transit is defined as fixed rail service or a bus stop for a rapid line or a line with 15 minute headways at commute hours, per Public Resources Code 21155.

receive four incentives or concessions, and are provided an additional three stories or 33 feet in height.

Berkeley Context:

- *Planning Commission Action:* No action is required. In March 2019, City Council adopted a new Density Bonus Ordinance (Chapter 23C.14) that points to GC 65915. This was done intentionally to ensure that as State law evolved, Berkeley's ZO would not need to be amended.
- *Referrals:* The Planning Commission and its Subcommittee on Affordable Housing developed a multi-phase approach to address six Density Bonus referrals. The approach included 1) adopting a new Density Bonus Ordinance; 2) developing a local density incentive program that would result in affordable housing production in excess State Density Bonus requirements; and 3) recommending density standards. AB-1763 directly responds to the second phase of the outlined approach.

**AB-1485 – Streamlining**

AB-1485 modifies SB-35, which was signed by Governor Brown in the fall of 2017. SB-35 requires streamlined permit processing for qualified housing developments in cities that have not met their Regional Housing Needs Allocation (RHNA) targets and/or have not submitted their Housing Element Annual Progress Reports. AB-1485 provides additional options for developers (i.e. percentage of units at different affordability levels) requesting streamlining. AB-1485 clarifies project approval timelines taking into consideration length of potential litigation and/or construction. Furthermore, AB-1485 requires jurisdictions to ministerially process subsequent permits needed for a project that has received its SB-35 approval. Finally, AB-1485 explains how to calculate the percentage of a project that is residential (e.g. exclude underground space such as parking garages and basements).

Berkeley Context:

- *Planning Commission Action:* No action is required.
- *Referrals:* On December 5, 2017 City Council adopted a referral to allow ministerial approval of housing projects that receive Housing Trust Fund monies and/or housing projects that have more than 50% below market rate units with 20% of the BMR units designated for those earning up to 50% AMI (extremely low and very low income households). Affordability levels in this referral are deeper than those required by SB-35. Additionally, the referral asks for design review and a community meeting as part of ministerial review.

**SB-330 -- Housing Crisis Act of 2019**

SB-330 places a moratorium on regulations that limit housing development. It dictates a new project intake process – requiring a preliminary application -- and freezes applicable



regulations and fees at the time the preliminary application is submitted. It shortens timelines to approve projects and limits the number of allowable project hearings<sup>6</sup> to five. SB-330 primarily affects permit processing procedures, but it also restricts jurisdictions from adopting new zoning regulations or policies that limit housing or density. This includes objective standards and invalidates any regulations adopted after January 1, 2018 that reduce allowable density or restrict development.

#### Berkeley Context:

- *Planning Commission Action:* As new ZO amendments are considered, Planning Commission and staff will have to evaluate if proposals are reducing density or restricting development.
- *Referrals:* N/A

#### NEXT STEPS

Staff will continue to work with the City Attorney and HCD to evaluate the interpretations presented in this staff report. Planning Commission is asked to provide feedback on this summary, with particular attention to the analysis of AB-881.

#### Attachments:


1. [New California Housing Laws by Best, Best and Kreiger](#)
2. [California's 2020 Housing Laws: What You Need to Know by Holland and Knight](#)
3. [California Housing Law Update by Meyers and Nave](#)
4. AB-881 -- Accessory Dwelling Units
5. AB-1763 -- Density Bonuses
6. AB-1485 – Streamlining (SB-35)
7. SB-330 – Housing Crisis Act of 2019
8. ADU Referrals


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<sup>6</sup> A project hearing is broadly defined as a city-held meeting, workshop, work session, commission meeting, public hearing, subcommittee meeting, appeal or departmental meeting.

# City of Berkeley Fire Zone Map

## Legend


 CA Very High Hazard Severity Zone


 Berkeley Fire Zone 2

 Berkeley Fire Zone 3

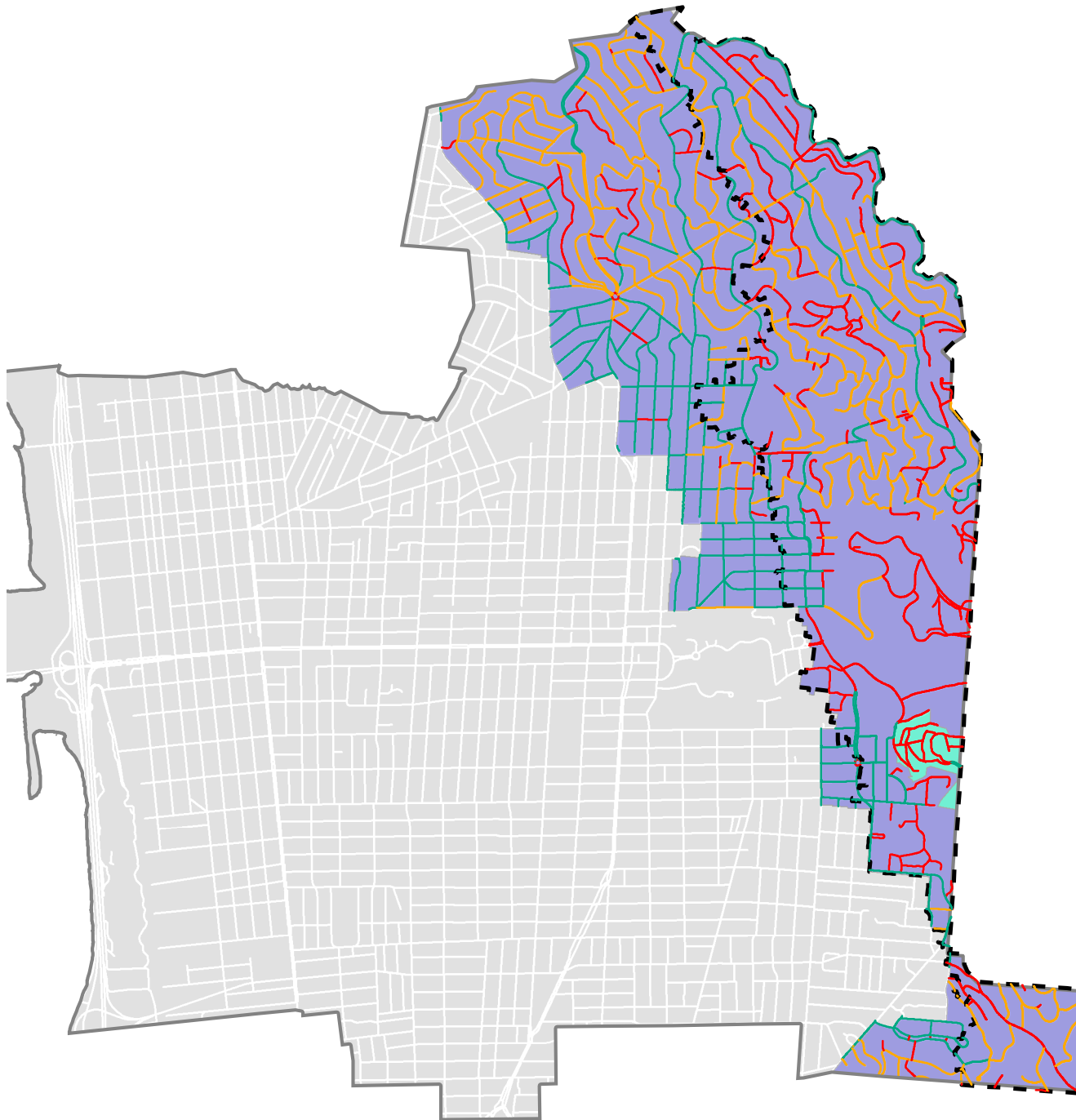
 Berkeley Boundary

## Pavement Width

 Less than or equal to 20 feet

 21 to 26 feet

 Greater than 27 feet



Updated:  
November 14, 2019

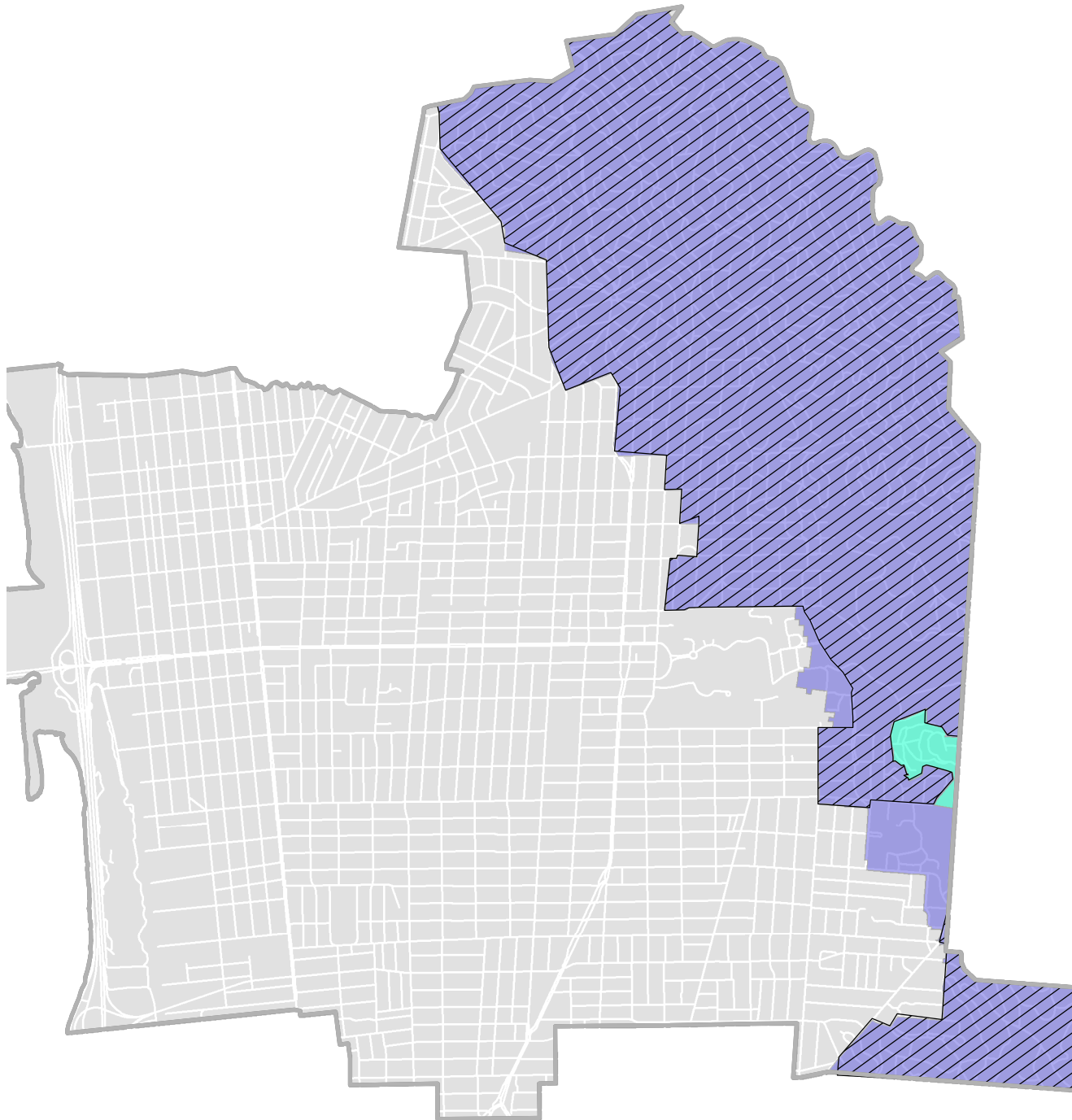


0 800 1,600 3,200  
Feet






**CITY OF BERKELEY**  
Land Use Planning Division  
Dep.t of Planning & Development  
2120 Milvia Street, 2nd Floor  
Berkeley, CA 94704

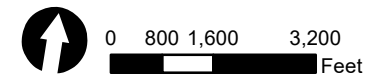
# Hillside Overlay and Fire Zones 2 and 3




## Legend

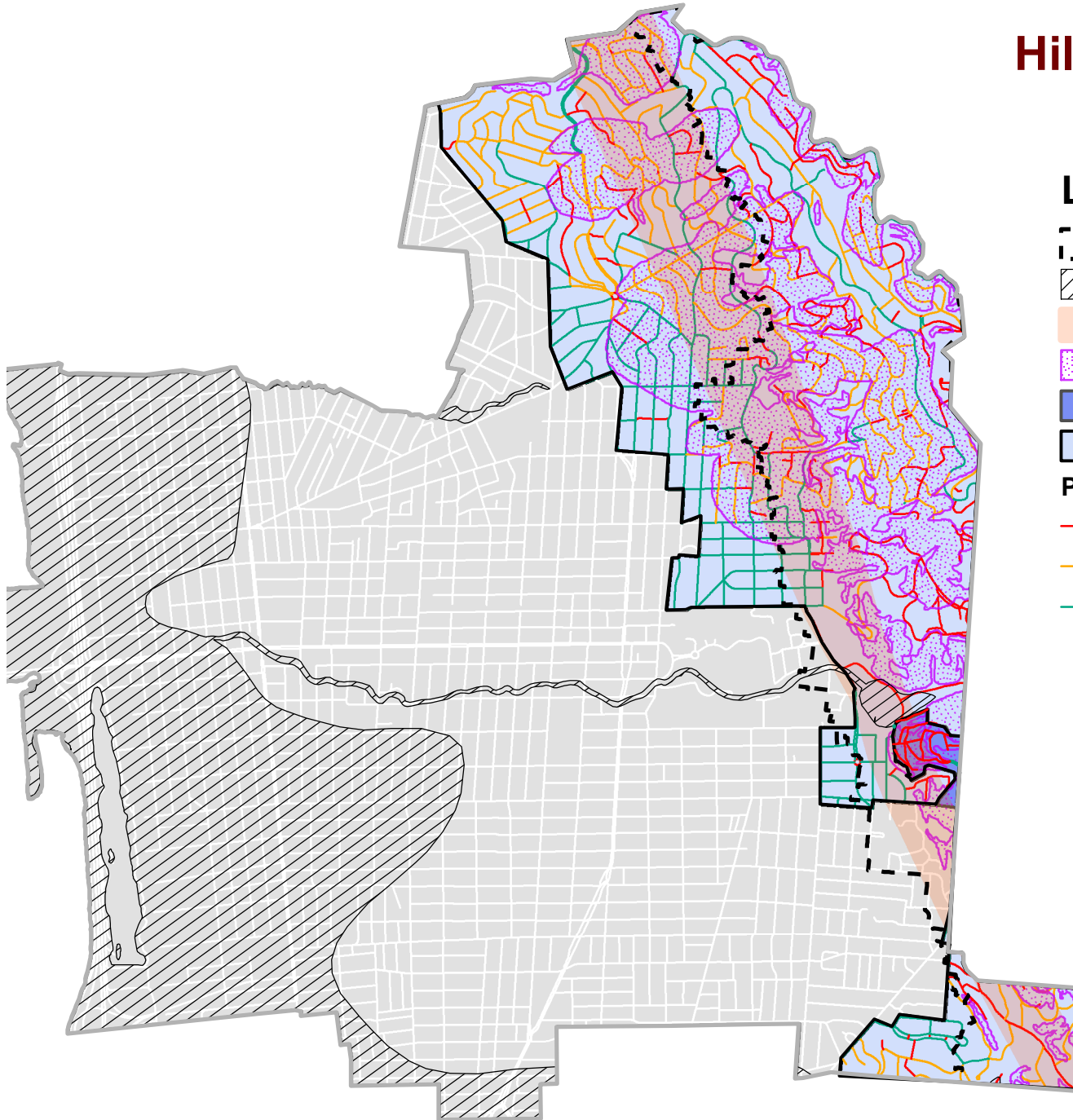
-  Hillside Overlay
-  Berkeley Fire Zone 2
-  Berkeley Fire Zone 3

Updated:  
November 14, 2019



 **CITY OF BERKELEY**  
Land Use Planning Division  
Dep.t of Planning & Development  
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# City of Berkeley Hillside Conditions Map



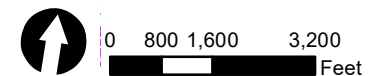
## Legend

- Very High Hazard Severity Zone
- CGS Seismic Hazard Zone: Liquefaction
- CGS Seismic Hazard Zone: Earthquake Fault
- CGS Seismic Hazard Zone: Landslide
- ES-R Zoning District
- Hillside Overlay

## Pavement Width

- Less than or equal to 20 feet
- 21 to 26 feet
- Greater than 27 feet

Updated:  
November 14, 2019



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