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ORDINANCE NO. 7,983-N.S.

AMENDMENTS TO BERKELEY MUNICIPAL CODE TITLE 23 (ZONING) RELATED TO ADUS

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

Section 1. That Berkeley Municipal Code Section 23.306.010(A) is amended to read as follows:

A. Implement California Government Code Sections 66314 through 66339.

Section 2. 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.

Section 3. Specific Findings:

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 in 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 California Public Resources Code 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 4. 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 Conversion ADU, 1 New Construction ADU[1], and 1 Junior ADU. All are permitted.
Single Family Dwelling, more than one unit on lot	1 ADU
Existing Multifamily Dwelling	
Outside Hillside Overlay	8 New Construction ADUs[1], 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.
Within Hillside Overlay	8 Detached 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.
Proposed Multifamily Dwelling	
Outside Hillside Overlay	2 New Construction ADUs[1]
Within Hillside Overlay	2 Detached ADUs
Group Living Accommodation	1 ADU
[1.] New Construction ADUs may be either attached or detached from the main building(s) and/or other ADUs, in any configuration.	

Section 5. 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		
Outside Hillside Overlay	1,200 sf	23.306.030(A)(1) 23.306.030(A)(2) 23.306.030(A)(3)
Within Hillside Overlay	850 sf (studio or 1 bedroom) 1,000 sf (2+ bedrooms)	
Building Height, Maximum, Outside Hillside Overlay		
Conversion	Same as existing structure	23.306.030(A)(1) 23.306.030(A)(3)
Detached or Attached, New Construction	25 ft.	23.306.030(A)(5)

		23.306.030(A)(6)
Building Height, Maximum, Within Hillside Overlay		
Conversion	Same as existing structure	23.306.030(A)(1) 23.306.030(A)(3)
Detached	20 ft	
Attached	25 ft or height limit applicable to the existing building, whichever is lower.	23.306.030(A)(4)
Lot Line Setbacks, Minimum		
Rear	4 ft.	23.306.030(A)(3) 23.306.030(A)(5)
Interior Side	4 ft.	
Street Side	4 ft.	
Required Off-Street Parking Spaces		See 23.322.030 – Required Parking Spaces

Section 6. That Municipal Code Section 23.306.030(A)(2) through (8) is amended to read as follows:

2. *Multi-family Dwelling Conversion.* Interior ADU(s) must be created entirely through non-habitable residential portions of the existing multi-family 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 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. *Attached ADU.* An ADU shall be considered attached if sharing a common wall with a primary dwelling.

5. *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.

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

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

D. *Rooftop Decks.* Roofs on ADUs may 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 9. 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 review must be completed, and the application approved or denied, within 60 days of receipt of a completed application. A completed application must include evidence of compliance with this Chapter, including development standards.

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

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

Section 11. 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 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 12. That the row "Accessory Dwelling Units" in Table 23.322-1 (Required Off-street Parking in Residential Districts) within Berkeley Municipal Code Section 23.322.030 is amended to read as follows:

Accessory Dwelling Units	Junior ADU: None required ADU: None required

Section 13. 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.

At a regular meeting of the Council of the City of Berkeley held on July 29, 2025, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Humbert, Kesarwani, Lunaparra, Taplin, Tregub, and Ishii.

Noes: None.

Abstain: O'Keefe, Blackaby.

Absent: None.