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Councilmember District 4

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: September 28, 2021

Item Number: 29

Item Description: Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04

Submitted by: Councilmember Kate Harrison

The attached revised document contains four revisions to the item's attached revisions to BMC Chapter 23C.24:

1. Rewrites 23C.24.040 (Development Standards) subsection B. 2. to remove the 150-ft² limit on extensions to ADUs created from existing building or structures, provided that the extensions still conform to all other conditions, to strengthen the financial feasibility of potential ADUs.
2. Adds to 23C.24.040 (Development Standards) section A.1. to reaffirm that Objective Design Standards will guide ADU development.
3. Removes 23C.24.040 (Development Standards) subsection F, which allowed for some protrusions into the four-foot setback by right. Many of the items named for the intrusion into the setback would create noise or privacy concerns. Any protrusion into the four-foot setback would remain eligible for a case-by-case approval.
4. Removes 23C.24.050 (Special Provisions) subsection A, which allowed for rooftop decks by right. Rooftop decks are still possible with case-by-case approval but a by-right approval creates many concerns with fire safety, noise, and privacy.

ORDINANCE NO. -N.S.

ACCESSORY DWELLING UNIT ORDINANCE

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

Section 1. 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 Development Standards
- 23C.24.050 Special Provisions

23C.24.010 Applicability of Regulations

- A. The provisions of this Chapter apply to all lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.
- B. ADUs and JADUs are allowed on lots as follows:
 - a. One ADU and/or one JADU is allowed on a lot with one Single Family Dwelling.
 - b. One ADU is allowed on a lot with multiple Single Family Dwellings.
 - c. For lots with a Duplex or Multiple Dwelling Uses, one of the following is allowed:
 - i. Up to two detached ADUs; or
 - ii. At least one ADU created from non-habitable portions of the existing dwelling structure (e.g. basement, attic, storage room). The maximum number of ADUs created from non-habitable portions of the existing dwelling structure shall not exceed 25% of the number of existing Dwelling Units on the lot.
 - d. One ADU is allowed on a lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.

23C.24.020 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 hazard severity areas.

23C.24.030 Permit Procedures

- A. An application for an ADU or JADU is subject to ministerial review. Review must be completed within 60 days of submission of a complete application.
- B. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, 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.

23C.24.040 Development Standards

- A. Development Standards in Paragraphs B through G, below, apply as follows:
 - 1. Nothing in this Chapter shall preclude the application of Objective Development Standards, once adopted, to ADU's.
 - 1.2. Detached New Construction. A detached, new construction ADU is subject to Development Standards for ADUs. A detached, new construction ADU is defined as having a 3-foot separation from a Main Building per Section 23E.04.030.
 - 2.3. Converted or Rebuilt Entirely from an Existing Building or Structure. An ADU converted or rebuilt entirely from an existing building or structure, in the same location with the same dimensions and roof height, is not subject to Development Standards for ADUs. These include:
 - a. An ADU created entirely within an existing Single Family Dwelling.
 - b. An ADU created entirely within the existing non-habitable space of a Duplex or Multiple Dwelling Use.
 - c. An ADU created entirely within an existing detached Accessory Building or Accessory Structure.
 - d. An ADU created entirely within an existing Accessory Building or

Accessory Structure that is demolished and rebuilt.

3.4. Addition to an Existing or Rebuilt Building or Structure. An ADU, fully or partially created by an addition of square footage to or changes in roof height is subject to Development Standards for ADUs. Paragraph B applies to the ADU's maximum size and Paragraphs C through G apply to the added square footage and roof design. These include:

- a. An ADU created by an addition or roof change to an existing Single Family Dwelling.
- b. An ADU created by an addition or roof change to an existing detached Accessory Building or Accessory Structure.
- c. An ADU created by an addition or roof change to an existing Accessory Building or Accessory Structure that is demolished and rebuilt.

4.5. Notwithstanding any other provision of this Chapter, no ADU is permitted to be built in the Hillside Overlay or Environmental Safety Residential (ES-R) districts unless it complies with the requirements of Government Code section 65852.2(e)(1).

5.6. A JADU is subject to applicable Development Standards in Paragraphs B and G.

B. Maximum Size

1. A detached, new construction ADU or an ADU fully or partially created by addition to an existing or proposed Single Family Dwelling is subject to the following maximum size limits:
 - a. 850 square feet for a studio or one-bedroom ADU.
 - b. 1000 square feet for an ADU with two or more bedrooms.
2. An ADU created from an existing Accessory Building or Accessory Structure or a portion of the existing building that does not conform to the Development Standards in Paragraphs C and D may ~~include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing building or structure~~ extend beyond the physical dimensions of the existing building or structure as long as the new construction is outside the four-foot setback and conforms to all other conditions herein. Additions shall conform with the Development Standards in this Chapter
3. An ADU created from an existing Accessory Building or Accessory Structure that conforms to the Development Standards in Paragraphs C and D must comply with one of the following:
 - a. May include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing building or structure; or
 - b. 850 square feet for a studio or one-bedroom ADU; or
 - c. 1000 square feet for an ADU with two or more bedrooms.
4. The maximum size of a JADU is 500 square feet.

C. Maximum Height is applied to ADUs as follows. See Chapter 23F.04 for definition.

1. Maximum Height of a detached, new construction ADU is 18 feet.
2. Maximum Height of new square footage added to a Single Family Dwelling, Accessory Building or Accessory Structure to create an ADU is 18 feet.

D. Rear and Side Setbacks. The required rear and side setbacks for a detached,

new construction ADU or addition to an existing building or structure are 4 feet, unless a lesser setback is allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district.

- E. Front Yard Setback. The required front yard setback is the same as is established in the underlying zoning district.

~~Projections. Architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings and Bay Window) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines.~~

- F. Parking

1. Off-street parking is not required.
2. Replacement parking is not required, but is allowed if in compliance with Chapter 23D.12 and/or Chapter 23E.28.

- G. Nothing in this Chapter shall preclude the issuance of Zoning Certificate for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code section 65852.2(e)(1). The City shall not apply the Development Standards in this Chapter to the extent they are inconsistent with the requirements of Government Code sections 65852.2 and 65852.22.

- H. A Zoning Certificate for the construction of an ADU or JADU may not be denied based on the failure of the applicant to correct a nonconforming zoning condition.

23C.24.050 Special Provisions

~~A. A rooftop deck may be established provided that the entire roof, deck and railing comply with Development Standards for ADUs in Section 23C.24.040 Paragraphs C through G.~~

- ~~B.A.~~ A JADU must be owner-occupied. For purposes of this paragraph, “owner-occupied” means that a person with legal title to the property must reside in either the Single Family Dwelling or the JADU as their legal permanent residence.

- ~~C.B.~~ The property owner shall file a deed restriction with the County Recorder providing that:

1. The ADU and/or JADU shall not be sold separately from the Dwelling Unit.
2. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days.

3. The JADU or the Single Family Dwelling in which the JADU is located shall be owner-occupied per the definition in Section 23F.04.010

Section 2. That the definition for Accessory Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is amended to read as follows:

Accessory Dwelling Unit (ADU): A secondary Dwelling Unit that is located on a lot with a proposed or existing Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation, ~~which is occupied by one legally established Single Family Dwelling that conforms to the standards of Section 23C.24.~~ An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements unless the City is prohibited from applying such requirements by Government Code Section 65852.2 or 65852.22 and provide the following features independent of the Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation: 1) exterior or independent access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Section 3. That the definition for Primary Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is rescinded:

~~**Primary Dwelling Unit:** A legally established Single Family Dwelling that is on a lot with an Accessory Dwelling Unit.~~

Section 4. That the following two definitions are adopted into Berkeley Municipal Code Chapter 23F.04.010:

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

Junior Accessory Dwelling Unit (JADU): A unit that is contained within the walls of a Single Family Dwelling and includes a separate exterior entrance. A JADU may not be located in an Accessory Building or an Accessory Structure. A JADU may include separate sanitation facilities, or may share sanitary facilities with a Single Family Dwelling. At a minimum, a JADU shall include an Efficiency Kitchen with a working refrigerator.

Section 5. 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.