



Susan Wengraf
Councilmember District 6

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: October 26, 2021

Item Number: #32

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 Wengraf

Accessory Dwelling Unit Amendments: Balancing Safety, Health and Welfare with Housing in High Fire Areas in Berkeley's Hillside Overlay District.

CONSENT CALENDAR
October 26, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf (author) Mayor Arreguín (co-sponsor) Sophie Hahn
(co-sponsor)

Subject: Accessory Dwelling Unit Amendments: Balancing Safety, Health and Welfare
with Housing in High Fire Areas in Berkeley's Hillside Overlay District

RECOMMENDATION

Refer to the City Manager for Planning staff and Legal staff to review and return to Council with language for amendments to a local ordinance for the development standards of ADUs in the Hillside Overlay District. See specific recommendations, discussed below.

Request that this topic be added to the Nov. 4 City Council Legislative Platform Meeting for consideration of additional legally permissible amendments to increase safety measures in the Hillside Overlay District.

In addition, request that Planning submit the proposed local ordinance amendments to Housing and Community Development for review for compliance with State ADU law.

BACKGROUND

Creation of ADUs and JADUs can provide much needed housing in our community. State law requires that all cities in California issue ministerial or "by right" permits for two Accessory Dwelling Units, one ADU and one JADU, for all single-family parcels that contain a proposed or existing primary dwelling. (Gov. Code Section 65852.2)

Concurrently, State law allows cities to pass laws to protect the health, safety and welfare of its residents. Specifically, Gov. 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."

Extreme weather patterns are quickly intensifying with climate change. The impacts must be considered as we try to counter the determinantal consequences of people living in areas that are exposed to risk. The construction of multiple ADUs on properties in areas that are vulnerable to catastrophic natural disasters, like earthquakes, landslides and WUI fires should be considered in our land use regulation and reasonably balanced with the need for more housing.

Bringing additional population and vehicles can add risk to an already very dangerous situation in the hillside areas of Berkeley. Land use planning is an effective tool for limiting danger and can be used to mitigate hazardous conditions and minimize potential harm to our residents.

The Disaster and Fire Safety Commission has consistently recommended the prohibition of ADUs in the Hillside Overlay District based on their knowledge and expertise of the dangerous hazards and conditions that exist. Although we have updated and improved our Fire Code to address fire risk in the Hillside Overlay District by requiring sprinklers in all new construction, the Fire Marshall has stated that sprinkler systems alone will not be sufficient to save lives in a firestorm.

Wildfires, earthquakes and landslides¹ put residents of the Hillside Overlay District of our city at significant risk. The Hayward fault bisects the Hillside Overlay District. Affirmation of these unique conditions is repeated in several City of Berkeley adopted policy documents and plans:

- The Base Zoning Ordinance², adopted 10/12/21, defines the geographic boundaries of the Hillside Overlay District designation and in section 23.210.020, #2 & #5, emphasizes the need for flexibility in applying our zoning code in this area of the city:

2. Protect the safety and health of residents where steep topography, unusual street conditions and proximity to the wildland-urban interface create severe risk from wildfire;

5. Allow modifications in standard setback and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the hillside areas.

- The Disaster Preparedness and Safety Element³ of Berkeley's General Plan states as one of its top objectives (#3):

"Plan for and regulate the uses of land to minimize exposure to hazards from either natural or human related causes and to contribute to a "disaster-resistant" community."

- Berkeley's 2019 Local Hazard Mitigation Plan⁴ states:

"Earthquakes and wildland-urban interface (WUI) fires are the hazards of greatest concern to Berkeley. Both of these hazards have a relatively high likelihood of occurrence and the potential for widespread damage within the city and the greater east bay region."

¹ https://www.akropp.com/wp-content/uploads/2013/07/berkeley_hills_slide_map.pdf

² https://www.cityofberkeley.info/Clerk/City_Council/2021/10_Oct/Documents/2021-10-12_Item_05_Adoption_of_the_Baseline_Zoning_Ordinance.aspx

³ https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Disaster_Preparedness_and_Safety_Element.aspx

⁴ <https://www.cityofberkeley.info/Mitigation/>

- *Berkeley's General Plan⁵ addresses the catastrophic consequences of increased density in earthquake and fire prone areas:*

*Policy H-13⁶ Second Units: Encourage and facilitate addition of second and small "in-law" units on properties with single-family homes, **but not in areas with limited parking and vehicular access or that are especially vulnerable to natural disaster.***

*Policy S-16⁷ Residential Density in the Hills: Consider **changes to the existing residential zoning in high risk, residential areas, such as the Hill Hazardous Fire Area, to reduce the vulnerability of these areas to future disasters.***

- A. Consider zoning amendments to **prevent future development, including the prohibition of new second units**, in these areas or sites in these areas that are particularly vulnerable to natural disaster.*
- B. Consider **fire safety, evacuation and emergency vehicle access** when reviewing secondary unit or other proposals to add residential units to these areas.*

Traffic Flow, Public Safety and Access to Transit

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. [This map](#) shows the large number of streets less than 33 feet wide in the high fire zone in the hills. A very recent 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.⁸

To better understand the importance of safe evacuation times in context, under "extreme weather" conditions (when forecasted wind speeds and humidity levels during a Red Flag Warning would produce especially risky conditions), a wildfire can move at a breathtaking speed, destroying everything in its path. Fire experts predict that in an

⁵https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan__A_Guide_for_Public_Decision-Making.aspx

⁶ https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Housing_Element.aspx

⁷ https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Disaster_Preparedness_and_Safety_Element.aspx

⁸ <https://escholarship.org/uc/item/70p6k4rf>

extreme weather scenario, it would take approximately 27 minutes for a wildfire to travel from Grizzly Peak Blvd to the Marin Fountain Circle.

A 2019 AP News Analysis⁹ identified Berkeley Hills Zip Code 94708 as being within the worst 1% in the state when it comes to population-to-evacuation-route ratios. The Town of Paradise is also in the worst 1% category. Berkeley and Paradise share that terrible distinction with just 31 other Zip Codes in California, out of 1,741 Zip Codes in the state. State law precludes requiring off street parking if the project is half a mile from a transit stop, essentially making it illegal to require off-street parking.¹⁰ But, limited public transit service in the Hillside Overlay District needs to be factored when considering ADU development. Although there are "transit stops" within a half mile of most parcels, the actual bus service is minimal, limited to one-hour headways and no service on nights and weekends (see attachment #1). The reality is that most ADU hill dwellers will rely on vehicles for their transportation, adding to the congestion and obstruction and possible creation of bottlenecks at choke points on substandard roadways. Berkeley's Evacuation map (see attachment #2) reveals a labyrinth of narrow streets with sharp curves and no clear route off of the hillside. Only Marin Ave, with a substandard road width of only 23 feet, offers a direct route down the hill to the Marin Fountain Circle.

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, as suggested in State law, will seriously exacerbate the already very hazardous conditions that currently exist. The addition of multiple ADUs to every parcel would be dangerous to everyone in the city, including the very people the new ADUs are designed to serve.

RECOMMENDATIONS

The following proposed amendments regulate the number, the size, the height and setbacks of ADUs in the Hillside Overlay District in an effort to try to achieve a compromise and balance between risk and the need for housing. We can make an effort to protect lives and build ADUs. In this spirit, I offer the following amendments to Berkeley's local ADU ordinance, for Council's consideration and discussion:

Hillside Overlay District (HOD)

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

⁹ <https://apnews.com/article/california-wildfires-evacuations-redding-ca-state-wire-6f621c1c54734d0b95d374556c2cf5c0>

¹⁰ Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10)

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**

CONTACT PERSON

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Council District 6

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Attachments:

- 1: AC Transit Bus Line 67 & 65 Schedules/Maps
- 2: Berkeley Evacuation Routes & Hill Fire Hazard Area
3. Earthquake Fault Map
4. Land Slide Map

67 Monday through Friday except holidays To Downtown Berkeley

Spruce St. & Grizzly Peak Blvd.	Kenyon Ave. & Trinity Ave.	Vassar Ave. & Spruce St.	Allston Way & Shattuck Ave.
7:35a	7:37a	7:41a	7:56a
8:35a	8:37a	8:41a	8:56a
9:05a	9:07a	9:11a	9:26a
9:35a	9:37a	9:41a	9:56a
10:05a	10:07a	10:11a	10:26a
10:35a	10:37a	10:41a	10:56a
11:05a	11:07a	11:11a	11:26a
11:35a	11:37a	11:41a	11:56a
12:05p	12:07p	12:11p	12:26p
12:35p	12:37p	12:41p	12:56p
1:05p	1:07p	1:11p	1:26p
1:35p	1:37p	1:41p	1:56p
2:05p	2:07p	2:11p	2:26p
2:35p	2:37p	2:41p	2:56p
3:05p	3:07p	3:11p	3:26p
3:35p	3:37p	3:41p	3:56p
4:05p	4:07p	4:11p	4:26p
4:35p	4:37p	4:41p	4:56p
5:05p	5:07p	5:11p	5:26p
5:35p	5:37p	5:41p	5:56p
6:05p	6:07p	6:11p	6:26p
6:35p	6:37p	6:41p	6:56p
7:05p	7:07p	7:11p	7:26p

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

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

67 AC TRANSIT SCHEDULE

EFFECTIVE: September 20, 2021

Berkeley
 Downtown Berkeley BART
 Oxford Street
 Spruce Street
 Beloit Avenue

Monday through Friday except holidays

65 Monday through Friday except holidays To Lawrence Hall of Science

Oxford St. & Addison St.	Euclid Ave. & Grizzly Peak Blvd.	Lawrence Hall of Science
7:20a	7:32a	7:40a
8:30a	8:42a	8:50a
9:30a	9:42a	9:50a
10:30a	10:44a	10:52a
11:30a	11:44a	11:52a
12:30p	12:44p	12:52p
1:30p	1:44p	1:52p
2:30p	2:44p	2:52p
3:30p	3:44p	3:52p
4:30p	4:44p	4:52p
5:30p	5:44p	5:52p
6:30p	6:44p	6:52p

65 Monday through Friday except holidays To Downtown Berkeley

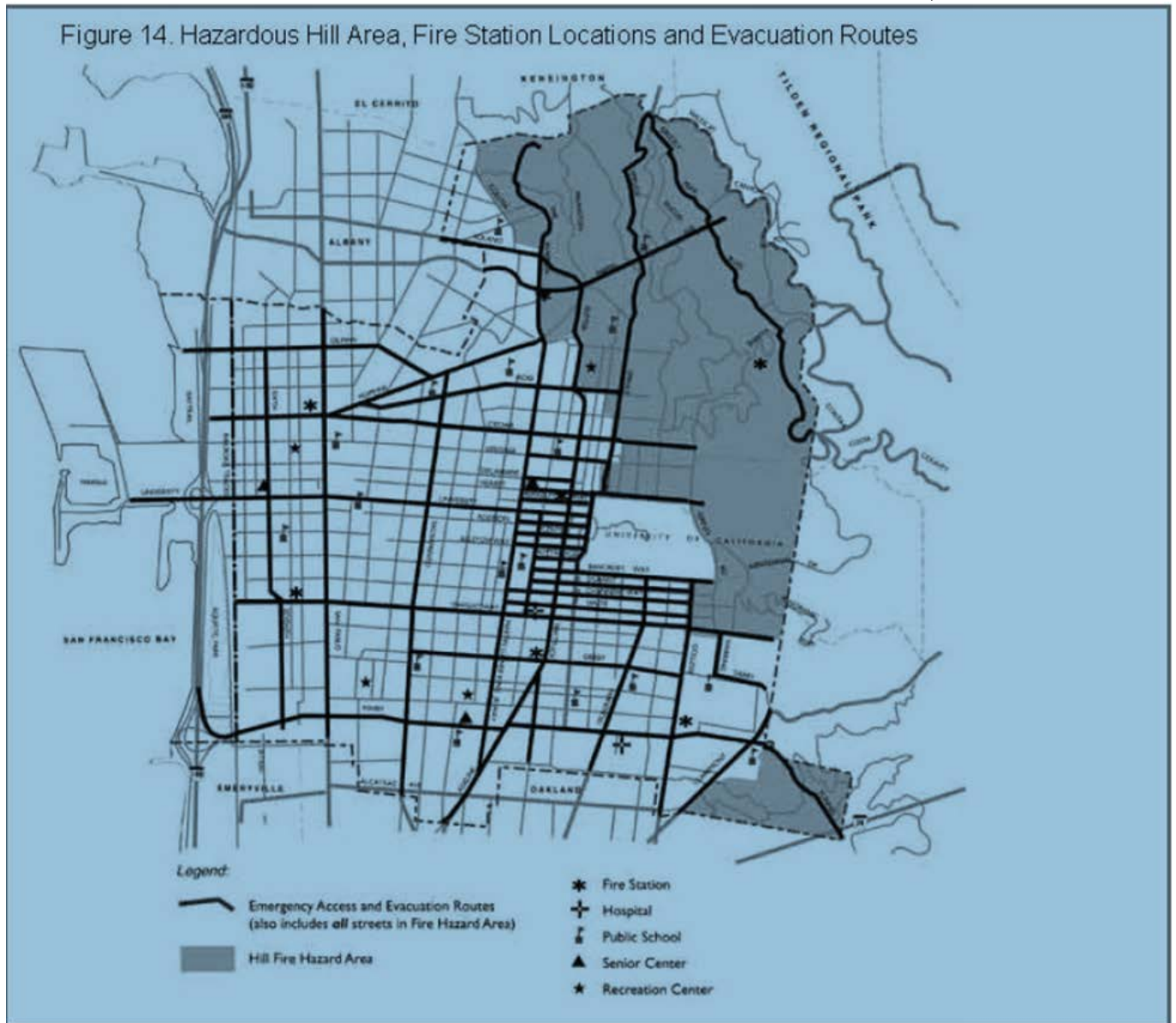
Lawrence Hall of Science	Euclid Ave. & Grizzly Peak Blvd.	Oxford St. & Addison St.
7:45a	7:56a	8:10a
8:53a	9:06a	9:20a
9:53a	10:06a	10:20a
10:54a	11:06a	11:20a
11:54a	12:06p	12:20p
12:54p	1:06p	1:20p
1:54p	2:06p	2:20p
2:54p	3:06p	3:20p
3:54p	4:06p	4:20p
4:54p	5:06p	5:20p
5:54p	6:06p	6:20p
6:56p	7:08p	7:22p

65 AC TRANSIT SCHEDULE

EFFECTIVE: August 16, 2021

Berkeley
 Downtown Berkeley BART
 Hearst Avenue
 Euclid Avenue
 Grizzly Peak Blvd.
 Lawrence Hall of Science

Monday through Friday except holidays

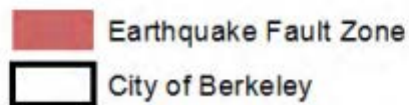


Map 3. California Geological Survey Earthquake Fault Planning Zone

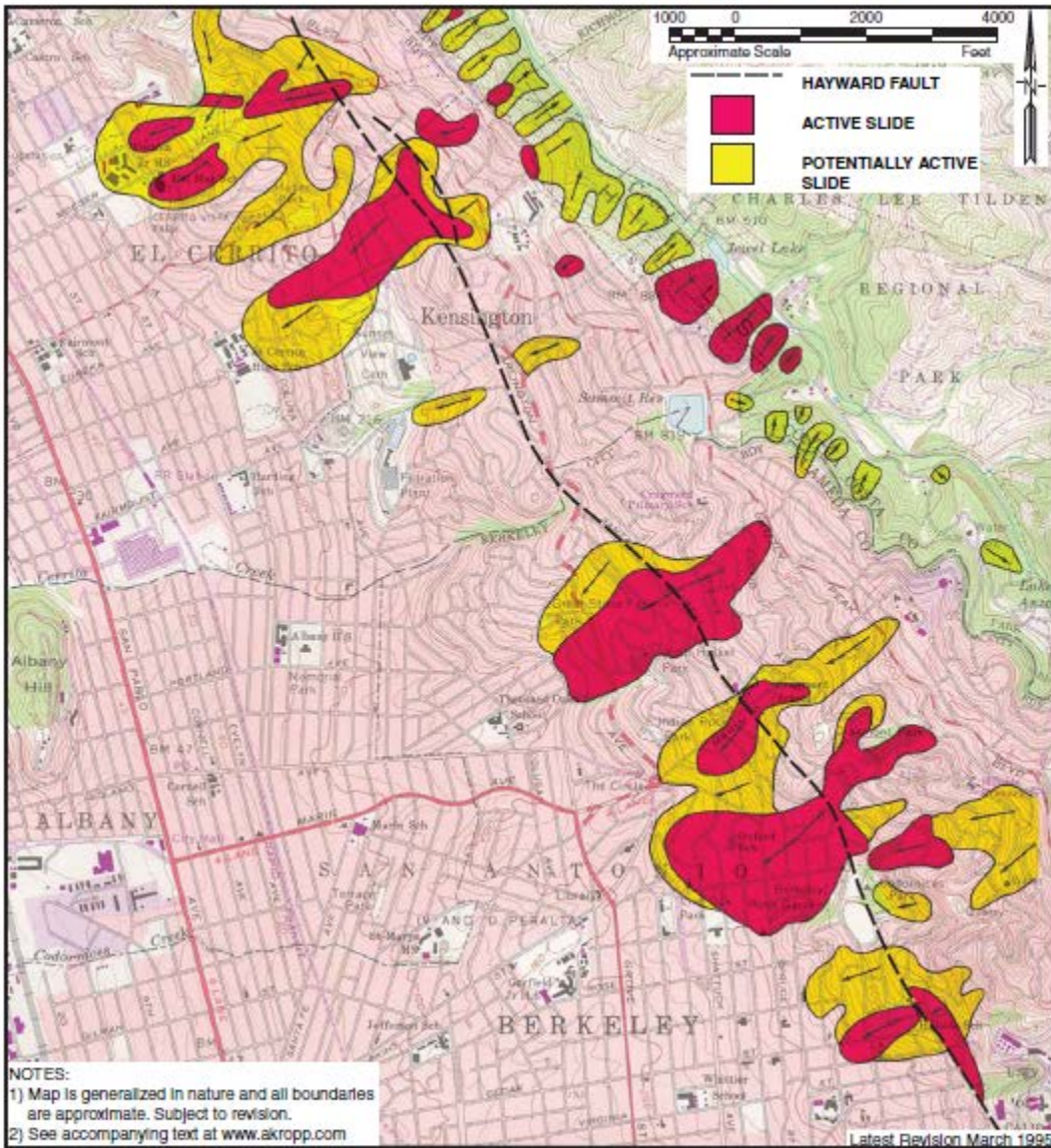


Source: California Geological Survey, Earthquake Fault Planning Zone.

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LANDSLIDES OF THE BERKELEY HILLS



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