

**AGENDA**  
**Disaster Fire and Safety Commission**  
**Regular Meeting**

**March 22, 2023**

**7:00 PM**

**Fire Department Training Facility – 997 Cedar Street**

District 1 –

District 5 – Shirley Dean

District 2 – Weldon Bradstreet

District 6 – Greg Murphy

District 3 –

District 7 – Harrison Raines

District 4 – Antoinette Stein

District 8 – Theo Gordon

Mayor's Appointee- Jose Luis Bedolla

**Preliminary Matters**

Call to Order

Introduction of Commissioner Theo Gordon

Approval of the Agenda

Public Comment on Non-Agenda Matters

1. Fire Department Staff Report \*

**Consent Items**

2. Approval of Draft Minutes of Meeting of February 22, 2022\*

**Action Items**

3. Annual Election of Commission Vice Chair
4. Approval of Additional Disaster and Fire Safety Commission Meeting to Hear Presentations on Standards of Coverage and Facilities Master Plan (Bradstreet)\*
5. Request Commissioners To Replace Working Group Commissioners On The Work Plan Who Are No Longer With The Disaster and Fire Safety Commission (Murphy)\*

## **Discussion Items**

6. Formulate a Working Group To Develop a Summary Document On Safe Passages Initiatives (Bedolla)
7. Building Standards (Dean)
8. Fire Department Recruitment Issues (Staff)
9. Update on Outdoor Warning Siren System – Presentation (Staff)
10. State Department of Housing and Community Development (Dean)\*
11. Future Agenda Items and Next Steps

## **Adjournment**

**Disaster Fire and Safety Commission  
Regular Meeting**

**February 22, 2023  
7:00 PM**

Present: Harrison Raine, Jose Luis Bedolla, Weldon Bradstreet, Greg Murphy

Absent: Dean, Stein

Staff: Keith May, David Sprague, Khin Chin, Leah Greenbaum, Cheryl Miller, Carol Rice, Chris Pinto

Public: 8 attendees, 3 speakers

**Preliminary Matters**

Call to Order

J. Bedolla called meeting to order at 7:01pm

S. Dean arrived 7:05pm

Approval of the Agenda

Remove Item #5 and move to next meeting

Approved by Acclamation

Public Comment on Non-Agenda Matters

2 speakers

1. Fire Department Staff Report \*

Staff Report included an update presentation on Community Wildfires Protection Plan.

**Consent Items**

2. Approval of Draft Minutes of Meeting of January 25, 2022\*

Motion to approve as revised: S. Dean

Second: G. Murphy

Vote: 5 Ayes: J. Bedolla, G. Murphy, W. Bradstreet, H. Raine, S. Dean; 0 Noes; 1 Absent: Stein;  
0 Abstain

## Items

### 3. Annual Election of Commission Chair and Vice Chair

Motion to nominate Bradstreet for Chair: J. Bedolla

Second: H. Raine

Vote:

4 Ayes: J. Bedolla, S. Dean, G. Murphy, H. Raine;

0 Noes; 1 Absent: Stein; 0 Abstain

Weldon Bradstreet elected as Chair.

Election for Vice Chair moved to next meeting because of low Commissioner attendance.

### 4. Form Ad-Hoc Sub-Committee to Review Hopkins Corridor (Dean)

Item discussed and retracted by Dean. No action taken.

### 5. Approval of Additional Disaster and Fire Safety Commission Meeting to Hear Presentations on Standards of Coverage and Facilities Master Plan (Bedolla)

Item moved to next meeting.

## Discussion Items

### 6. Quarterly Budget Report (Staff)\*

### 7. Formulate a Working Group To Develop a Summary Document On Safe Passages Initiatives (Bedolla)

### 8. Future Agenda Items and Next Steps

- Election of Vice Chair
- Hear next quarterly report (May)
- Re-division of annual workplan assignments (Bradstreet)
- Murphy requested preparation of staff report on preparations for other types of disasters (not fire). Bedolla requests staff add this to future agenda
- Dean requests discussion on building standards
- Raine requests more information on recruitment challenges.

## Adjournment

Motion to adjourn: S. Dean

Second: W. Bradstreet

Vote: 5 Ayes: J. Bedolla, G. Murphy, W. Bradstreet, H. Raine, S. Dean; 0 Noes; 1 Absent: Stein; 0 Abstain

Adjourned at 900pm

DRAFT

## DFSC Staff Report

March 22, 2023

### 1. Measure FF Monthly Report

#### a. Budget Overview –

b. Quarter 1 (July, August, September) report due in November

Quarter 2 (October, November, December) report due in February

Quarter 3 (January, February, March) **report due in May**

Quarter 4 (April, May, June) End of Year Report due in October

#### i. Program Review

- **Standards of Coverage Analysis** – The Department is undergoing an in-depth analysis of fixed and mobile resources to determine the best deployment model and to ensure the Department is responding effectively and efficiently. (*Measure FF has funded the study only*)
  - Status: No New Update
- **Community Wildfire Protection Plan (CWPP)** – The CWPP is a comprehensive risk analysis that addresses local target hazards and includes a community-based action plan to mitigate threats, promote preparedness activities, and ensure resiliency. It will serve as the foundation and roadmap for the Departments work to prevent wildfire and limit the spread when they ignite.
  - Update: Survey #4 closed on March 15<sup>th</sup>. The final step in the planning process will be to incorporate comments on the draft and have discussion on the CWPP structure, future updates, and adoption processes with regards to the Berkeley Fire Department, CAL FIRE Santa Clara Unit, and the Berkeley City Council.

<https://cwpp-berkeley.hub.arcgis.com/>

- **Wildfire Prevention / Mitigation – Vegetation Management Inspections –**

- Wildland Urban Interface Fire Intern Program – This is a collaborative internship with Berkeley Youthworks Alternatives and it is gaining popularity. A two-week academy has been formatted to meet the onboarding needs of new hires and will be offered bi-annually. This will be a key step in our overarching recruitment pathway aimed at providing various opportunities

to enter the department and begin to gain job related experience.

- Chipper Day – Parks Recreation & Waterfront has transferred responsibility for running the City’s chipper program to Fire. Over the past several months the program has been re-tooled and modernized, a new contractor has been brought on board, and the service will now be available to the entire City. The program will launch in April and run for 22 weeks.
- Wildland Urban Interface (WUI) Ambassador Program - The Ambassador program is a new volunteer program for residents interested in helping WUI spread the word about what their neighbors can do to help make Berkeley more Fire Safe. Think of this as neighbors helping neighbors.
  
- **Retired Annuitants** – The retired annuitants are largely focused on performing vegetation inspections for properties in fire zone 2 and 3. They are also looking at transitioning the inspection from paper to mobile technology, re-tooling the re-inspection, citation, and violation process. The Department has also expanded its traditional hazardous fire area program to include all properties in fire zones 2 and 3.
  - Update: No New Updates.
  
- **Dispatch Study:** Our goal, per Council direction is to enhance the dispatch center so it can triage calls, divert non-emergency calls (including mental health calls) to appropriate resources like the SCU; and provide emergency medical instructions to callers.
  - Status: Phase I of this study has been completed. The consultant has presented their findings to the City Manager and to the larger Fire/Dispatch/Police working group. The short story is that there is lots of work and the Center needs a substantial amount of investment to be brought up to the level that is needed to properly serve the community. We will likely be taking the findings and recommendations from the study to the City Council Public Safety Committee to seek direction on next steps..
  
- **Safe Passage**
  - **Update:** No New Updates

- **Division of Training Property** – The Department is actively engaged to find a piece of property that will meet the City’s needs for the training and development of its emergency responders and support staff. Due to zoning, the cost of property and the proximity of residential units to most property in Berkeley, this location will likely be outside the City proper. This presents exciting opportunities for regional collaboration with other fire departments and a community college district.
    - Update: No New Updates.
  - ii. Implementation & Metrics
    - **Outdoor Warning System** – Our first three locations have been installed at the Harbor Master’s Office, Zaytuna College, and City Hall. The next two locations will be installed in early April.
2. Measure GG Monthly Report
- a. Budget Overview – No new update
  - b. Quarter 1 (July, August, September) report due in November  
Quarter 2 (October, November, December) report due in February  
Quarter 3 (January, February, March) **report due in May**  
Quarter 4 (April, May, June) End of Year Report due in October
3. Fire Facilities Master Plan (FMP): Berkeley Fire Department stations are undersized, in poor condition and in need of remodels or replacement. The Department initiated a long-term replacement planning process to better understand infrastructure needs. This process will provide the City leaders of today and tomorrow with actionable information ahead of future infrastructure bond measures. (*Measure FF has funded the study only*)
- a. Update: The Fire Department will be presenting the outcomes of the Fire Facilities Master Plan process to the City Council on May 16<sup>th</sup>.
4. Department Activities
- a. On March 16<sup>th</sup>, our first Paramedic Academy graduated 9 Paramedic Recruits. Once their Field orientation is complete, they will be placed on two of our ambulances with a experienced firefighter/paramedic.
  - b. Fire Academy #112 will be graduating on March 31<sup>st</sup> at 2:00 pm. Ceremony will be at Freight & Salvage, 2020 Addison Street. You are welcomed to attend.
  - c. We have begun recruitment for Fire Academy #113
  - d. The First-In Fire Camp team has been developing the curriculum for the upcoming First-In Fire Camp (formerly known as Ignite Academy). This two-day event was designed as a mentor and academy to assist young female athletes in exploring a career in the fire service. This year’s event will be held on April 29<sup>th</sup> and 30<sup>th</sup>, 2023.
5. Grants



- a. **SAFER Grant Planning:** We will be submitting for a SAFER grant to begin to address the staffing recommendations that are outlined in the Standards of Coverage report. A team has been working on the application for several months now and we are close to having a final draft.
- b. **AFG Grant Submission:** We did apply for ~800k that would fund two additional full-time on-site Human Performance Specialists for two years who would focus on nutrition and behavioral health.
- c. **Cal Fire, Berkeley, and El Cerrito Grant:** The City is applying for a \$5 million grant to perform education, outreach and direct aid to Fire Zone 2, 3 and to perform work in Cerritos Canyon on both the Berkeley and El Cerrito/Kensington sides.
- d. **CalFIRE Hills Emergency Forum (HEF) Grant:** Berkeley Fire is submitting for about \$1.2 million multi-agency mitigation grant that will provide funding for hazardous vegetation management along key roadways in Fire Zone 2, mostly along all of Grizzly Peak. A lot of work is going into this and the benefits will be a huge win for the City.

6. Call Volume Report

<b>Fire Department Report by California Incident Type</b>		
<b>January 2023</b>		
<b>Fires – including Encampment Fires</b> (structures, mobile properties, vegetation, rubbish, equipment, cooking, chimney,	42	
<b>Encampment Fires</b> (structures, warming/cooking, debris)	39	
<b>Explosion</b> - no fire (overpressure ruptures, explosions)	0	
<b>Rescue &amp; EMS</b> (medical assist, vehicle accident	805	
<b>Hazardous Condition</b> - no fire (combustible spills/leaks, chemical release, radioactive condition, electrical wiring problem, biological hazard, potential accident w/ building/aircraft/vehicles)	60	
<b>Service Calls</b> (person in distress, water issue, smoke/odor	133	

problem, animal issue, public assist, cover assignment/standby)		
<b>Good Intent</b> (canceled en-route, wrong location, nothing found, steam mistaken for smoke)	110	
<b>False Alarm Calls</b> (malicious, malfunction, unintentional, biohazard scare)	183	
<b>Severe WX</b> (lightening, wind storms)	0	
<b>Special Incidents</b> (citizen complaints)	4	
<b>TOTAL</b>	<b>1,376</b>	
<b>Apparatus Count</b>		
<b>Unit Utilization</b>	<b>3,029</b>	

### Summary of DFSC Actions: April 2022- Present

<b>Date of DFSC Action</b>	<b>Description</b>	<b>Status</b>
<b>4/13/2022</b>	Budget Recommendation for Parking Enforcement in Fire Zones 2 & 3	Recommendation approved by Council on 6/14/22: Closed
<b>4/27/2022</b>	Measure FF Budget Recommendation - Expanded Fire Prevention Inspection	Recommendation approved by Council on 12/13/22: Closed
<b>5/25/2022</b>	Annual Measure GG Tax Rate Adjustment Memorandum	Ordinance adopted by Council on 6/14/22: Closed
<b>5/25/2022</b>	Request for One Additional Meeting of Disaster and Fire Safety Commission	Resolution adopted by Council on 7/26/22: Closed
<b>6/22/2022</b>	Red Curbs and Visible Signage	Recommendation approved by Council on 9/13/22: Closed
<b>9/28/2022</b>	FY 22-23 Commission Work Plan	Communication received by Council on 3/21/23: Closed
<b>1/25/2023</b>	Process for Changes to Streets Designated as Emergency Access Routes Memorandum	Communication received by Council on 3/14/23: Closed



Disaster and Fire Safety Commission

ACTION CALENDAR

[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council

From: Disaster and Fire Safety Commission

Submitted by: Weldon Bradstreet, Chairperson, Disaster and Fire Safety Commission

Subject: Approval of Additional Disaster and Fire Safety Commission Meeting

RECOMMENDATION

Adopt a Resolution approving the request from the Disaster and Fire Safety Commission (the “Commission”) to hold one additional meeting in calendar year 2023.

FISCAL IMPACTS OF RECOMMENDATION

Minimal staff time and resources.

BACKGROUND

On December 12, 2014, Berkeley City Council adopted Resolution No. 66,861-N.S. that established a Commission Meeting Frequency Schedule for 2015. The Disaster and Fire Safety Commission was allocated a maximum of ten meetings a year. Additional meetings require Council approval.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

RATIONALE FOR RECOMMENDATION

On January 25, 2023, the Berkeley Fire Department offered the Commission an opportunity to receive presentations on the final draft report on the Standards of Coverage Analysis, and the Fire Facilities Master Plan at a future Commission meeting.

Measure FF funded both the study that produced the final draft report on the Standards of Coverage Analysis, and the study that produced the Fire Facilities Master Plan. Since the Commission is charged with oversight of Measure FF expenditures by the Berkeley Fire Department, it is appropriate that the Commission receive presentations on the above referenced studies as part of the Commission’s regular oversight activities. The Commission will require an extra meeting during 2023 to receive these presentations, as neither presentation will fit within the Commission’s current meeting schedule. An extra meeting would also provide further opportunity for public comment on the Standards of Coverage Analysis and the Fire Facilities Master Plan.

On March 22, 2023, the Commission passed a motion to request approval for an additional meeting.

Motion to request from City Council one additional meetings for 2022: Second: Vote: (Ayes:; 0 Noes:; Absent:;)

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission's Report. [OR] Refer to the budget process.

Note: If the City Manager does not (a) concur, (b) takes any other position, or (c) refer to the budget process, a council action report must be prepared. Indicate under the CITY MANAGER heading, "See companion report."

CONTACT PERSON

Keith May, Interim Deputy Fire Chief, Berkeley Fire Department, 510-981-5508

Attachments:

1: Resolution

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

APPROVAL FOR ONE ADDITIONAL DISASTER AND FIRE SAFETY COMMISSION  
MEETING IN CALENDAR YEAR 2023

WHEREAS, on December 12, 2014, the Berkeley City Council adopted Resolution No. 66,861-N.S. that established a Commission Meeting Frequency Schedule which limited the Disaster and Fire Safety Commission to a frequency of 10 meetings during calendar year 2023; and

WHEREAS, at the January 25, 2023, meeting of the Disaster and Fire Safety Commission, the Berkeley Fire Department offered the Disaster and Fire Safety Commission an opportunity to receive presentations on the final draft report on the Standards of Coverage Analysis, and the Fire Facilities Master Plan, at a future Commission meeting, and

WHEREAS, Measure FF funded the studies that underpin both the final draft report on the Standards of Coverage Analysis, and the Fire Facilities Master Plan, and

WHEREAS, the Disaster and Fire Safety Commission provides oversight of Measure FF expenditures by the Berkeley Fire Department, and

WHEREAS, the Disaster and Fire Safety Commission passed a motion on March 22, 2023, to request from City Council one additional meeting for 2023: Second: Vote: (Ayes;; 0 Noes;; Absent:;).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council authorized the Disaster and Fire Safety Commission to convene for one additional meeting in calendar year 2023.

# Berkeley Disaster and Fire Safety Commission

## Draft WORK PLAN – FY 2023-2024

### Mission Statement

The Disaster and Fire Safety Commission serves as the public oversight body for Berkeley’s Measure GG and Measure FF funds, charged with reviewing the budget on a regular basis to ensure that the funds are spent in accordance with the intent of the voter approved measures, recommending the appropriate annual increase to the tax rate, and recommending new programs and policy positions requiring Measure GG and Measure FF funding. The ultimate goal of the Commission is to increase community safety, resilience, and education for community disaster preparedness. The Commission also reviews and makes recommendations on items referred by the City Council or other Commissions.

### Summary of FY 2023-2024 Work Plan Activities

<b>GOAL</b>	<b>Activities</b>	<b>Expected Outcomes</b>	<b>Commissioners</b>
<b>1. Plan &amp; Budget Oversight</b>	a) Review BFD materials on a quarterly basis b) Meet monthly as Finance ad hoc working group with FD to review monthly materials c) Track financial issues related to FF & GG with the City Council	a) Budget development plan b) Provide input of quarterly budget c) Provide annual budget recommendation City Council on FF & GG d) Provide recommendation to City Council on annual GG increases e) Provide City Council recommendation for midyear program corrections (ad hoc)	Rotating group of commissioners (based on availability) on a quarterly basis hosted by Chair / Chief
<b>2. Home hardening</b>	a) Lead review of monthly inspection report b) Review sessions with Fire Marshal c) Listening sessions with Building Department	a) Provide recommendation to City Council on annual inspection program targets b) Provide recommendation to City Council on building code modifications for Fire Safety (ad hoc)	<ul style="list-style-type: none"> <li>• <b>P. Degenkolb</b></li> <li>• W. Bradstreet</li> <li>• S. Dean</li> </ul>
<b>3. Wildland-urban interface (WUI)</b>	a) Participate in and promote CWPP process b) Provide input to CWPP consultant c) Review vegetation management program	a) Provide monthly report and input to CWPP working group team & report to commission b) Provide recommendation to City Council on CWPP report or additions/edits to report c) Provide recommendation to City Council on vegetation management program	<ul style="list-style-type: none"> <li>• <b>N. Rader</b></li> <li>• JL. Bedolla</li> <li>• <b>T. Simmons</b></li> </ul>

<b>GOAL</b>	<b>Activities</b>	<b>Expected Outcomes</b>	<b>Commissioners</b>
<b>4. Safe passages</b>	a) Review previous safe passages program and its component parts (parking restrictions, red curb, notification alerts, evacuation planning) b) Meet with community members for intake c) Absorb CWPP report	a) Restart of Safe Passages Program b) Formation of team/committee to develop plan c) Provide recommendation to City Council on draft revised Safe Passages program	<ul style="list-style-type: none"> <li>• <b>JL. Bedolla</b></li> <li>• <b>K. Cutler</b></li> <li>• A. Stein</li> </ul>
<b>5. Community Outreach</b>	a) Work with FD on educating the public on disaster and fire safety programs b) Coordinate / alert commission of potential outlets for information c) Follow / facilitate / support meetings with community groups d) Follow to conclusion external emergency speaker system e) Track Commission recommendations / status	a) Provide recommendation to City Council on mid-program changes to current communications plan b) Provide City Council recommendation into annual communications plan	<ul style="list-style-type: none"> <li>• <b>S. Dean</b></li> <li>• A. Stein</li> <li>• <b>T. Simmons</b></li> </ul>

## March 22, 2023 Disaster and Fire Safety Commission Meeting

Over the past several years, considering the frequency of topics discussed by Disaster and Fire Safety Commission (DFSC) members, development in hazard areas and evacuation routes is a topic of major concern. During this same period of time, cities have been assigned a number of housing units called Regional Housing Needs Allocation (RHNA) goals broken down into household income categories – very-low to above moderate amounts. Berkeley’s current RHNA goals are 8,934 units which are to be achieved within the next 8 years – 2023 – 2031. In order to meet these goals, the State has required that each city in the State produce a Housing Element that would indicate specific sites and areas where development within that city would occur.

The State Department of Housing and Community Development (HCD) sent a letter to Jordon Klein, Berkeley Planning Director dated October 17, 2022 regarding their disapproval of limiting development in the Hillside Overlay District. The letter also dismissed that a March 3, 2022 City “traffic simulation” study done within the Hillside Overlay District regarding strategies for wildfire evacuation was not sufficient evidence to limit ADU/JADU development in the Hillside Overlay District. A copy of the letter is attached.

The City sent a revised version of the required Housing Element to HCD. On February 23, 2023 HCD found the city of Berkeley to be in substantial compliance with State regulations. The approved Housing Element indicates on page 105 that “*The City expects to produce around 75 ADUs or 600 ADUs over the eight-year planning period.*” However, it does not seem to indicate if this is a limit, or if the City would have the authority to refuse a permit to build extra units in such areas as the Hayward Fault Zone, existing designated landslide areas, or on streets that are so narrow that they have been fully recognized by the City as impeding both emergency vehicle access in an emergency or serving as an evacuation route. In City maps regarding evacuation routes most of the streets within Fire Zones 2 and 3 are actually named “evacuation routes.” The Safe Passages Program to limit on street parking has been discussed endlessly with few real accomplishments and little enforcement. Also, there continues to be a lack of a requirement to provide parking on-site of new development in many areas.

Further, City maps or other documents are unclear as to specific addresses within the Fault Zone or in designated landslide areas. In addition, the DTSC has sent multiple communications to the Council regarding the vulnerability of areas



mostly in West and South Berkeley which have been designated as liquefaction areas which are described in City documents as turning to water when triggered by the major earthquake expected along the Hayward Fault. It is not a question of if that Fault will erupt, it is a question of WHEN it will erupt and is said to be capable of a 6 or 7 eruption and likely to trigger fires when it moves. In addition to concerns about liquefaction, DFSC communications about what will happen to sites on which there is a storage of large amounts of hazardous material such as at the asphalt plant on Virginia in West Berkeley and on the Bayer Campus in South Berkeley have all been ignored. This is also true as to what will happen in Memorial Stadium should there be a major eruption centered in Berkeley at a time when a game or other event is occurring in the Stadium since the State Legislature approved re-building it directly across the Hayward Fault.

The updated Housing Element does indicate that in 2024 there will be a reassessment of hazard mitigation measures. However, in order to carry out the mission of the DFSC, we will need clarification on the extent of development that can happen now since it is proposed that permits be automatically approved without public review. Current levels of development in Berkeley which is more dense than most cities in the East Bay put any people, in all parts of Berkeley, at risk. Increased density has been approved, but we must be very careful and fully informed in how that is being done.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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Sacramento, CA 95833  
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October 17, 2022

Jordan Klein, Director  
Planning and Development Department  
1947 Center Street, 3<sup>rd</sup> Floor  
City of Berkeley, CA 94704

Dear Jordan Klein:

**RE: Review of Berkeley's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of Berkeley's (City) accessory dwelling unit (ADU) Ordinance Nos. 7,797-N.S. and 7,799-N.S. (collectively, Ordinances), both adopted on February 8, 2022, to the California Department of Housing and Community Development (HCD). The Ordinances were received on February 23, 2022. HCD has reviewed the Ordinances and submits these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the Ordinances do not comply with section 65852.2 in the manner noted below. Under that statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than November 17, 2022.

The Ordinances address many statutory requirements; however, HCD finds that the Ordinances do not comply with State ADU Law in the following respects:

**Ordinance No. 7,797-N.S.**

- Section 23.502.020.E.1 and J.1 – *Efficiency Kitchen* – The Ordinance defines efficiency kitchen as including a sink and having a working refrigerator. However, the sink requirement, previously specified in Government Code section 65862.22, subdivision (a)(6), was removed and statute does not specify any type of appliances, thereby creating more options to satisfy the appliance requirement. Efficiency kitchen is now defined as “[a] cooking facility with appliances.” (Gov. Code, § 65852.22, subd. (a)(6)(A).) It shall include “[a] food preparation counter and storage cabinets that are in reasonable size in relation to the size of the junior accessory dwelling unit.” (Gov. Code, § 65852.22, subd. (a)(6)(B).) The City must remove the sink requirement as well as the reference to a working refrigerator to comply with existing statute.

Jordan Klein, Director  
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**Ordinance No. 7,799-N.S.**

- Section 12.99 – *Wildfire Hazard Evacuation Risk Mitigation Ordinance* – To restrict ADUs and Junior Accessory Dwelling Units (JADUs) in the Hillside Overlay District, the Ordinance relies on a local agency’s ability to designate areas where ADUs may be permitted based on the impact on traffic flow and public safety per Government Code 65852.2, subdivision (a)(1)(A). The Ordinance provides general information regarding the Hillside Overlay District and its topography and location within Berkeley’s Very High Fire Hazard Severity Zone (VHFHSZ). In addition, the Ordinance refers to a study published by UC Berkeley, and upon further communication by HCD with the City on March 4, 2022, the City provided information regarding a traffic simulation study (*Developing Transportation Response Strategies for Wildfire Evacuations via an Empirically Supported Traffic Simulation of Berkeley, California, Wong, 2021*) conducted within the Hillside Overlay District.

However, while HCD is sympathetic to concerns about fire safety and the need to ensure adequate evacuation in the event of a fire, the City has not adequately demonstrated that new ADUs will actually impact public safety in the VHFHSZ. The traffic simulation study is not specific to ADUs and JADUs, and therefore its information and conclusions do not adequately justify the restriction of ADUs in the Hillside Overlay District per Government Code 65852.2, subdivision (a)(1)(A). Specifically, the City relies on the study, which looks at total vehicular use, to conclude that additional ADUs will create an evacuation hazard. This study, however, does not provide data on how many lots are likely to add ADUs or what specific impact new ADUs might have on evacuations. Moreover, the City does not account for the potential for ADUs to be excluded from requiring a parking space given the availability of public transit in the Hillside Overlay District. HCD is aware that AC Transit serves the Berkeley Hills location, exempting many, if not all, potential lots from parking space requirements for new ADUs.

Furthermore, even if the City would provide adequate justification for this restriction on ADUs under this subdivision, the City may not justify such a restriction on ADUs that fall under subdivision (e), as local development standards (such as an area restriction based on VHFHSZ designation) provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e).

In summary, the City must remove these restrictions and permit applications pursuant to Government Code 65852.2, subdivisions (a) and (e).

Jordan Klein, Director  
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- Section 12.99.030 – *Total Number of Units Permitted* – The Ordinance limits the number of units allowed per lot in the Hillside Overlay District to one ADU or JADU. However, this limitation conflicts with the Government Code section 65852.2, subdivisions (e)(1)(A) and (B), requirement to allow for both an ADU and JADU on a lot with a proposed or existing single-family dwelling, should certain conditions be met. In addition, this limitation conflicts with Government Code section 65852.2, subdivisions (e)(1)(C) and (D), for lots with existing multifamily structures. The City must amend this prohibition to explicitly permit applications per Government Code 65852.2, subdivision (e).

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinances to comply with State ADU Law or adopt the Ordinances without changes. Should the City choose to adopt the Ordinances without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinances comply with State ADU Law despite the findings made by HCD. Accordingly, the City's response should provide a plan and timeline to bring the Ordinances into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the Ordinances into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

HCD appreciates the City's efforts in the preparation and adoption of the Ordinances and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Mike Van Gorder, of our staff, at (916) 916-776-7541 or at [mike.vangorder@hcd.ca.gov](mailto:mike.vangorder@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability

