

## ORDINANCE NO. 7,888-N.S.

REPEAL OF THE WILDFIRE HAZARD EVACUATION RISK MITIGATION ORDINANCE (BMC 12.99), AND AMENDMENTS TO THE RULES OF MEASUREMENT (BMC 23.106), ACCESSORY DWELLING UNIT (ADU) ORDINANCE (BMC 23.306), PARKING AND LOADING (BMC 23.322), EXEMPTIONS TO NONCONFORMING USES, STRUCTURES, AND BUILDINGS (BMC 23.324.060), AND DEFINED TERMS (BMC 23.502.020) RELATING TO ADUS

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

Section 1. General Findings

- A. California Government Code Sections 65852.1, 65852.2 and 65852.22 provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use.
1. California Government Code Section 65852.2(d)(1)(A) and (j)(11) finds that a local agency shall not impose any parking standards for an accessory dwelling unit where the accessory dwelling unit is located within one half-mile walking distance of public transit.
  2. California Government Code Section 65852.2(c)(2)(D)(ii) uses the proximity of parcels to major transit stops and high quality transit corridors as defined in Section 21155 of the California Public Resources Code.
- B. Accessory dwelling units are statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h).
- C. Policy H-18 of the City of Berkeley's 2023-2031 Housing Element encourages the addition of accessory dwelling units on properties with single-family and multi-unit homes.
- D. On October 17, 2022, the City received a letter from the State Department of Housing and Community Development (HCD) stating that the City's current ADU ordinances (BMC Sections 23.306 and 12.99, the "Ordinances") do not comply with Government Code Section 65852.2.
1. HCD found a discrepancy between the definition of "Efficiency Kitchen" contained within Ordinance No. 7,797-N.S. (Chapter 23.306) and Government Code §65852.22(a)(6)(A) and requested that the City remove the sink requirement from its zoning definition, as well as the reference to a working refrigerator in the definition of a "Junior Accessory Dwelling Unit."
  2. Regarding Ordinance No. 7,799-N.S (Chapter 12.99), HCD found that the City did not make adequate findings with respect to ADU and Junior ADU

development impacts on traffic flow and public safety when the City adopted limitations on ADU and Junior ADU development in the Hillside Overlay zoning district.

- E. In light of the HCD's letter, Policy H-18 of the City of Berkeley's 2023-2031 Housing Element, and Government Code Sections 65852.1, 65852.2 and 65852.22, the Planning Commission held a public hearing on May 3, 2023, to consider proposed amendments to Title 23 relating to ADUs. The Commission unanimously recommended staff's proposal with three modifications, which were incorporated with modifications into the proposed amendments: (1) Regulating bay window and balcony projections using setback requirements; (2) Revising Neighbor Noticing requirements to subject property tenants; (3) Permitting ADUs to reach maximum allowable height without requiring an Administrative Use Permit.

## Section 2. 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 December 10, 2019, the City adopted a 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:
    - i. 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.
    - ii. 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, 14 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 30 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.

- D. All of these conditions necessitate reasonable limitations on development, including on ADUs, within the Hillside Overlay in order to reduce exposure to hazardous conditions.

Section 3. That Berkeley Municipal Code Chapter 12.99 is hereby repealed.

Section 4. That Berkeley Municipal Code 23.106.020(B) is amended to read:

B. *Exclusions.* The lot coverage calculation excludes:

1. Uncovered porches, landings and stairs;
2. Uncovered decks, except that a deck on the roof of a building or accessory structure or over an enclosed space or paved ground area is included in the lot coverage calculation; and
3. The area of the roof of a subterranean structure, when such a structure is not more than 3 feet above finished grade.
4. The area of any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 5. That Berkeley Municipal Code 23.106.030(D) is amended to read:

D. *Excluded Areas.* The following areas are excluded from gross floor area calculation:

1. Covered or uncovered areas used for off-street parking or loading spaces.
2. Driveways ramps between floors and maneuvering aisles of a multi-level parking garage.
3. Mechanical, electrical, and telephone equipment rooms below finished grade.
4. Areas which qualify as usable open space.
5. Arcades, porticoes, and similar open areas for non-residential uses which are:
  - (a) Located at or near street level;
  - (b) Accessible to the general public; and
  - (c) Are not designed or used as sales, display, storage, service, or production areas.
6. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 6. That Berkeley Municipal Code 23.106.080(A) is amended to read:

A. *Measurement.* Building separation is measured as the distance between the surface of a main building or ADU's outer wall and the outer wall surface of the closest building.

Section 7. That Berkeley Municipal Code 23.106.090(A)(1) through (3) is amended to read:

A. *Average Building Height.*

1. Average Building Height: The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the addition) to the roof features shown in Table 23.106-1: Average Building Height Measurement. See Figure 23.106-4: Average Building Height.
2. Dormers are not included in the average building height calculation.
3. Attached accessory dwelling units are not included in the average building height calculation.

Section 8. That Berkeley Municipal Code 23.306 is amended to read:

**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.

**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

**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		23.306.030(A)(1);
Studio or 1 bedroom	850 sq. ft.	23.306.030(A)(2);
2+ bedrooms	1,000 sq. ft.	23.306.030(A)(3)
Building Height, Maximum		
Conversion	Same as existing structure	23.306.030(A)(1); 23.306.030(A)(3)
Detached, New Construction	20 ft.	
Attached, New Construction	25 ft.	23.306.030(A)(5); 23.306.030(A)(8)
Lot Line Setbacks, Minimum		
Front of Interior Lot	Same as underlying district	23.306.030(A)(3);
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)(4); 23.306.030(A)(6)
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.	23.306.030(A)(7)
Required Off-Street Parking Spaces	See 23.322.030– 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.

**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.

Section 9. That Berkeley Municipal Code 23.322.020(C) is amended to read:

*C. Changes of Use.*

1. *Commercial Districts.* In the Commercial Districts, off-street parking is required for a change in use only when the structure is expanded to include new floor area.
2. *Manufacturing and R-SMU Districts.*
  - (a) In the Manufacturing and R-SMU districts, off-street parking is required for a change in use only when:
    - i. The structure is expanded to include new floor area; and/or
    - ii. The use is changed to one with a numerical parking standard greater than the district minimum.
  - (b) If the new use is changed to one with a higher numerical parking standard than the district minimum, the new use must provide the incremental difference between the two numerical parking standards. A higher numerical parking standard may be reduced to the district minimum as provided in Section 23.322.050(A)(2) (Change of Use).
  - (c) As used in this section, the "district minimum" parking requirement is:
    - iii. 2 spaces per 1,000 square feet of floor area in the Manufacturing Districts; and

- iv. 1 space per 1,000 square feet of floor area in the R-SMU district.
- 3. *All Other Residential Districts.* In all Residential Districts except for R-SMU, off-street parking spaces are required for all changes in use.
- D. *Location Exemption.* Off-street parking spaces are not required for new uses or buildings, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2.

Section 10. That the section named; Residential Uses; in Berkeley Municipal Code Table 23.322-1, Required Off Street Parking in Residential Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read:

TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

Land Use	Number of Required Off-street Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	<u>Junior ADU:</u> None required <u>ADU outside of Hillside Overlay:</u> None required <u>ADU within Hillside Overlay:</u> 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.
Dwellings, including Group Living Accommodations	<u>R-3, R-4, and R-5 Districts (1-9 units):</u> If located on a roadway less than 26 ft. in width in the Hillside Overlay: 1 per unit. <u>R-3, R-4, and R-5 District (10 or more units):</u> If located on a roadway less than 26 ft. in width in the Hillside Overlay: 1 per 1,000 sq. ft. of gross floor area <u>All Other Districts:</u> If located on a roadway less than 26 ft. in width in the Hillside Overlay: 1 per unit <u>All Other Locations:</u> None required
Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing	<u>If located on a roadway less than 26 ft. in width in the Hillside Overlay:</u> 1 per each 5 residents, plus 1 for manager. <u>All Other Locations:</u> None required.
Rental of Rooms	<u>If located on a roadway less than 26 ft. in width in the Hillside Overlay:</u> 1 per each two roomers <u>All Other Locations:</u> None required

Section 11. That Berkeley Municipal Code Table 23.322-2 is amended to read:

TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

Land Use	Required Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	None required
Dwellings, including Group Living Accommodations	<u>If located on a roadway less than 26 ft. in width in the Hillside Overlay:</u> 1 per unit <u>All Other Locations:</u> None required
Hotel, Residential	None required
Mixed-Use Residential (residential use only)	None required
Senior Congregate Housing	None required
<b>Non-Residential Uses</b>	
All non-residential uses except uses listed below	<u>C-DMU District:</u> 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts:</u> 2 per 1,000 sq. ft.
Hospital	1 per each 4 beds plus 1 per each 3 employees
Library	<u>C-DMU District:</u> 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts:</u> 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	<u>C-DMU District:</u> 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts:</u> 1 per 300 sq. ft.
Hotels, Tourist	<u>C-DMU District:</u> 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts:</u> 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees <u>All Other Commercial Districts:</u> 2 per 1,000 sq. ft.
Motels, Tourist	<u>C-DMU District:</u> 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts:</u> 1 per guest/sleeping room plus 1 for owner or manager [1] <u>All Other Commercial Districts:</u> 2 per 1,000 sq. ft.
Large Vehicle Sales and Rental	<u>C-DMU District:</u> 1.5 per 1,000 sq. ft. <u>C-SA District:</u> 1 per 1,000 sq. ft. <u>All Other Commercial Districts:</u> 2 per 1,000 sq. ft.
Small Vehicle Sales	<u>C-DMU District:</u> 1.5 per 1,000 sq. ft.

Land Use	Required Parking Spaces
and Service	C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Manufacturing	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft. [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
Wholesale Trade	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Live/Work	If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area
<u>Notes:</u> [1] Spaces must be on the same lot as building it serves	

Section 12. That the section named; Residential Uses; in Table 23.322-4, Required Off Street Parking in Manufacturing Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read:

TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

Land Use	Required Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	None required
Dwellings	None required
Group Living Accommodation	None required

Section 13. That Berkeley Municipal Code 23.322.080 is amended to read:

**23.322.080– Parking Layout and Design**

*A. Traffic Engineering Requirements.*

1. All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City of Berkeley’s Traffic Engineering requirements.
2. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable,

functional, accessible, and safe parking areas, and are adequately integrated with Berkeley's overall street pattern and traffic flows.

- B. *Dimensional Standards.* Dimensional requirements and standards for off-street parking spaces, driveways, and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and ZAB.
- C. *Access Orientation in Non-Residential Districts.* Access to new parking areas in a Non-Residential District that serve commercial uses shall be oriented in such a way as to minimize the use of streets serving primarily residential uses.
- D. *Residential Parking Lots in Non-Residential Districts.* Parking lots in a non-residential district used exclusively for residential parking must comply with standards in Section 23.322.080 that apply in Residential Districts.
- E. *Placement--Residential Districts.*
  - 1. *Side Setback Areas.*
    - (a) One new off-street parking space in a required side setback area, where none exists, is allowed by right.
    - (b) The space must be constructed of a permeable surface unless the Public Works Department or Office of Transportation determines it is infeasible.
    - (c) The space must be screened as required by 23.322.080.I (Screening).
    - (d) The location of the space shall minimize impact on usable open space.
  - 2. *Other Setback Areas.* No portion of an off-street parking space may be located in a required front, street side, or rear setback area unless:
    - (a) The parking space location is authorized by Chapter 23.306 (Accessory Dwelling Units); or
    - (b) The Zoning Officer approves an AUP, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.
  - 3. *Multifamily Buildings.*
    - (a) An off-street parking space may not be located closer than 10 feet in horizontal distance from a door or a window of a building with three or more dwelling units where the space is on the same or approximately the same level as the building.
    - (b) For the purposes of this section, a window whose bottom edge or point is more than 6 feet in vertical height from the level of the subject off-street parking space is not considered on the same or approximately the same level.

- (c) The Zoning Officer may approve an AUP to grant an exception to this requirement.

F. *Placement--Non-Residential Districts.*

1. *Where Prohibited.* Except when otherwise allowed by this chapter, ground-level off-street parking spaces are not permitted within 20 feet of the lot's street frontage unless the parking is entirely within a building with walls.
2. *Corner Lots.* For a corner lot, the ZAB may approve a Use Permit to allow the parking within 20 feet of the street frontage facing the secondary street.
3. *C-W District.*
  - (a) Off-street automobile parking in the C-W district is not permitted between the front lot line and a main structure within a designated node.
  - (b) Outside of a designated node, off-street automobile parking may be allowed between the front lot line and a main structure with a Use Permit or AUP. If the project requires ZAB approval, a Use Permit is required. An AUP is required for all other projects.
  - (c) To approve the AUP or Use Permit, the review authority must find that one or more of the following is true:
    - i. Parking in the rear or on the side of the property is impractical because of the lot's depth and/or width.
    - ii. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses.
    - iii. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location.
    - iv. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front lot line.

G. *Placement--ADU.*

1. On a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU is allowed in any configuration on the lot, including within the front setback; or
2. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback.

- H. *Grade Change.* This subsection applies to off-street parking spaces in all districts, except for parking decks in Residential Districts.



1. The difference in elevation between a parking space and the finished grade on adjacent areas of the lot may not exceed 5 feet at any point.
2. Where there is a difference in elevation between a parking space and adjacent finished grade, the parking space shall be setback from a lot line as shown in Table 23.322-7.

TABLE 23.322-7. REQUIRED SETBACKS FOR PARKING SPACES WITH ADJACENT GRADE CHANGES

DIFFERENCE IN ELEVATION	MINIMUM SETBACK
Parking space lower than finished grade	
3 to 5 ft	4 ft.
Less than 3 ft	No min. setback
Parking space higher than finished grade	6 ft.

I. *Screening.*

1. Table 23.322-8 shows required parking space screening. Screening must effectively screen parked vehicles from view from buildings and uses on adjacent, abutting, and confronting lots. Screening may not interfere with pedestrian safety.

TABLE 23.322-8. REQUIRED PARKING SPACE SCREENING

DISTRICTS	WHEN REQUIRED	REQUIRED SCREENING FEATURE	SCREENING FEATURE HEIGHT
All Residential Districts	2 or more parking spaces, or any parking space partly or entirely within a required rear setback area	Continuous view-obscuring wood fence, masonry wall, or evergreen hedge which may be broken only for access driveways and walkways	4 ft. min and 6 ft. max.
All Commercial and Manufacturing Districts	2 or more parking spaces	Wall, fence, or evergreen shrubbery hedge in a landscape strip	Parking adjacent to public right-of-way or front lot line: 3 ft. min. and 4 ft. max. Parking adjacent to rear or side lot line: 4 ft. min and 6 ft. max.

2. In the C-W, M, MM, MU-LI districts, screening and landscape buffers are not required for any portion of a parking lot adjacent to Third Street (Southern Pacific Railroad).

J. *Landscape Buffers.*

1. All paved areas for off-street parking spaces, driveways, and any other vehicle-related paving must be separated from adjacent lot lines and the public right-of-way by a landscaped strip as shown in Table 23.322-9.

TABLE 23.322-9. REQUIRED LANDSCAPE BUFFERS

DISTRICT/NUMBER OF SPACES	MINIMUM WIDTH OF LANDSCAPE STRIP	
	AREAS ADJACENT TO SIDE OR REAR LOT LINES	AREAS ADJACENT TO PUBLIC RIGHT-OF-WAY OR FRONT LOT LINE
Residential Districts		
1-3 spaces	2 ft.	2 ft.
4 spaces or more	4 ft. [1]	4 ft. [1]
Commercial and Manufacturing Districts		
1 space	None required	None required
2-3 spaces	2 ft.	3 ft.
4 spaces or more	4 ft. [1]	4 ft. [1]
Note:		
[1] Calculated as average width along the full length of landscape strip.		

2. In all districts, this landscape buffer requirement does not apply to driveways that serve two adjacent lots when adjacent to a side lot line.
3. In the Residential Districts, this landscape buffer requirement also does not apply to pedestrian walkways that are separated from such areas by a landscaped strip at least two feet wide.

K. *Paved Setback Areas.* In Residential Districts, the total area of pavement devoted to off-street parking spaces, driveways, and other vehicle-related paving may not exceed 50 percent of any required setback area that runs parallel to and abuts a street.

L. *Driveway Width.*

1. A driveway may not exceed 20 feet in width at any lot line abutting a street or one-half of the width of the street frontage of the lot, whichever is less.
2. In a Non-Residential district, the Zoning Officer may modify this requirement with an AUP.

M. *Driveway Separation.* On a single lot in a Residential District, driveways must be spaced at least 75 feet from one another, as measured along any continuous lot line abutting a street.

N. *Tandem Parking.* Tandem spaces that provide required off-street parking require an AUP, except when allowed by right by Chapter 23.306 (Accessory Dwelling Units).

- O. *Carports*. A carport shall meet the minimum horizontal and vertical dimensions specified by the City's Traffic Engineer to be used for one or more legal parking spaces required under this chapter.

Section 14. That Berkeley Municipal Code is amended to add a new Section 23.324.060(C) to read:

- C. *Accessory Dwelling Units*. The following alterations of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate:
  - 1. New windows, doors, or other openings to a portion of a building or structure within a minimum required setback.
  - 2. New windows, doors, or other openings to a portion of a building or structure exceeding the height limit.

Section 15. That Berkeley Municipal Code 23.502.020(A)(4) is amended to read:

- 4. *Accessory Dwelling Unit (ADU)*. An attached or detached secondary dwelling unit that is located on the same lot as a proposed or existing single family dwelling, duplex, multi-family dwelling use, or group living accommodation and provides independent living facilities for one or more persons. An ADU must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: Exterior or independent access to the ADU, living and sleeping quarters, a full kitchen, and a full bathroom. An ADU also includes the following: (a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code, or (b) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
  - (a) *Junior Accessory Dwelling Unit (Junior ADU)*. A unit that is contained entirely within the walls of an existing or proposed single family dwelling, or a single family dwelling unit's attached garage. A Junior ADU must include a separate exterior entrance and, at minimum, an efficiency kitchen. A Junior ADU may include separate sanitation facilities or may share sanitary facilities with a single family dwelling.

Section 16. That Berkeley Municipal Code 23.502.020(A)(8) is amended to read:

- 8. *Addition, Residential*. The creation of any new portion of a main building which results in a vertical or horizontal extension of the building, or results in additional residential gross floor area to an existing main building, as long as such new gross floor area does not exceed 15 percent of the lot area or 600 square feet, whichever is less. For purposes of this definition gross floor area does not include:

- (a) Additions of gross floor area devoted to required off-street parking spaces, creation of mezzanines or lofts within the building's shell;
- (b) Making previously unusable attics into habitable floor area (except where new areas with vertical clearance of 6 feet or greater are created through expansions of the building shell);
- (c) Excavations of earth within the existing building footprint (i.e. expansion of existing basements or new basements), or
- (d) Replacement of existing floor area that was lawfully constructed and is located entirely within the addition's shell.
- (e) The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.

Section 17. That Berkeley Municipal Code 23.502.020(A)(9) is amended to read:

9. *Addition, Major Residential.*

- (a) A residential addition greater than 15 percent of the lot area or 600 square feet. Floor area from all residential additions since October 31, 1991, with the exception of:
  - i. Additions that are entirely subsumed within previously existing floor area; and
  - ii. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.
- (b) The floor area of subsequent stories where the addition does not exceed the district residential addition height limit, shall count towards the calculation of gross floor area for the purposes of this definition.
- (c) Any new floor area, except as exempted under (9)(a), shall be treated as a new major residential addition for the purpose of permit processing, when the cumulative square footage exceeds 15 percent of the lot area or 600 square feet, whichever is less.

Section 18. That Berkeley Municipal Code 23.502.020(E)(1) is amended to read:

1. *Efficiency Kitchen*. A cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.

Section 19. That Berkeley Municipal Code 23.502.020(J) is amended to read:

J. "*J*" Terms.

Section 20. That Berkeley Municipal Code 23.502.020(N)(1) is amended to read:

N. "*N*" Terms.

1. *New Construction*. Construction of a new main building or accessory dwelling unit.

Section 18. Severability.

If any provision or clause of this Ordinance or any application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this Ordinance. To this end the provisions and applications of this Ordinance are severable, and the Council of the City of Berkeley hereby declares that it would have passed this Ordinance and each provision or clause without regard to whether any other portion of this Ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 19.

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 October 3, 2023, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Harrison, Humbert, Kesarwani, Robinson, Taplin, and Arreguin.

Noes: None.

Abstain: Hahn and Wengraf.

Absent: None.