



Office of the City Manager

CONSENT CALENDAR

December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director, Public Works

Subject: Grant Applications: Metropolitan Transportation Commission Housing Incentive Pool

RECOMMENDATION

Adopt two Resolutions certifying the City’s compliance with State Housing Laws and authorizing the City Manager to submit grant applications to the Metropolitan Transportation Commission (MTC) Housing Incentive Pool (HIP) for the following projects: San Pablo Avenue/Ashby Avenue Intersection Improvements Project for up to \$1.9 million; Adeline Street Quick-Build for up to \$1.05 million; and 7<sup>th</sup> Street/Anthony Street Complete Intersections Project for up to \$2 million; accept the grants if awarded, and execute any resulting agreements and amendments.

FISCAL IMPACTS OF RECOMMENDATION

The City has been allocated a minimum of \$1,508,000 through the HIP. The HIP program requires that multiple projects be submitted for consideration for funding to MTC by local jurisdictions. If the City wins these grant awards, depending on funding availability, MTC will provide a total of up to \$4,869,814 to the City for improvements to several major corridors and local streets. The HIP funding requests are as follows, in priority order:

- \$1,856,900 for the San Pablo Ave. and Ashby Ave. Intersection Improvements;
- \$1,971,914 for the 7<sup>th</sup> St and Anthony St. Complete Intersections project; and
- \$1,041,000 for the Adeline Street Quick-Build.

The program requires that applicants ensure eligibility for Federal Surface Transportation Block Grant (STP) and/or Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds by providing matching funds equal to 11.47% of the total project cost. Matching funds in the amount of up to \$558,566 are available starting in fiscal year 2025 from Alameda County Transportation Sales Tax Measure BB direct local distribution Fund 134. Final matching funds required will depend on the amount of grant funding awarded to the City.

Housing Incentive Pool Grant Funding Requests and Matching Funds

San Pablo Ave. and Ashby Ave. Project Funding Request	\$1,856,900
Matching Funds for San Pablo Ave. and Ashby Ave. Project	\$212,987
7 <sup>th</sup> St. and Anthony St. Project Funding Request	\$1,971,914
Matching Funds for 7 <sup>th</sup> St. & Anthony St. Project	\$226,179
Adeline St. Quick-Build Project Funding Request	\$1,041,000
Matching Funds for Adeline St. Quick-Build Project	\$119,400
<b>Total Housing Incentive Pool Grant Funding Request</b>	<b>\$4,869,814</b>
City Matching Funds Available	\$558,566
<b>TOTAL Housing Incentive Pool Grant and City Match</b>	<b>\$5,428,380</b>

CURRENT SITUATION AND ITS EFFECTS

The safety countermeasures and traffic calming improvements in these projects were identified in the following Council approved plans:

- 2017 Bicycle Plan (Resolution No. 67,945-N.S.),
- 2019 Vision Zero Action Plan (Resolution No. 69,324-N.S.) and
- 2020 Pedestrian Plan (Resolution No. 69,711–N.S.).

These plans were the result of robust public engagement processes involving members of the public, Transportation Commissioners and numerous stakeholders throughout the City.

**San Pablo Avenue and Ashby Avenue Intersection Improvements Project**

Both San Pablo Ave and Ashby Ave are identified as high injury streets in the 2020 Vision Zero Plan, underscoring the critical need for these improvements. The San Pablo Avenue and Ashby Avenue Intersection Improvements Project brings several significant safety and accessibility enhancements to the intersection. In addition to installing protected left turn signals and modified curb ramps, the widening of the northeast and southeast roadway sections of Ashby Ave at San Pablo Ave will better accommodate vehicle flow and pedestrian movement. The accessible pedestrian signal push buttons further improve crossing conditions, especially for individuals with disabilities. As part of the 2020 Berkeley Pedestrian Plan, Ashby Ave's designation as a high injury corridor places a strong focus on pedestrian safety. The inclusion of curb ramps that align with the crosswalk and the addition of protected left turn phasing align directly with the plan's goals to enhance pedestrian safety and accessibility. Given the intersection's history of fatal, severe, and other injurious collisions, these targeted improvements will significantly reduce the risk of crashes and improve safety for all road users, from pedestrians and cyclists to motorists.

### **7th St and Anthony St. Complete Intersections Project**

The 7<sup>th</sup> and Anthony Street Intersections Project improvements will help transit riders safely access the AC Transit bus stops located on the northwest and southeast corners of the 7<sup>th</sup> St and Anthony St intersection, consistent with the citywide recommendations of the Berkeley City Council adopted 2023 Transit-First Policy Implementation Plan and 2020 Pedestrian Plan. This project will remove and replace the traffic signal at 7<sup>th</sup> and Potter St. with a new signal at 7<sup>th</sup> and Anthony St. While 7<sup>th</sup> Street is not categorized as a Vision Zero High Injury Street, the close proximity of the 7<sup>th</sup>/Potter signal to the busy intersection at 7<sup>th</sup>/Ashy Ave (State Route 13) has been observed to create frequent confusion and conflicts among road users. The project installs four high visibility crosswalks at 7<sup>th</sup> St. and Anthony St. and three high visibility crosswalks at 7<sup>th</sup> St and Potter St. A rectangular rapid flashing beacon (RRFB) and two-way stop will be implemented on Potter St. with right-turns only onto 7<sup>th</sup> St. Relocating the traffic signal further from Ashby Avenue (SR13) is intended to reduce confusion and conflicts with the heavy volumes of traffic accessing the state highway and the nearby I-80/I-580 interchange.

### **Adeline Quick-Build Project**

Adeline St. has been identified as a High Injury Street in the 2020 Vision Zero Action Plan, with a pattern of drivers, cyclists, and pedestrians suffering severe injuries and at least one pedestrian fatality. This project runs on Adeline Street from Ashby Avenue to the Berkeley city limit at Martin Luther King Jr Way. There are currently six lanes of traffic on Adeline Street (three lanes in each direction). This project reduces the number of through lanes from six to four lanes and accommodates construction of a one-way protected bike lane (“cycle track”) on each side of Adeline Street in response to documented bicycle safety issues and to improve bicycling comfort. This gap closure project uses a quick-build approach, which allows a cost-effective means of constructing safe infrastructure while offering Public Works design flexibility to respond to community input. The project also supports improved transit operations by providing bus boarding islands at several stops on Adeline Street, and improves pedestrian crossing safety by upgrading medians at several pedestrian crosswalks. The project complements the City of Oakland’s proposed protected bikeway on Martin Luther King Jr. Way, currently at 35% design, to be installed as part of OakDOT’s 2026 repaving program. The Oakland project would connect directly to the proposed Berkeley project at the Berkeley/Oakland border, thus creating a seamless protected bikeway connection through South Berkeley and North Oakland. City and Oakland staff are closely coordinating the two efforts.

These projects advance the Strategic Plan goals of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities; and creating a resilient, safe, connected, and prepared city.

### **BACKGROUND**

The Housing Incentive Pool (HIP) is a program administered by MTC that provides \$71M total in federal transportation funding to local jurisdictions for 2024. The HIP funds transportation improvement projects to the region's top fifteen jurisdictions that produced and preserved the most qualifying affordable housing units on a per-unit basis. The City has been awarded a minimum of \$ 1,508,000 through this program. The HIP program requires that multiple projects be submitted for consideration for funding to MTC by local jurisdictions. This program is funded through \$58 million in flexible federal funds through the second round of the One Bay Area Grant (OBAG 2) program and \$18 million in local funds.

In order to be eligible for HIP funding per MTC requirements, the City must adopt a Resolution of Local Compliance with State Housing Law. The City demonstrates compliance with State Housing Laws by referencing Ch. 23.306 Accessory Dwelling Units, and Ch. 23.330 Density Bonus of the Berkeley Municipal Code, and Resolution 71,401-N.S. Prioritizing Affordable Housing on City-Owned Land.

There is an urgent need to coordinate the delivery of a protected bike lane project on Adeline Street in the City with the 2026 OakDOT repaving project which will install a protected bike lane on Martin Luther King Jr. Way in neighboring Oakland. For this reason, City staff are pursuing multiple grant funding opportunities for the Adeline Quick Build, including California Active Transportation Program Cycle 7 and Regional Measure 3 Safe Routes to Transit and Bay Trail funding, in addition to this MTC HIP funding request.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

These projects are designed to promote sustainable transportation and climate resilience by improving traffic safety for pedestrians and bicyclists. This is consistent with the 2009 Climate Action Plan (Plan) Policy 5.A, which calls for expanding and improving the City's bicycle and pedestrian infrastructure. The Plan's target is to reduce transportation emissions 80% below year 2000 levels by 2050. The Plan further states that transportation modes, such as public transit, walking and bicycling, must become the primary means of fulfilling the City's mobility needs in order to meet these targets.

#### RATIONALE FOR RECOMMENDATION

The HIP funding allows the City to address traffic safety issues along major transportation corridors and promote environmentally-friendly mobility. The need for the projects in these applications has been identified in the following Council-approved plans:

- 2017 Bicycle Plan (Resolution No. 67,945-N.S.),
- 2019 Vision Zero Action Plan (Resolution No. 69,324-N.S.) and
- 2020 Pedestrian Plan (Resolution No. 69,711-N.S.).

Not applying would mean foregoing up to \$4,869,814 in potential grant funding and leaving traffic safety issues on these streets unaddressed.

ALTERNATIVE ACTIONS CONSIDERED

The City could choose not to apply for these funds. However, no alternative funding source has been identified to complete these key traffic safety and sustainability projects.

CONTACT PERSON

Wahid Amiri, Deputy Director, 510-981-6396

Eric Anderson, Principal Planner, 510-981-7062

Attachments:

1: Resolution of Local Support

2: Resolution of Local Compliance with State Housing Law

Exhibit A: Resolution No. 71-401: Prioritizing Affordable Housing on City-Owned Land

Exhibit B: Berkeley Municipal Code, Chapter 23.306, Accessory Dwelling Units

Exhibit C: Berkeley Municipal Code, Chapter 23.330, Density Bonus

**Resolution of Local Support**  
RESOLUTION NO. ##,###-N.S.

AUTHORIZING THE FILING OF AN APPLICATION FOR FUNDING ASSIGNED TO MTC AND COMMITTING ANY NECESSARY MATCHING FUNDS AND STATING ASSURANCE TO COMPLETE THE PROJECT

WHEREAS, City of Berkeley (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for up to \$4,869,814 in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Carbon Reduction Program (CRP) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the San Pablo Avenue and Ashby Avenue Intersection Improvements Project, Adeline Quick-Build Project, and 7th St and Anthony St. Complete Intersections Project. (herein referred to as PROJECT) for the Housing Incentive Pool (herein referred to as PROGRAM); and

WHEREAS, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the FEDERAL TRANSPORTATION ACT) including, but not limited to the Surface Transportation Block Grant Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149), the Carbon Reduction Program (CRP) (23 U.S.C. § 175), and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

WHEREAS, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and WHEREAS, pursuant to the FEDERAL TRANSPORTATION ACT, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, as part of the application for REGIONAL DISCRETIONARY FUNDING, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
- that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
- that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective County Transportation Agency (CTA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and
- in the case of a transit project, the PROJECT will comply with MTC Resolution No. 3866, revised, which sets forth the requirements of MTC's Transit Coordination Implementation Plan to more efficiently deliver transit projects in the region; and
- in the case of a highway project, the PROJECT will comply with MTC Resolution No. 4104, which sets forth MTC's Traffic Operations System (TOS) Policy to install and activate TOS elements on new major freeway projects; and
- in the case of an RTIP project, state law requires PROJECT be included in a local congestion management plan, or be consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the County Transportation Agency (CTA); and

WHEREAS, that APPLICANT is authorized to submit an application for REGIONAL

DISCRETIONARY FUNDING for the PROJECT; and

WHEREAS, there is no legal impediment to APPLICANT making applications for the funds; and

WHEREAS, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

WHEREAS, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

WHEREAS, MTC requires that a copy of this resolution be transmitted to the MTC in conjunction with the filing of the application.

NOW, THEREFORE, BE IT RESOLVED that the APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under the FEDERAL TRANSPORTATION ACT or continued funding; and

BE IT FURTHER RESOLVED that APPLICANT will provide any required matching funds; and

BE IT FURTHER RESOLVED that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and

BE IT FURTHER RESOLVED that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective County Transportation Agency (CTA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC funded transportation and transit projects implemented by APPLICANT; and

BE IT FURTHER RESOLVED that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if approved, for the amount approved by MTC and programmed in the federal TIP; and BE

IT FURTHER RESOLVED that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and

BE IT FURTHER RESOLVED that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the PROGRAM; and

BE IT FURTHER RESOLVED that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution No. 3866, revised; and

BE IT FURTHER RESOLVED that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and

BE IT FURTHER RESOLVED that, in the case of an RTIP project, PROJECT is included in a local congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the County Transportation Agency (CTA); and

BE IT FURTHER RESOLVED that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and

BE IT FURTHER RESOLVED that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

BE IT FURTHER RESOLVED that there is no legal impediment to APPLICANT making applications for the funds; and

BE IT FURTHER RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

BE IT FURTHER RESOLVED that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

BE IT FURTHER RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and BE IT FURTHER RESOLVED that the MTC is requested to support the application for the PROJECT described in the resolution,

and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project sponsor for TIP programming.

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

COMPLIANCE WITH STATE HOUSING LAWS

WHEREAS, the San Francisco region has the highest housing costs in the United States; and

WHEREAS, the Bay Area produced less than 30% of the need for low- and moderate-income housing units from 2007-2014, and is on track to similarly underproduce low income units during the 2015-2023 time period; and

WHEREAS, there are limited funding sources available to secure land for the construction of low- and moderate-income housing; and

WHEREAS, public lands can play a critical role in increasing the supply of land for affordable housing; and

WHEREAS, accessory dwelling units (ADUs) and junior accessory dwelling units (Junior ADUs) provide an important option to increase the availability and affordability of housing, especially in existing, lower density neighborhoods; and

WHEREAS, density bonuses are an effective tool to increase the financial feasibility of housing and incentivize the creation of affordable housing; and

WHEREAS, the Metropolitan Transportation Commission adopted Resolution No. 4505, outlining the programming policy and project selection criteria for the One Bay Area Grant Program (OBAG 3), including certain requirements to access these funds.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley agrees to comply with the terms of Surplus Land Act (California Government Code § 54220 et seq.), as exists now or may be amended in the future, including, but not limited to, AB 1255 (Rivas, 2019), which requires jurisdictions to compile and report annually an inventory of surplus lands to the California Department of Housing and Community Development.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to comply with state laws related to ADUs and Junior ADUs, as it exists now or may be amended in the future, including, but not limited to California Government Code §§ 66310 - 66342 and California Health & Safety Code §§ 17980.12.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to comply with the state Density Bonus Law (California Government Code § 65915 et seq.), as exists now or may be amended in the future.

BE IT FURTHER RESOLVED that the City of Berkeley warrant and represents that is in compliance with the aforementioned state housing laws and that there are no claims, actions, suits, or proceedings pending to the best of the City of Berkeley's knowledge, alleging violations of the state housing laws by the City of Berkeley.

Exhibits

A: Resolution No. 71-401: Prioritizing Affordable Housing on City-Owned Land

B: Berkeley Municipal Code, Chapter 23.306, Accessory Dwelling Units

C: Berkeley Municipal Code, Chapter 23.330, Density Bonus

RESOLUTION NO. 71,401-N.S.

PRIORITIZING AFFORDABLE HOUSING ON CITY-OWNED LAND

WHEREAS, public land is a public asset and should be used for the public good; and

WHEREAS, 70% of households below 80% of Area Median Income (AMI) in Berkeley occupy units that are unaffordable to them; and

WHEREAS, the City of Berkeley's 2023-2031 Regional Housing Needs Allocation (RHNA) goal for extremely low-income, very low-income, and low-income housing is a combined 3,854 units; and

WHEREAS, the City Council is committed to supporting affordable housing development on public land within City limits; and

WHEREAS, the Surplus Land Act (SLA) is a "right of first refusal" law that requires all local agencies to offer surplus land for sale or lease to affordable home developers and certain other entities before selling or leasing the land to any other individual or entity; and

WHEREAS, The City of Berkeley submitted a Prohousing Designation Application in August 2023 to the California Department of Housing and Community Development affirming its commitment to make City-owned land available for redevelopment into affordable housing; and

WHEREAS, Program H-15 in the 2023-2023 Housing Element states that the City will "encourage use of publicly-owned or controlled sites for affordable housing and/or mixed-use residential projects with a substantial portion of affordable units"; and

WHEREAS, The City of Berkeley will commit to making surplus publicly owned land available for affordable housing, or for multifamily housing projects with the highest feasible percentage of units affordable to lower income households; and

WHEREAS, The City of Berkeley will commit to using mechanisms including but not limited to land donations, land sales with significant write-downs, or below-market land leases to support affordable housing development on publicly owned land.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley commits to follow the Surplus Land Act and prioritize all City-owned land no longer needed for public use available for affordable housing.

The foregoing Resolution was adopted by the Berkeley City Council on June 25, 2024 by the following vote:

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

Noes: None.

Absent: None.

  
Susan Wengraf, Mayor Pro Tempore

Attest:   
Mark Numainville, City Clerk

## Chapter 23.306

### ACCESSORY DWELLING UNITS

Sections:

- 23.306.010 Purpose.**
- 23.306.020 Applicability.**
- 23.306.030 Development Standards.**
- 23.306.040 Permit Procedures.**

#### **23.306.010 Purpose.**

This Chapter establishes accessory dwelling unit (ADU) and junior accessory dwelling unit (Junior ADU) standards that:

- A. Implement California Government Code Section [65852.1](#), [65852.2](#) and [65852.22](#).
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure. (Ord. 7888-NS § 8, 2023; Ord. 7799-NS § 1, 2022; Ord. 7797-NS § 1, 2022; Ord. 7787-NS § 2 (Exh. A), 2021)

#### **23.306.020 Applicability.**

- A. The provisions of this chapter apply to zoning districts where residential uses are permitted, on lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.
- B. *Number Permitted.* See Table 23.306-1--ADU and Junior ADU Maximum Number of Units per Lot.
- C. *Density Exemption.* ADUs and Junior ADUs are not included in the minimum or maximum density established by the underlying zoning district.

**Table 23.306-1. ADU AND JUNIOR ADU MAXIMUM NUMBER OF UNITS PER LOT**

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

(Ord. 7888-NS § 8, 2023; Ord. 7799-NS § 1, 2022; Ord. 7797-NS § 1, 2022; Ord. 7787-NS § 2 (Exh. A), 2021)

### 23.306.030 Development Standards.

A. *Basic Standards.* See Table 23.306-2: ADU Development Standards.

**Table 23.306-2. ADU DEVELOPMENT STANDARDS**

Basic Standards		Supplemental Standards
Gross Floor Area, Maximum		<a href="#">23.306.030(A)(1);</a> <a href="#">23.306.030(A)(2);</a> <a href="#">23.306.030(A)(3)</a>
Studio or 1 bedroom	850 sq. ft.	
2+ bedrooms	1,000 sq. ft.	
Building Height, Maximum		
Conversion	Same as existing structure	<a href="#">23.306.030(A)(1);</a> <a href="#">23.306.030(A)(3)</a>
Detached, New Construction	20 ft.	
Attached, New Construction	25 ft.	<a href="#">23.306.030(A)(5);</a> <a href="#">23.306.030(A)(8)</a>
Lot Line Setbacks, Minimum		
Front of Interior Lot	Same as underlying district	<a href="#">23.306.030(A)(3);</a> <a href="#">23.306.030(A)(4);</a> <a href="#">23.306.030(A)(6)</a>

**Table 23.306-2. ADU DEVELOPMENT STANDARDS**

Basic Standards		Supplemental Standards
Front of Through Lot	Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer	
Rear	4 ft.	
Interior Side	4 ft.	
Street Side	4 ft.	
Building Separation for Detached ADU, Minimum		
Outside the Hillside Overlay	5 ft.	
Within the Hillside Overlay	8 ft.	<a href="#">23.306.030(A)(7)</a>
Required Off-Street Parking Spaces	See <a href="#">23.322.030</a> -- Required Parking Spaces	

1. *Existing Building Conversion.* An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for maximum gross floor area in Table 23.306-2, ADU Development Standards, is allowed a physical addition of no more than 150 square feet. The addition must comply with maximum height and setback requirements.
2. *Duplex or Multi-Family Dwelling Conversion.* Interior ADU(s) must be created entirely through non-habitable residential portions of the existing main building that are not within the living space of a dwelling unit (e.g. basement, attic, garages, storage room).
3. *Accessory Building or Accessory Structure Conversion.* An ADU converted from a legally established accessory building or accessory structure is allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure, provided that the ADU meets fire and safety standards set forth in the California Building Standards Code adopted in BMC Title [19](#). Any physical additions to the existing accessory building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.
4. *Front Setback, New Construction.* An ADU shall not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet. Should an ADU require area within the front setback, the ADU shall maintain a minimum 10-foot setback from the front lot line, unless such setback would preclude an ADU of 800 square feet. If a 10-foot setback would preclude an ADU of 800 square feet, the ADU shall maintain a 5-foot setback from the front lot line. If a 5-foot setback would preclude an ADU of 800 square feet, the ADU may be sited up to the front lot line.

5. *Attached ADU.* An ADU shall be considered attached if sharing a common wall with a primary dwelling.
6. *Detached ADU Setback Exceptions.* If there is a lesser setback allowed in [23.304.060](#) -- Accessory Buildings and Enclosed Accessory Structures for a comparable accessory building or accessory structure in the underlying zoning district, that setback shall apply.
7. *Building Separation for Detached ADU.* A minimum 8-foot separation is required within the Hillside Overlay, except where such separation would preclude an ADU of 800 square feet, in which case the minimum building separation shall be reduced to 5 feet.
8. *Attached ADU, New Construction Height.* Attached ADUs with height up to 25 ft. allowed with a Zoning Certificate.

B. *Junior ADUs.*

1. *Basic Standards.* A Junior ADU shall be contained entirely within an existing or proposed single family dwelling or its attached garage, and have no more than 500 square feet in floor area.
2. *Shared Sanitation Facility.* If a Junior ADU shares a sanitary facility with a single-family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.
3. *Junior ADU Floor Area.* The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single family dwelling.

C. *Projections.*

1. *Outside of the Hillside Overlay.* Chimneys, water heater enclosures, flues, heating and cooling equipment, eaves, cornices, canopies, awnings, bay windows, and balconies may project two feet into the required front and side setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows and balconies may not project into a required rear ADU setback.
2. *Within the Hillside Overlay.* No projections shall be allowed within a required setback.

D. *Rooftop Decks within the Hillside Overlay.* Roofs on ADUs within the Hillside Overlay may not be designed, converted, or used as usable open space. (Ord. 7888-NS § 8, 2023; Ord. 7799-NS § 1, 2022; Ord. 7797-NS § 1, 2022; Ord. 7787-NS § 2 (Exh. A), 2021. Formerly 23.306.040)

## **23.306.040 Permit Procedures.**

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

1. If an application to create an ADU or Junior ADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a building permit shall not be issued for the ADU or Junior ADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired. See [23.404.060\(A\)](#) Post-Decision Provisions (Effective Dates).
2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or Junior ADU that complies with the requirements of Government Code Section [65852.2\(e\)\(1\)](#).
3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or Junior ADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.

B. *Neighbor Noticing.*

1. *Scope and Timing of Notice.* Notice of an ADU application shall be mailed to tenants of the subject property, and owners and tenants of the adjacent, confronting, and abutting properties, within ten working days of submission of the building permit application to the City.
2. *Content of Notice.* Notice shall provide the address of the project, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.
3. *Mailing Fees.* The applicant shall be responsible for the cost of materials, postage, and staff time necessary to process and mail notices.

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

1. The Junior ADU shall not be sold separately from the main building;
2. The ADU shall not be sold separately from the main building unless the conditions of BMC [23.306.040\(D\)](#) ADUs Developed by a Qualified Nonprofit Developer are met;
3. The ADU and/or Junior ADU shall not be rented for a term that is shorter than 30 days; and
4. If the property includes a Junior ADU, the Junior ADU or the Single Family Dwelling in which the Junior ADU is located shall be owner-occupied.

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

1. Delineation of all areas of the property that are for the exclusive use of a cotenant;
2. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;

3. Procedures for dispute resolution among cotenants before resorting to legal action;
4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;
6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence; and
7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility. (Ord. 7888-NS § 8, 2023; Ord. 7799-NS § 1, 2022; Ord. 7797-NS § 1, 2022. Formerly 23.306.030)

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## Chapter 23.330

### DENSITY BONUS

Sections:

- 23.330.010 Chapter Purpose.**
- 23.330.020 Definitions.**
- 23.330.030 Application Requirements.**
- 23.330.040 Density Bonus Calculations and Procedures.**
- 23.330.050 Incentives and Concessions.**
- 23.330.060 Waivers and Reductions.**
- 23.330.070 Qualifying Units.**
- 23.330.080 Regulatory Agreements.**

#### **23.330.010 Chapter Purpose.**

The purpose of this chapter is to:

- A. Establish procedures and local standards to implement California Government Code Sections [65915--65918](#) consistent with local zoning regulations and development standards; and
- B. Provide special provisions consistent with the intent of State and local law. Unless otherwise noted, all section references in this chapter are to the California Government Code. (Ord. 7787-NS § 2 (Exh. A), 2021)

#### **23.330.020 Definitions.**

- A. *Terms Defined.* Terms used in this chapter are defined as follows:
  - 1. *Administrative Regulations.* Guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
  - 2. *Base Project.* The maximum allowable residential density on a housing development site pursuant to the applicable zoning district or, where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.
  - 3. *Density Bonus.* Those residential units, floor area, rental beds or bedrooms added to the Base Project pursuant to the provisions of Government Code Section [65915](#) and this chapter.
  - 4. *Eligible Housing Development.* As defined in Government Code Section [65917.2](#).
  - 5. *Housing Development.* As defined in Government Code Section [65915\(i\)](#).

6. *Incentive and Concession.* An incentive or a concession as the terms are used in Government Code Section [65915](#) and in particular as defined in Section [65915\(k\)](#) thereof. The City may request reasonable documentation from the applicant to support the request.
  7. *Qualifying Unit.* A unit that is provided at a below market-rate rent or sales price as set forth in Government Code Section [65915](#) to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
  8. *Waiver and Reduction.* A waiver or a reduction as the terms are used in Government Code Section [65915](#) and in particular in Section [65915\(e\)](#) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section [65915\(e\)](#). The City may request reasonable documentation from the applicant to support the request.
- B. *Terms Not Defined.* Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law. (Ord. 7787-NS § 2 (Exh. A), 2021)

### **23.330.030 Application Requirements.**

- A. *Required Information.* In addition to any other information required by the Zoning Ordinance, an application for a density bonus must include the following information:
1. How the proposed project will satisfy the eligibility requirements of Section [65915](#) or [65917.2](#).
  2. For those districts without density standards, a density bonus schematic as set forth in the City of Berkeley Administrative Regulations.
  3. The requested density bonus pursuant to Municipal Code Section [23.330.040](#) (Density Bonus Calculations and Procedures).
  4. Any waivers and reductions that are sought under Section [65915.e](#) that would be required to accommodate the housing development including the density bonus units.
  5. Any incentives and concessions that are sought under Section [65915.d](#) accompanied by documentation of resulting cost reductions to provide for affordable housing costs.
  6. Any requested additional bonus units under Section [65915.n](#).
  7. Any requested parking reductions under Section [65915.p](#).
  8. Whether the applicant elects to receive a density bonus that is less than that mandated by Section [65915](#), including a density bonus of zero. In such cases, the applicant retains their entitlement to incentives and concessions.

9. Documentation of how a project complies with regulations regarding replacement units as described in Section [65915.c.3](#).

B. *Documentation Supporting Requests.* The City may request reasonable documentation from the applicant to support requested waivers/reductions and incentives/concessions. (Ord. 7787-NS § 2 (Exh. A), 2021)

### **23.330.040 Density Bonus Calculations and Procedures.**

A. *Calculation.* Density bonuses must be calculated as set forth in Section [65915](#), [65917.2](#), and pursuant to the Administrative Regulations.

B. *Procedures.* Density bonus requests must accompany housing development permit applications and will be decided upon concurrent with the underlying permit for the project. (Ord. 7787-NS § 2 (Exh. A), 2021)

### **23.330.050 Incentives and Concessions.**

A. *Calculation.* For purposes of this chapter, the number of incentives and concessions are counted as follows:

1. Any incentive and concession that would otherwise require discretionary approval by the Zoning Officer, the ZAB, or City Council of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
2. A proposed incentive and concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one permit (e.g., extra height may require permits for height, floor area ratio, and/or number of stories but would count as one incentive and concession for height).
3. Where it is ambiguous as to whether a proposed incentive and concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation applies, as determined by the review authority.

B. *Procedural Requirements.*

1. The City shall grant incentives and concession unless findings are made as set forth in Section [65915d.1](#).
2. The City is not required to deny a proposed incentive and concession solely because it can make a finding under Section [65915.d.1](#).
3. The City bears the burden of proof for the denial of a requested incentive and concession.
4. Unless denied under Section [65915](#), incentives and concessions are exempt from discretionary review of permits under the Zoning Ordinance, other than Design Review, and by law do not modify the CEQA review status of a project. (Ord. 7787-NS § 2 (Exh. A), 2021)

### **23.330.060 Waivers and Reductions.**

- A. *Proposal.* An applicant may submit to the City a proposal for waivers and reductions of development standards that physically prevent construction of a housing development and density bonus units meeting the criteria of Section [65915.b](#).
- B. *Negotiated Process.* The City may negotiate changes to the requested waivers and reductions as part of the Use Permit and Design Review process, in coordination with the applicant, to address aspects of the project that may be of concern in the community or inconsistent with overarching principles of the General Plan, Zoning Ordinance, and Design Guidelines.
- C. *Denial.* The City may deny waivers and reductions for the reasons set forth in Section [65915.e.1](#). (Ord. 7787-NS § 2 (Exh. A), 2021)

### **23.330.070 Qualifying Units.**

Qualifying units must meet the standards set forth in Chapter [23.328](#) (Affordable Housing Requirements). (Ord. 7853-NS § 3, 2023)

### **23.330.080 Regulatory Agreements.**

Before issuance of a certificate of occupancy for a housing development that has received a density bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Sections [65915--65918](#) and this chapter. (Ord. 7787-NS § 2 (Exh. A), 2021)

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