



Brent Blackaby
Councilmember District 6

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: July 29, 2025

Item Number: 28

Item Description: **Accessory Dwelling Units (ADUs): Amendments to Title 21 (Subdivisions) to Allow Separate Sale of ADUs, and Amendments to Title 23 (Zoning) to Comply with State Law and Encourage ADU Development**

Submitted by: **Councilmember Blackaby (Author), Mayor Ishii (Co-Sponsor), Councilmember Humbert (Co-Sponsor), Councilmember O’Keefe (Co-Sponsor)**

Additional proposed amendments to the Title 23 (Zoning) amendments, specific to the Hillside Overlay Zone to address wildfire evacuation risk, **tracked in yellow highlight**.

On July 15, 2025, the City of Berkeley published an *Evacuation Time Estimate Study* which found that a scenario of maximum permissible ADU development in the Hillside Overlay Zone could increase evacuation times by as much as 102%. It also described how increasing population density in an area, even when the added people do not own vehicles, can increase emergency evacuation times and create public safety impacts.

Given just the current level of population density in the Hills, even with some early warning, “evacuation time estimates indicate that fast-moving fire could overtake people who are still stuck in traffic.” Therefore, the *Study* recommended that the City institute separate, more restrictive ADU/JADU development provisions in the Hillside Overlay.

These amendments for the Hillside Overlay Zone still meet California state ADU minimum standards.

ORDINANCE NO. -N.S.

AMENDMENTS TO TITLE 21 (SUBDIVISIONS) TO ALLOW SEPARATE SALE OF
ACCESSORY DWELLING UNITS (ADU), AND AMENDMENTS TO TITLE 23
(ZONING) RELATED TO ADUS TO COMPLY WITH STATE LAW

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

Section 1. That Berkeley Municipal Code Chapter 21.29 is added to Title 21
(Subdivisions) to read as follows:

21.29. Accessory Dwelling Unit Condominium Subdivision

21.29.010. -- Purpose and Applicability.

- A. This Chapter establishes regulations and procedures for the subdivision of property to allow separate ownership of Accessory Dwelling Units (ADUs) from other buildings on the same lot in the City of Berkeley. It implements California Government Code Section 66342, which authorizes local ordinances permitting ADUs to be conveyed as condominiums.
- B. This Chapter applies to all lots that contain (or will contain) one or more ADUs constructed in compliance with BMC Chapter 23.306 (Accessory Dwelling Units).
- C. Notwithstanding any other provision of the Berkeley Municipal Code, an ADU condominium subdivision that conforms to this Chapter and state law may be approved and recorded as provided herein. An ADU condominium subdivision shall not be subject to the provisions of Chapter 21.28, except that:
 - 1) Covered Rental ADUs. If the ADU is a covered rental unit under BMC Chapter 13.76 (Rent Stabilization Ordinance), the tenant protections of Chapter 21.28 shall apply in full, including:
 - a. A tenant in an ADU shall have a continued right to occupy the ADU after a conversion, pursuant to Section 21.28.090(C)(4).
 - b. A tenant in an ADU shall have an exclusive right to purchase the unit, pursuant to Section 21.28.030(C) and 21.28.090(C)(2).
 - 2) All other requirements of Chapter 21.28, including application procedures and rent-ceiling limitations, shall not apply to an ADU condominium subdivision processed under this Chapter unless expressly referenced above.

D. This Chapter is intended to provide a streamlined, ministerial process for qualifying ADU condominium subdivisions and shall remain operative only so long as state law authorizes such subdivisions (Government Code §66342).

21.29.030. -- Permit required.

The Planning Director shall review, on a ministerial basis and without a hearing, an application for a parcel map or a tentative and final map for an ADU Condominium subdivision, and shall approve the application if the criteria in Government Code Section 66342 and this section are satisfied.

Units other than ADUs that are part of an ADU Condominium Subdivision may be subject to the provisions of Chapter 21.28, or any other applicable regulations.

21.29.040 -- Eligibility.

A. A property is eligible for an ADU Condominium subdivision under this Chapter only if all the following criteria are met:

- 1) Existing Units. The lot contains at least one legally established primary dwelling unit and at least one legally established ADU, or there is a valid building permit for construction of a new ADU on the lot. The ADU must be in compliance with BMC Chapter 23.306.
- 2) Number of Condominium Units. In no event shall an ADU condominium subdivision result in more than ten (10) total condominium units on the lot inclusive of all residential, commercial, and accessory dwelling units.

B. Junior ADUs. Junior ADUs shall not be eligible for conversion to condominiums.

21.29.050 -- Application Requirements.

In addition to the information required by Section 21.24.020 (Parcel Maps, Form and Content) and Section 21.16.020 (Tentative Maps, Form and Content), an application for an ADU condominium subdivision shall include all of the following information:

- A. The condominium shall be created pursuant to the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code).
- B. Subdivision Map Act Compliance. The condominium shall be created in conformance with all applicable objective requirements of the Subdivision Map Act (Division 2, commencing with Section 66410) and all other objective requirements of this Part.

C. Safety Inspection. Prior to the recordation of the condominium plan, a safety inspection of the ADU shall be conducted as evidenced either through a certificate of occupancy or housing quality standards report from a building inspector certified by the United States Department of Housing and Urban Development.

D. Lienholder Consent.

1) Neither a subdivision map nor a condominium plan shall be recorded with the county recorder without obtaining the written consent of each lienholder. A lienholder may refuse to give consent. A lienholder may also consent provided that any terms and conditions required by the lienholder are satisfied. Prior to recordation of the initial or any subsequent modifications to the condominium plan, written evidence of the lienholder's consent shall be provided to the Assessor-Recorder along with a signed statement from each lienholder that states as follows:

"(Name of lienholder) hereby consents to the recording of this condominium plan in its sole and absolute discretion, and the borrower has or will satisfy any additional terms and conditions the lienholder may have."

2) Required Information. The lienholder's consent, whether included directly on the condominium plan or attached thereto, must include the following information:

- a. The lienholder's signature.
- b. The name of the record owner or ground lessee.
- c. The legal description of the real property.
- d. The identities of all parties with an interest in the real property as reflected in the public records.
- e. A statement that the lienholder's consent shall be recorded in the Office of the County Recorder.

E. Tenant Protections Notice. Proof of service of a *Notice of Tenants' Rights Regarding ADU Condominium Conversion*, on a form required by the City, shall be submitted for each tenant household occupying the subject ADUs, no earlier than 60 days prior to the date of the application. The Notice shall include, but not be limited to:

- 1) The tenant's continued right to occupy the unit pursuant to Section 21.28.090(C)(4), which prohibits eviction for the purpose of occupancy by the owner or the owner's relatives so long as the unit remains the tenant's principal place of residence.
- 2) Information concerning any agreement by the owner to limit rents under Section 21.28.080(B).
- 3) The tenant's exclusive right to purchase the unit under 21.28.090(C)(2).

F. Notice to providers of utilities. If an ADU is established as a condominium, the owner shall notify providers of utilities, including water, sewer, gas, and electricity, of the condominium creation and separate conveyance.

G. The owner of a property or a separate interest within an existing planned development that has an existing association, as defined in Section 4080 of the Civil Code, shall not record a condominium plan to create a common interest development under Section 4100 of the Civil Code without the express written authorization by the existing association.

For purposes of this subdivision, written authorization by the existing association means approval by the board at a duly noticed board meeting, as defined in Section 4090 of the Civil Code, and if needed pursuant to the existing association's governing documents, membership approval of the existing association.

21.29.060 -- Required Notice to Consumers.

The City shall include the following notice to consumers on any Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling Unit (JADU) submittal checklist or public information describing requirements and permitting for ADUs, and as a standard condition of any building permit or condominium plan approval:

"NOTICE: If you are considering establishing your primary dwelling unit and accessory dwelling unit as a condominium, please ensure that your building permitting agency allows this practice. If you decide to establish your primary dwelling unit and accessory dwelling unit as a condominium, your condominium plan or any future modifications to the condominium plan must be recorded with the County Recorder. Prior to recordation or modification of your subdivision map

and condominium plan, any lienholder with a lien on your title must provide a form of written consent either on the condominium plan, or on the lienholder's consent form attached to the condominium plan, with text that clearly states that the lender approves recordation of the condominium plan and that you have satisfied their terms and conditions, if any.

In order to secure lender consent, you may be required to follow additional lender requirements, which may include, but are not limited to, one or more of the following:

(a) Paying off your current lender.

You may pay off your mortgage and any liens through a refinance or a new loan. Be aware that refinancing or using a new loan may result in changes to your interest rate or tax basis. Also, be aware that any subsequent modification to your subdivision map or condominium plan must also be consented to by your lender, which consent may be denied.

(b) Securing your lender's approval of a modification to their loan collateral due to the change of your current property legal description into one or more condominium parcels.

(c) Securing your lender's consent to the details of any construction loan or ground lease.

This may include a copy of the improvement contract entered in good faith with a licensed contractor, evidence that the record owner or ground lessee has the funds to complete the work, and a signed statement made by the record owner or ground lessor that the information in the consent above is true and correct."

Section 2. That Berkeley Municipal Code Section 23.306.010(A) is amended to read as follows:

A. Implement California Government Code Sections ~~65852.1, 65852.2, and 65852.22~~ 66314 through 66339.

Section 3. That Berkeley Municipal Code Section 23.306.020(C) is amended to read as follows:

C. *Density Exemption and Growth Limits.* ADUs are considered an accessory use consistent with the parcel's General Plan and zoning designation, shall not count toward the allowable density, and shall not be subject to any local ordinance, policy, or program that limits residential growth. ~~ADUs and Junior ADUs are not included in the minimum or maximum density established by the underlying zoning district.~~

Section 4. Specific Findings:

Commented [HJ1]: New Specific Findings section.

A. The intent of Berkeley's Hillside Overlay zone, as set forth in BMC 23.210.020, is to protect the safety and health of residents in an area comprised of Berkeley's Very-High Fire Hazard Severity Zones and Wildland-Urban Interface (WUI) Fire Areas. The Hillside Overlay has unique conditions, including limited transit access, steep topography, proximity to forested wild land, and vegetation that create a high risk of wildfires, earthquakes, and landslides. These hazards put residents of the Hillside Overlay at greater risk than residents of other parts of the City.

1. On March 18, 2025 the City adopted a Local Hazard Mitigation Plan that identifies Earthquake and Wildland-Urban Interface Fire as "Likely" and "Catastrophic" events.
2. The earthquake risk in the Hillside Overlay is exceptionally high because the Hayward Fault bisects the Hillside Overlay, traversing the full length of these zones, with violent (Level 9 of 10) shaking predicted in the US Geologic Services Hayward Fault earthquake scenario (HayWired).
3. The 2014 Working Group on California Earthquake Probabilities calculated that there is a 33 percent likelihood of a large (magnitude 6.7 or greater) earthquake occurring on the Hayward Fault within three decades. On March 9, 2015, a report published by the U.S. Geological Survey found that the Bay Area has a 72 percent chance of having at least a magnitude 6.7 earthquake in the same time period.
4. The risk of a wind-driven wildfire is also very high within the Hillside Overlay because of the City's unique topography, which is flat along the San Francisco Bay in the west but turns into steeper, sloped terrain approaching 1,000 feet in elevation along the City's eastern edge, as well as strong winds that develop in the late spring and early fall. Vegetation/wildland fires tend to burn more intensely and spread faster when burning uphill and up-canyon, unless they are wind-driven, which can then cause intense and rapid burning downhill.
5. The high fire risk within the Hillside Overlay is demonstrated by Berkeley's history of catastrophic wildfires. Wildfires that occurred in Berkeley in 1905, 1923, 1946, 1970 and 1991 resulted in loss of injury, loss of life, extensive damage and destruction of property and enormous economic impacts. The two most notable are:
 - a) In 1923, a wildfire swept out of Tilden Park through Berkeley, ultimately destroying approximately 600 homes, as well as churches, schools, libraries, and student living quarters. At that time, the population of Berkeley was 52,000. One thousand residents were displaced or left homeless. The fire traveled across the then sparsely populated ridge line to what is now Tunnel Road

and down to the intersection of Shattuck and Hearst in the downtown.

b) In 1991, the Tunnel Fire burned over 1,500 acres, claiming 25 lives and destroying approximately 3,000 structures in southeast Berkeley and Oakland. Had the wind direction not shifted, many more people could have died, and more of Berkeley would have been destroyed.

6. The number of large wind-driven wildfires will only continue to grow as the climate changes. According to CalFIRE, 15 of the 20 most destructive California wildfires ever recorded have occurred in the past 10 years. In the 67 years between 1932 and 1999, 572,000 acres burned in California. In the 20 years from 2000 to 2020, over 4,000,000 acres have burned.

B. Structure Separation Distance (SSD) is related to the number of structures per acre. These are two measurements that play a key role in affecting the speed of a fire's spread. According to recognized industry models from the National Institute of Standards and Technology (NIST), California Department of Forestry and Fire Protection (CAL FIRE), and Insurance Institute for Business & Home Safety (IBHS), the closer together two structures are situated, and the higher the number of structures per acre, the higher the likelihood that a fire will rapidly spread between structures, creating a risk of a large-scale urban conflagration.

1. SSD is categorized into three risk profiles; Low Density with an SSD of greater than 50 feet, Moderate Density with an SSD of 25 feet to 50 feet, and High Density with an SSD of less than 25 feet.
2. The majority of the Hillside Overlay is in the highest risk category with less than 25 feet SSD between structures. Over 3,000 structures in the Hillside Overlay have less than 11 feet of separation and over 1,700 structures have less than 5.5 feet SSD. High-density communities with closely spaced structures create a high risk of rapid, uncontrolled fire spread.
3. The structural density of a Wildland Urban Interface is categorized into one of seven risk profiles with the highest-density communities having 8 housing units per acre (HU/ac), and being 320 times denser than the lowest-density WUI areas, which have 0.02 HU/ac (1 HU on 40 acres). Almost the entire Hillside Overlay is in one of the two highest risk categories with between 4 and 6 structures per acre.
4. As more open space on a parcel is filled with structures, fire can spread along features including primary structures, auxiliary structures, fences, wood piles, decks, and vehicles. This fuel agglomeration may have an impact on structure-to-structure fire spread during an urban, wind-driven conflagration.
5. On June 10, 2021, a study published by UC Berkeley researchers concluded that continued development in the wildland-urban interface will make California's supply of housing more vulnerable, undermine state

efforts to curb carbon emissions, further degrade the state's wildland habitats, and create fiscal challenges for state and local governments in the event of post-disaster recovery.

- C. Due to the risk of earthquakes, fires, and other hazards, it is essential that emergency responders have ready accessibility to injured persons and damaged property, and that residents be able to evacuate quickly and efficiently. Nonetheless, conditions within the Hillside Overlay combine to compromise emergency access egress and accessibility for emergency responders.
1. A majority of streets in the Hillside Overlay are less than 26 feet in width, and include conditions such as steep slopes, sharp curves and acute-angled corners. This increases the chance that, in the event that a large-scale evacuation is initiated, residents will become trapped in clogged exiting traffic and succumb to smoke, heat and fire, as seen in recent wildfires.
 2. The majority of transit within the Hillside Overlay does not meet the definition of major transit stops and high quality transit corridors as defined in [Section 21155](#). Bus service (AC Transit Lines 7, 65 and 67) runs at headways of 45 minutes or longer, with limited or no service on evenings, weekends and holidays. The lack of available transit exacerbates the hazardous conditions that currently exist with respect to traffic flow and public safety in the likely event of a catastrophic wildfire or earthquake.
 3. Increased vehicle density will add to these risks, as the Hillside Overlay does not have the capacity to have additional vehicles parked on the street without jeopardizing access and ingress during emergencies. On August 10, 2021, a study published by UC Berkeley researchers concluded that in the best-case scenario, if each household evacuated from the Berkeley hills with one vehicle, estimated evacuation time would be two hours and 245 vehicles would be exposed to immediate fire danger. However, if each household evacuated with 1.7 vehicles, evacuation time would increase to three hours and 782 vehicles would be exposed to immediate fire danger. On July 15, 2025, the City of Berkeley published an *Evacuation Time Estimate Study* which found that a scenario of maximum permissible ADU development in the Hillside Overlay zone could increase evacuation times by as much as 102%. It also described how increasing population density in an area, even when the added people do not own vehicles, can increase emergency evacuation times and create public safety impacts. Therefore, the *Study* recommended that the City institute separate, more restrictive ADU/JADU development provisions in the Hillside Overlay.
- D. All of these conditions necessitate reasonable limitations on ADUs within the Hillside Overlay in order to reduce exposure to hazardous conditions.

Section 5 That Table 23.306-1 (ADU and Junior ADU Maximum Number of Units per Lot) within Berkeley Municipal Code Section 23.306.020 is amended to read as follows:

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

| USE, PRIMARY | ADU AND JADU, MAXIMUM PER LOT |
|---|--|
| Single Family Dwelling, one unit on lot | 1 <u>Conversion</u> ADU, 1 <u>New Construction</u> ADU, and 1 Junior ADU, both <u>All</u> are permitted. |
| Single Family Dwelling, more than one unit on lot | 1 ADU |
| Duplex or <u>Existing</u> Multifamily Dwelling | <u>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.</u> |
| <u>Outside Hillside Overlay</u> | <u>8 New Construction ADUs, provided that the number of ADUs does not exceed the number of existing units, and at least one interior ADU up to 25% of the total number of existing dwelling units on the lot.</u> |
| <u>Within Hillside Overlay</u> | <u>8 Detached New Construction ADUs, provided that the number of ADUs does not exceed the number of existing units, and at least one interior ADU up to 25% of the total number of existing dwelling units on the lot.</u> |
| <u>Proposed Multifamily Dwelling</u> | |
| <u>Outside Hillside Overlay</u> | <u>2 New Construction ADUs</u> |

Commented [HJ2]: PC allowed either detached or attached ADUs

Commented [HJ3]: State law specifies detached ADUs.

Commented [HJ4]: PC allowed either detached or attached ADUs

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| <u>Within Hillside Overlay</u> | <u>2 Detached New Construction ADUs</u> |
| Group Living Accommodation | 1 ADU |

Commented [HJ5]: State law specifies detached ADUs.

Section 6. That Table 23.306-2 (ADU Development Standards) within Berkeley Municipal Code Section 23.306.030 is amended to read as follows:

Table 23.306-2 ADU DEVELOPMENT STANDARDS

| BASIC STANDARDS | | SUPPLEMENTAL STANDARDS |
|--|--|--------------------------------------|
| Gross Floor Area, Maximum | | 23.306.030(A)(1) 23.306.030(A)(2) |
| <u>Outside Hillside Overlay</u> | <u>1,200 sf</u> | 23.306.030(A)(3) |
| <u>Within Hillside Overlay</u> | <u>850 sf (studio or 1 bedroom)</u> <u>1,000 sf (2+ bedrooms)</u> | |
| Studio or 1 bedroom | 850 sq. ft. | |
| 2+ bedrooms | 1,000 sq. ft. | |
| Building Height, Maximum, <u>Outside Hillside Overlay</u> | | |
| Conversion | Same as existing structure | 23.306.030(A)(1) 23.306.030(A)(3) |
| Detached, New Construction | 20 ft. | |
| <u>Detached or Attached, New Construction</u> | 25 ft. | 23.306.030(A)(5) 23.306.030(A)(8) |

| Building Height, Maximum, Within Hillside Overlay | | |
|---|---|--|
| <u>Conversion ADU</u> | <u>Same as existing structure</u> | <u>23.306.030(A)(1)</u> <u>23.306.030(A)(3)</u> |
| <u>Detached ADU on a lot with a new or existing single-family or multi-family dwelling</u> | <u>16 ft</u> | |
| <u>Detached ADU on a lot with a new or existing single-family or multi-family dwelling within 0.5 miles of a major transit stop or High Quality Transit Corridor (as defined in California Public Resource Code Section §21155)</u> | <u>18 ft</u> <u>An additional 2 feet of height is permitted to match the roof pitch of the primary dwelling.</u> | |
| <u>Detached ADU on a lot with a new or existing multi-family, multi-story dwelling</u> | <u>18 ft</u> | |
| <u>Attached ADU</u> | <u>25 ft or height limit applicable to the existing building, whichever is lower.</u> | <u>23.306.030(A)(5)</u> |
| Lot Line Setbacks, Minimum | | |

| | | |
|--|--|--|
| Front of Interior Lot | Same as underlying district | 23.306.030(A)(3) 23.306.030(A)(4) |
| Front of Through Lot | Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer. | 23.306.030(A)(6) |
| Rear | 4 ft. | |
| Interior Side | 4 ft. | |
| Street Side | 4 ft. | |
| Building Separation for Detached ADU, Minimum | | |
| Outside of Hillside Overlay | 5 ft. | |
| Within Hillside Overlay | 8 ft. | |
| Required Off-Street Parking Spaces | | See 23.322.030 – Required Parking Spaces |

Section 7. That Municipal Code Section 23.306.030(A)(2) through (8) is amended to read as follows:

2. ~~Duplex or Multifamily Dwelling Conversion.~~ Interior ADU(s) must be created entirely through non-habitable residential portions of the existing ~~main building~~ multifamily dwelling structures that are not within the living space of a dwelling unit (e.g. basements, attics, garages, storage rooms, boiler rooms, passageways).

3. *Accessory Building or Accessory Structure Conversion.* An ADU converted from an 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.~~

~~54. *Attached ADU.* An ADU shall be considered attached if sharing a common wall with a primary dwelling.~~

~~65. *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.~~

~~86. *Attached ADU, New Construction Height.* Attached ADUs with height up to 25 ft. allowed with a Zoning Certificate.~~

Section 8. That Municipal Code Section 23.306.030(B) (1) is amended to read as follows:

1. *Basic Standards.* A Junior ADU shall be contained entirely within an existing or proposed single family dwelling ([including basements, attics, storage rooms, boiler rooms, and passageways](#)) or its attached garage, and have no more than 500 square feet in floor area.

Section 9. That Municipal Code Section 23.306.030(D) is amended to read as follows:

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 with a maximum additional height allowance of nine feet (beyond the height maximum allowed by development standards) only to enable rooftop access and protective railings.

Section 10. That Municipal Code Section 23.306.040(A) is amended to read as follows:

A. *Zoning Certificate*. An application for an ADU or Junior ADU shall be allowed with a Zoning Certificate. ~~The r~~Review must be completed, and the application approved or denied, within 60 days of ~~submission receipt~~ 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)~~66323.

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.

4. If the Zoning Officer denies an application, the applicant shall be provided, within the same 60-day period, a written notice identifying all deficiencies in the application and a description of how the application may be corrected.

Section 11. That Municipal Code Section 23.306.040(C)(2) and (3) are amended to read as follows:

2. The ADU shall not be sold separately from the main building, unless authorized under BMC Chapter 21.29 (ADU Condominium Ordinance) or ~~unless~~

~~the conditions of under~~ BMC 23.306.040(D) -- ADUs Developed by a Qualified Nonprofit Developer, ~~or as otherwise permitted by state law, are met;~~

3. The ADU ~~and/or Junior ADU~~ shall not be rented for a term that is shorter than 30 days; and

Section 12. That Municipal Code Section 23.306.040(D) is amended to read as follows:

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~~66340 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.

Section 13. That the row "Accessory Dwelling Units" in Table 23.322-1 (Required Offstreet Parking in Residential Districts) within Berkeley Municipal Code Section 23.322.030 is amended to read as follows:

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|---------------------------------|---|
| <p>Accessory Dwelling Units</p> | <p>Junior ADU: None required ADU outside of Hillside Overlay: None required ADU within Hillside Overlay: 1 per ADU unless the parcel satisfies the criteria in subdivision (d) of Government Code Section 65852.2, using the definition of public transit as established in subdivision (j)(11) of Government Code 65852.2.</p> |
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Section 14. 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.