

AGENDA
Disaster Fire and Safety Commission
March 24, 2021
7:00 PM

District 1 – Ruth Grimes

District 5 – Shirley Dean

District 2 – Weldon Bradstreet

District 6 – Nancy Rader

District 3 – Gradiva Couzin

District 7 – Robert Simmons

District 4 – Antoinette Stein

District 8 – Paul Degenkolb

Mayor's Appointee- Jose Luis Bedolla

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the March 24, 2021 meeting of the Disaster, Fire and Safety Commission will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://zoom.us/j/96816312434>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial 1-669-900-9128 and enter Meeting ID 968 1631 2434. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair. Please be mindful that all other rules of procedure and decorum will apply for Commission meetings conducted by teleconference or videoconference*

Preliminary Matters

Call to Order

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 24, 2021*

Action Items

3. Revision of Automatic Gas Shut Off Valves Recommendation*
4. Short Term Referral to City Manager, Disaster and Fire Safety Commission and Planning Commission to Amend Local Accessory Dwelling Unit (ADU) Zoning Ordinance and Berkeley's Fire Code (Dean)
5. Designate the Commission Chair to Represent the Commission in Measure FF Budget Process (Bedolla)

Discussion Items

6. Density Ordinance (QuadPlexes) and Berkeley's Fire Code (Bedolla)
7. Presentation from the Berkeley Path Wanderers
8. Budget Timelines and Process (Fire Department)
9. Update on Memorandum of Understanding on Grizzly Peak Blvd (Fire Department)
10. Cal Fire Grant (Fire Department)
11. Vision 2050 Volunteer (Bedolla)
12. Future Agenda Items
 - a. Budget report on GG and FF April quarterly
 - b. Possible formation of a Berkeley Fire Safe Council
 - c. Berkeley mutual presentation
 - d. Transfer Tax for Home Hardening
 - e. SB 9
 - f. CEQA
 - g. Home Hardening

Adjournment

Disaster & Fire Safety Commission
Regular Meeting
Wednesday February 24, 2021

Present: Ruth Grimes, Gradiva Couzin, Jose Luis Bedolla, Paul Degenkolb, Robert Flasher, Toby Simmons, Shirley Dean, Weldon Bradstreet

Absent: Toni Stein,

Staff: Keith May, Khin Chin, Liam Garland

Public: 9 Attendees: Alina Constantinescu, Bob Flasher, Chris Cullander, David Peattie, Kelly Hammargren, Lin Due, Richard Thomason, Margo Schueler (Presenter), Ray Yep (Presenter)

Preliminary Matters

Call to Order

G. Couzin called meeting to order at 7:00pm

S. Dean arrived at 7:03

Approval of the Agenda

Move Item

Approved by Acclimation

Public Comment on Non-Agenda Items

David Peattie, from Berkeley Disaster Preparedness Neighborhood Network (BDPNN) said BDPNN now has sales tax exempt status. Berkeley Food Network space will be used to make and store the go-kits for seniors and people with disabilities program. Visit BDPNNNetwork.org to find out more about this free supplies and disaster preparedness education program. Berkeley Mutual is doing amazing things and will share more about activities next time.

1. Fire Department Staff Report

Fire Department entry-level firefighter position interviews are underway. 180 candidates were moved from the application phase to interviews. 55 have moved to second round interviews.

900 block of Ashby and one on 8th street experienced small fires recently.

Consent Items

2. Approval of Draft Minutes of Meeting of January 27, 2021*

Motion to approve as revised: Dean

Second: Couzin

Vote: 7 Ayes: Couzin, Dean, Bradstreet, Degenkolb, Grimes, Bedolla, Simmons; 0 Noes;
1 Absent: Stein, 1 Abstain: Rader.

W. Bradstreet left the meeting at 7:25p

W. Bradstreet returned to the meeting at 7:40

Action Items

3. Annual Election of Officers

Open nomination for Chair.

Motion to nominate Jose Luis Bedolla for chair: G. Couzin

Second: S. Dean

Vote: 8 Ayes: Couzin, Dean, Rader, Simmons, Degenkolb, Grimes, Bradstreet, Bedolla;
0 Noes; 1 Absent: Stein, 0 Abstain.

Jose Luis Bedolla elected as Chair.

Open nomination for Vice Chair.

Motion to nominate Weldon Bradstreet as vice chair: R. Grimes

Second: S. Dean

Vote: 8 Ayes: Couzin, Dean, Rader, Simmons, Degenkolb, Grimes, Bradstreet, Bedolla;
0 Noes; 1 Absent: Stein, 0 Abstain.

Weldon Bradstreet elected as Vice Chair.

4. Commission Annual Workplan*

Motion to submit the Commission's Annual Workplan: G. Couzin

Second: S. Dean

Vote: 8 Ayes: Couzin, Dean, Rader, Simmons, Degenkolb, Grimes, Bradstreet, Bedolla;
0 Noes; 1 Absent: Stein, 0 Abstain.

5. Measure FF Oversight Recommendation*

Motion to Recommend the Use Measure FF Funds as Intended by Voters for Firefighting, Emergency Medical Response, 9-1-1 Communications Services, Hazard Mitigation, and Wildfire Prevention and Preparedness; to Not Reduce General Fund Allocations Towards Fire Services; and to Support Effective Commission Oversight: G. Couzin

Second: P. Degenkolb

Vote: 8 Ayes: Couzin, Dean, Rader, Simmons, Degenkolb, Grimes, Bradstreet, Bedolla; 0 Noes; 1 Absent: Stein, 0 Abstain.

6. Forming a Subcommittee on Accessory Dwelling Units, Parking, and the Safe Passages Program

No action taken.

Items

7. Vision 2050 Presentation from Staff*
8. Cerritos Canyon
9. Future Agenda Items

Adjournment

Motion to adjourn: J. Bedolla

Second: P. Degenkolb

Vote: 8 Ayes: Couzin, Dean, Rader, Simmons, Degenkolb, Grimes, Bradstreet, Bedolla; 0 Noes; 1 Absent: Stein, 0 Abstain.

Adjourned at 920p



Disaster and Fire Safety Commission

ACTION CALENDAR

[Date]

To: Honorable Mayor and Members of the City Council
From: Disaster and Fire Safety Commission
Submitted by: Jose Bedolla, Chairperson, Disaster and Fire Safety Commission
Subject: Amending Chapter 19.34 of the Berkeley Municipal Code to Expand Automatic Gas Shut-Off Valve Requirements in Multifamily, Condominium and Commercial Buildings Undergoing Renovations

RECOMMENDATION

The proposed ordinance modifications in the referral dated October 29, 2019, shown in Attachment 2 (the Referral), can be briefly summarized as:

- Expand the Gas Shut-Off Valve requirements to remove exceptions for multi-family, condominium, and commercial buildings

The Disaster and Fire Safety Commission (DFSC) recommends that the Berkeley Municipal Code (BMC) 19.34.040 be modified in accordance with the Referral, with the following changes:

1. Do not allow excess flow valves to substitute for motion-activated shut-off valves as a way to comply with this ordinance.
2. Clarify requirements for excess flow valves and motion activated (seismic) valves.
3. Include a provision for common areas of buildings.
4. Do not include any requirements regarding sale or transfer of the building.
5. Remove the dollar limit on the modifications and replace with a requirement to comply any time a plumbing or mechanical permit is issued.

A proposal for this ordinance modification, including DFSC's edits, is attached as Attachment 1.

In addition, we recommend the inclusion of wording in the Berkeley Emissions Saving Ordinance (BESO) to require that in any transfer of property, that the property be required to equipped with a seismic gas shutoff valve.

FISCAL IMPACTS OF RECOMMENDATION

Staff savings realized from first responders not having to shut off valves manually in case of emergency.

Costs will include staff time to submit ordinance to the Building Standards Commission. In addition, building inspector staff time will be necessary to ensure compliance with new provisions.

CURRENT SITUATION AND ITS EFFECTS

Currently, BMC 19.34.040 requires automatic gas shut-off valves in all new construction or existing buildings that undergo repair or alteration exceeding \$50,000 consistent with sewer lateral requirements. However, it makes several exceptions for multi-unit buildings, as described in Attachment 2. As a result, residents of multi-unit buildings as well as neighboring buildings that may be impacted by a gas-driven fire after an earthquake, are not protected by a gas shut-off valve requirement.

BACKGROUND

In October of 2019 the Disaster and Fire Safety Commission received a referral from Councilmembers Harrison, Wengraf, Hahn, and Bartlett on modifications to the BMC 19.34.040 Gas Shut-Off Valves ordinance.

The Referral's proposed ordinance modifications expands the Gas Shut-Off Valves requirement by removing several exceptions, including an exception for multi-unit buildings.

The Referral was discussed by the DFSC in the 12/4/19, 1/22/20, and 2/26/20 meetings. Several meetings subsequent were cancelled due to Covid-19.

Additional background can be found in the Referral, Attachment 2.

ENVIRONMENTAL SUSTAINABILITY

In addition to potentially saving lives and property, increasing gas shut-off valve use may reduce the spread of house-fires and wildland-urban interface fires, reducing the pollution, hazardous waste, loss of habitat, and other environmental damage caused by uncontrolled fires, and reducing greenhouse gas emissions caused by gas leaks after an earthquake.

RATIONALE FOR RECOMMENDATION

The DFSC generally concurs with the rationale for this recommendation described in the Referral. The modifications to the ordinance are intended to increase the use of automatic gas shutoff valves to help reduce or prevent gas-related fires in the event of an earthquake.

In a major earthquake, gas piping is subjected to forces which may result in significant leaks of natural gas. These leaks can in turn result in serious fires or explosions.

A good article about the dangers of gas fires in an earthquake and the performance of Motion Activated Gas Shutoff Valves can be found here:

<http://www.strandearthquake.com/psqsv.html>.

The DFSC differs from the Referral regarding excess flow valves:

The ordinance modifications in the Referral allow the use of excess flow shut-off valves in place of motion-activated shut-off valves. The DFSC recommends against allowing excess flow valves to substitute for motion-activated shut-off valves.

Excess flow valves are appropriate for connection to individual appliances and are readily available incorporated in appliance connection lines. However, these valves would have to allow for a very large flow if connected to a whole house, and the leaks resulting from an earthquake may not be adequate to trigger an excess flow valve, while still being large enough to create a severe potential for fire or explosion.

Therefore, we recommend against allowing excess flow valves at the whole-house level to satisfy the requirements of the ordinance. Our edits in Attachment 1 incorporate this suggestion.

The DFSC believes that setting a minimum project value to trigger the installation of seismic gas shutoff valves is not the right way to trigger that requirement. In practice, the installation of a Seismic Gas Shutoff Valve is a simple task for a plumbing or mechanical contractor, however it is not within the designated ability of many other contractors. The \$10,000 minimum value set could easily be exceeded by work done by persons not approved to contract for such work, which could add significantly to the cost of a contract. On the other hand, the work required to install a seismic shutoff valve is generally less than an hour for a mechanical or plumbing contractor and the valve itself will usually cost less than \$150. The change in cost to the property owner should be minor compared to the cost of the other work performed under mechanical or plumbing permits. Therefore, it makes sense to require that having an operational seismic gas shutoff valve in place to receive a final signoff on a permit is not a significant burden to the property owner.

Finally, the DFSC has been informed that the building department does not get involved with transfer of property except as permit applications are filed. Any requirements affecting the transfer of property, especially those involving natural gas service, should be addressed through the Office of Energy and Sustainable Development.

ALTERNATIVE ACTIONS CONSIDERED

n/a This is in response to a City Council referral.

CITY MANAGER

Recommendation to Immediately Fund and Implement the Safe Passages Program ACTION CALENDAR
and Additional Actions to Ensure Emergency Equipment Access to All Parts of the
City [Date]

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, Secretary, Disaster and Fire Safety Commission, 510-981-5508

Attachments:

1. Proposed BMC 19.34.010 revisions
2. 10/19/2019 referral to the Disaster and Fire Safety Commission

Attachment 1: Proposed changes to BMC 19.34.040

The following is a recommendation of changes to BMC 19.34.040. Black type indicates text as it is currently published at

<https://www.codepublishing.com/CA/Berkeley/html/Berkeley19/Berkeley1934/Berkeley1934040.html#19.34.040>

The locations where DFSC's recommended edits differ from the Council Referral dated 10/29/2019 are highlighted in yellow.

19.34.040 Gas Shut-Off Valves.

Chapter 12 of the 2019 **California Plumbing Code** is adopted in its entirety subject to the modifications thereto which are set forth below.

1209.0 Automatic Gas Shutoff Valves

1209.1 General. Where automatic excess flow valves are installed, they shall be listed, sized, and installed in accordance with manufacturer's installation instructions. [NFPA 54:5.13]

1209.2 General Requirements for Gas Shut-Off Valves. Automatic gas shut-off valves installed either in compliance with this Section or voluntarily pursuant to a plumbing permit issued on or after the effective date of this Section, shall comply with the following:

1209.2.1 All valves shall:

1. Comply with all applicable requirements of the Berkeley Plumbing Code.
2. Be tested and listed by recognized testing agencies such as the Independent Laboratory of the International Approval Services (IAS), Underwriter's Laboratory (UL), International Association of Plumbing and Mechanical Officials (IAPMO) or any other agency approved by the State of California Office of the State Architect (OSA).
3. **Excess Flow Gas Shutoff Valves shall be** listed to ANSI Z21.93/CSA6.30 Excess Flow Valves for Natural and LP Gas with Pressures up to 5 Psig.
4. Be installed on downstream side of the gas utility meter.
5. Be installed in accordance with the manufacturer's instructions.
6. Be installed in accordance with a plumbing permit issued by the City of Berkeley.
7. Provide a method for expedient and safe gas shut-off in an emergency.
8. Provide a capability for ease of consumer or owner resetting in a safe manner.

1209.2.2 Motion activated seismic gas shut-off valves shall be mounted rigidly to the exterior of the building or structure containing the fuel gas piping, unless otherwise specified in the manufacturer's installation instructions.

1209.3 Definitions

For the purpose of this Section terms shall be defined as follows:

AUTOMATIC GAS SHUT-OFF VALVE shall mean either a motion activated gas shut-off valve or device or an excess flow gas shut-off valve or device.

DOWNSTREAM OF GAS UTILITY METER shall mean all gas piping on the property owner's side of the gas meter and after the service tee.

EXCESS FLOW GAS SHUT-OFF VALVE shall mean an approved valve or device that is activated by significant gas leaks or overpressure surges that can occur when pipes rupture inside a structure. Such valves are installed at each appliance, unless otherwise specified by the manufacturer's installation instructions.

MOTION ACTIVATED GAS SHUT OFF VALVE shall mean an approved gas valve activated by motion. Valves are set to activate in the event of a moderate or strong seismic event greater than 5.0 on the Richter scale.

UPSTREAM OF GAS UTILITY METER shall mean all gas piping installed by the

utility up to and including the meter and the utility's service tee.

1209.4 Devices When Required. Approved **automatic motion activated** gas shut-off valves shall be installed as follows:

1209.4.1 New Construction. In any new building construction containing gas piping for which a building permit is first issued on or after the effective date of this Section.

1209.4.2 Existing Buildings. In any existing building, when any addition, alteration or repair is made for which a **plumbing or mechanical building** permit is issued on or after the effective date of this Section. ~~and the valuation for the work exceeds \$50,000.~~

1209.4.2.1 Multifamily, Condominium and Commercial Buildings.

1. In any existing commercial, multifamily and condominium and commercial building, and applicable to all units and tenant spaces therein if the building is individually metered and lacks a central motion activated gas shut-off valve downstream of the utility delivery point, when any addition, alteration or repair exclusive of individual units or tenant spaces is made for which a plumbing or mechanical building permit is issued on or after the effective date of this Section. ~~and the valuation for the work exceeds \$50,000.~~

2. In any existing commercial, multifamily and condominium unit for all gas piping serving only those individual units, when any addition, alteration or repair inclusive of individual units or tenant spaces is made for which a plumbing or mechanical building permit is issued on or after the effective date of this Section. ~~and the valuation for the work exceeds \$10,000.~~

~~**1209.4.3 Sale of Existing Buildings.**~~

~~The requirement to install motion activated gas shutoff valves shall apply prior to entering into a contract of sale, or prior to the close of escrow when an escrow agreement has been executed in connection with a sale as follows:~~

~~1. in any building or structure, and all units therein when gas piping serving those units lacks a central motion activated gas shut-off valve downstream of the utility delivery point; or~~

~~2. in an individual condominium unit for all gas piping serving that individual unit.~~

1209.4.4 Exceptions:

1. Buildings with individually metered residential units when the building contains 5 or more residential units, unless the units are condominiums.

~~2. For residential or mixed use condominium buildings, valves are required when the value of the work exceeds \$50,000 in any single condominium unit or when any work done outside of the units exceeds \$50,000.~~

3. Commercial occupancies and uses in mixed use buildings of residential and non-residential occupancies with a single gas service line larger than 1 1/2 inches that serves the entire building.

4. **Automatic Motion activated** gas shut-off valves installed with a building permit on a building prior to the effective date of this Section provided the valves remain installed on the building or structure and are adequately maintained for the life of the building or structure.

5. Automatic gas shut-off valves installed on a gas distribution system owned or operated by a public utility



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
January 26, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Susan Wengraf (Author), Councilmember Sophie Hahn (Co-sponsor)

Subject: Short Term Referral to City Manager, Disaster and Fire Safety Commission and Planning Commission to Amend Local Accessory Dwelling Unit (ADU) Zoning Ordinance and Berkeley's Fire Code

RECOMMENDATION

Refer to the City Manager, the Disaster and Fire Safety Commission and the Planning Commission to evaluate and recommend to Council within 90 days, a set of ordinance amendments and implementation programs to address emergency access and egress, parking and objective development standards to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3. (Attachment 1).

Recommendations to Additional Objective Development Standards in Zones 2 and 3:

Zone 2 and 3 - limit the base maximum size of newly constructed, detached ADUs to 850 sq. feet.

Zone 2 and 3 – require compliance with front yard, side yard and open space and coverage requirements of the applicable zoning district.

Recommendations to amend the Fire Code:

Prohibit parking on streets where egress and ingress will be adversely impacted by additional vehicles and increased population.

Require sprinklers in new construction, consistent with local Fire Code

Explore their authority under California Health and Safety Code Sec. 13869.7 to mitigate the adverse impacts of ADU creation in requiring safe and adequate ingress and egress routes and sufficient off-street parking.

FINANCIAL IMPLICATIONS

Staff Time

BACKGROUND

On October 9, 2019, Governor Newsom signed three bills into law (Assembly Bill 881, Assembly Bill 68, and Senate Bill 13), requiring local jurisdictions to relax or eliminate restrictions on development of ADUs. The legislation is codified in Government Code sections 65852.2 and 65852.22 and Health and Safety Code section 17980.12 and became effective on January 1, 2020.

The City Council had previously adopted an interim Urgency ADU Ordinance in December, 2019 and an extension of that ordinance in January, 2020 that prohibited the construction of ADUs in the ES-R district (Zone 3) and on any lot with frontage on a roadway of less than 26 feet width in the Hillside Overlay, subject to discretionary review. (Attachment 2.)

The interim ADU Ordinance expired on December 4, 2020. Since then, the City has been operating without any local provisions for ADUs; all ADUs in residential districts are regulated only by State law, allowing their development without regard to street width or parking. City Council may adopt a new local ADU Ordinance within the constraints of the law to address a limited range of local considerations.

The Disaster Fire Safety Commission (DFSC) met on July 6 and July 13, 2020 to discuss the issues related to ADUs in the hillside fire zones, received a presentation from Planning Department and Fire Department staff, and directed that a memo be sent to the Planning Commission with recommendations for zoning code amendments

On August 8, 2020, the Planning Commission received communications from the DFSC and members of the community concerned about the restrictions created by State law and the need for local regulations to address public safety concerns. (Attachment 3.)

The current state legislation includes provisions that on their face require local agencies to approve certain categories of ADU development in all residential and mixed-use districts (See Gov. Code, § 65852.2(e)(1)). Subsequent interpretations adopted by the State Housing and Community Development Department (HCD) made clear that any conflict between the different provisions of the law must be resolved in favor of allowing certain categories of ADUs to be constructed in all residential and mixed-use districts, regardless of public safety concerns. This interpretation is reflected in the final guidance document released by HCD in September and updated in December 2020 (Attachment 4.)

Currently, as codified in Government Code sections 65852.2 and 65852.22 and Health and Safety Code section 17980.12, local jurisdictions have extremely limited discretion to impose restrictions on the development of ADUs, even in high risk areas threatened by wildfire or any other natural disaster, like landslides, earthquake or flood.

Increasingly hot and dry climate conditions in combination with topography and narrow and curvy roads in certain areas of Berkeley create real threats to access for first responders and egress of our residents in the event of a wildfire. Since the City has no authority under the current regulations to require off-street parking for new ADUs nor can we require replacement of off-street parking removed as a result of ADU conversion, I am requesting that the Fire Department impose additional restrictions on street parking when new ADUs are created, in Fire Zones 2 and 3.

Until State Law is amended to allow jurisdictions to be able to protect their communities from increased vulnerability to risk, the City must use every available tool to mitigate the dangerous impacts in high hazard fire zones, where the health, safety and welfare of Berkeley residents will be affected.

Previously, Berkeley's ADU Ordinance prohibited ADUs in Fire Zone 3 and on streets of 26 feet or less in width in Fire Zone 2, subject to discretionary review. As interpreted by the California Department of Housing and Community Development, current regulations make applications to construct a new ADU entirely ministerial and prohibit any discretionary review.

Now that the City's ADU Urgency Ordinance has expired, Berkeley has no local protections in Fire Zones 2 & 3 as designated in local amendments to the State Fire Code, corresponding to the H – Hillside zoning district. The city is currently operating under State law without any local provisions addressing these unique characteristics and threats to life safety.

Therefore, I am referring to the City Manager, the Disaster and Fire Safety Commission and the Planning Commission to evaluate and recommend to Council within 90 days, a set of ordinance amendments and implementation programs to address emergency access and egress, parking and objective development standards to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3.

Recommendations to Additional Objective Development Standards in Zones 2 and 3:

Zone 2 and 3 - limit the base maximum size of newly constructed, detached ADUs to 850 sq. feet.

Zone 2 and 3 – require compliance with front yard, side yard and open space and coverage requirements of the applicable zoning district.

Recommendations to amend the Fire Code:

Prohibit parking on streets where egress and ingress will be adversely impacted by additional vehicles and increased population.

Require sprinklers in new construction, consistent with local Fire Code

Explore their authority under California Health and Safety Code Sec. 13869.7 to mitigate the adverse impacts of ADU creation in requiring safe and adequate ingress and egress routes and sufficient off-street parking.

Finally, given the urgency of the matter, I am requesting a short-term referral of 90 days to the City Manager, so that the amendments can return to Council for approval and be codified in a timely manner. Amendments to the Zoning Code need approval from the Planning Commission and amendments to the Fire Code need approval from the State Fire Marshall.

ENVIRONMENTAL SUSTAINABILITY

Aligns with Berkeley's environmental sustainability goals.

CONTACT PERSON

Councilmember Wengraf

Council District 6

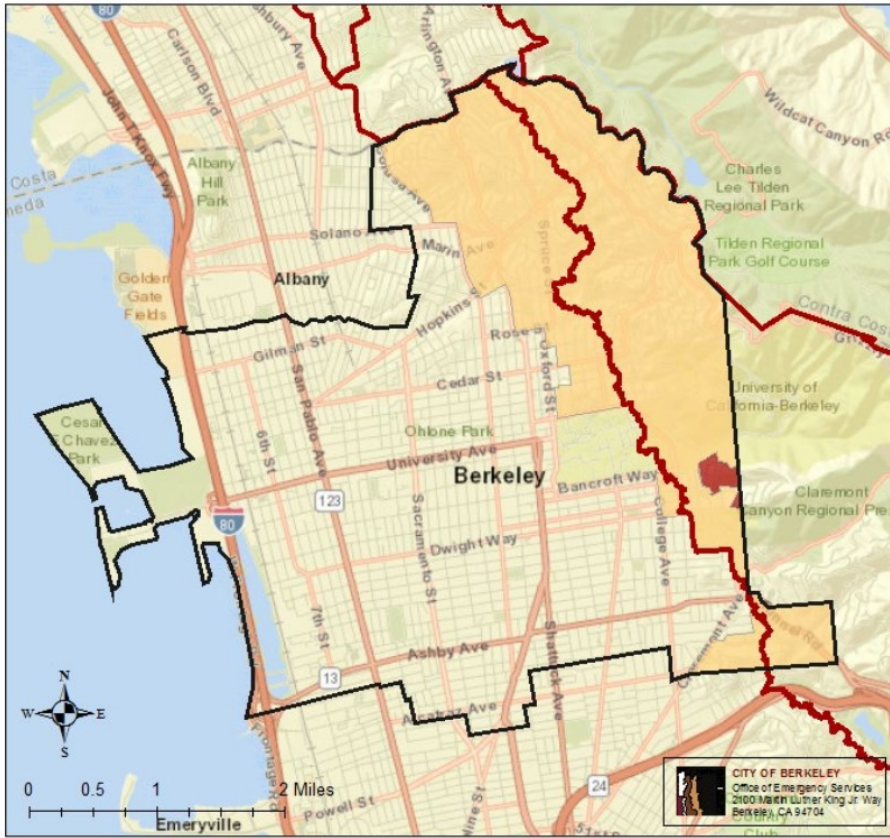
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

Attachments:

- 1: Maps from Fire Safety Town Hall 2019, Berkeley Fire Department
- 2: Extension of Urgency Ordinance for ADUs, Jan 21, 2020
- 3: Memo from Disaster Fire Safety Commission to Planning Commission, July 20, 2020
- 4: Accessory Dwelling Unit Handbook, California Department of Housing and Community Development, Updated December 2020

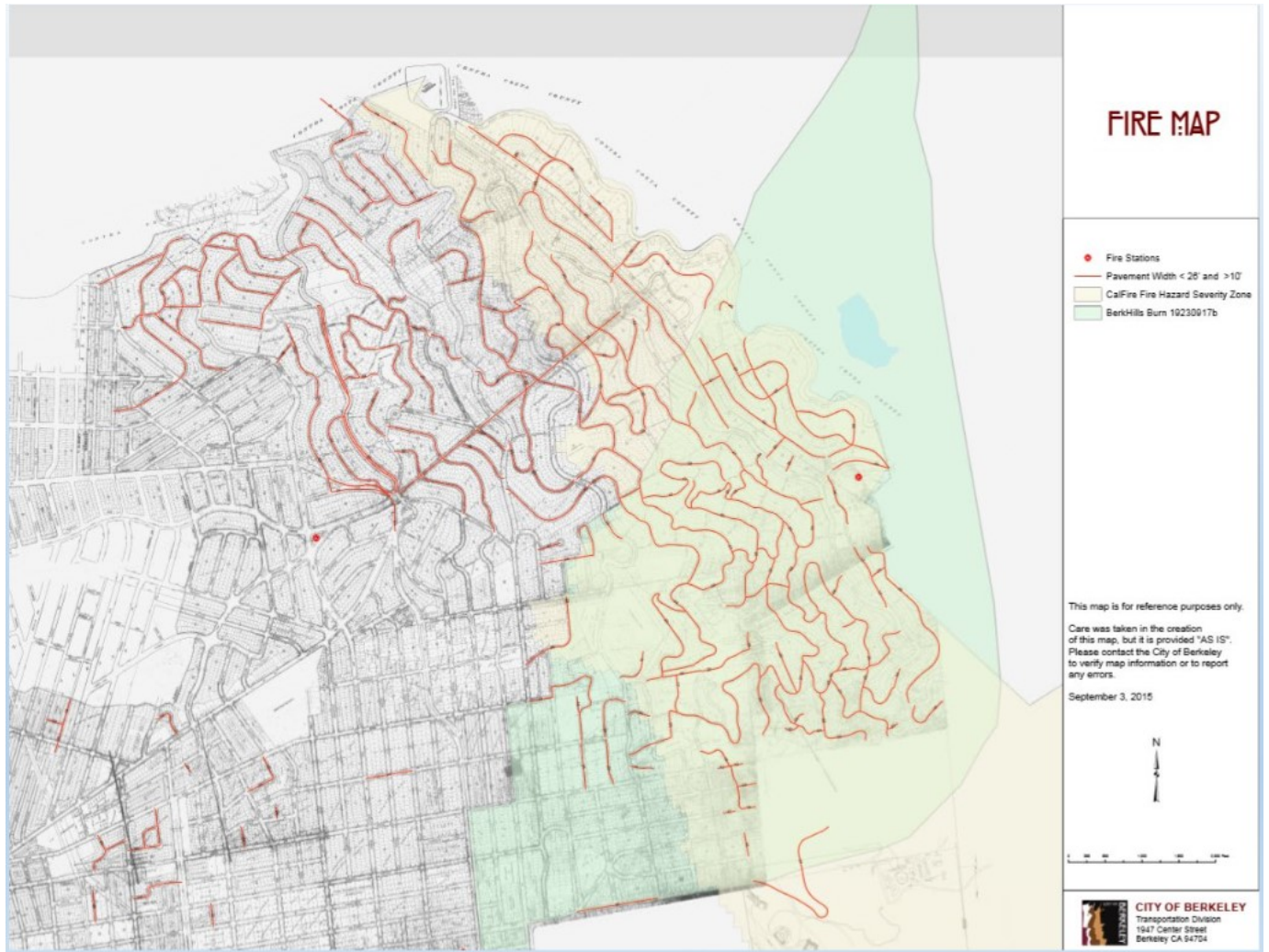
EXCERPTS FROM FIRE SAFETY TOWN HALL, 2019

Wildfire Threat in Berkeley



-  City of Berkeley
-  CA Dept of Forestry, Very High Fire Hazard Potential
- Berkeley Fire Zones**
-  Hazardous Fire Zone 1
-  Hazardous Fire Zone 2
-  Hazardous Fire Zone 3

CITY OF BERKELEY
Office of Emergency Services
2800 Martin Luther King Jr. Way
Berkeley, CA 94704



ORDINANCE NO. 7,685-N.S.

EXTENDING URGENCY ORDINANCE NO. 7,683-N.S. AMENDING
ACCESSORY
DWELLING UNIT (ADU) ORDINANCE -ro COMPLY WITH NEW
STATE LAW AND ESTABLISH INTERIM LIMITS ON
DEVELOPMENT

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

Section 1. Findings

- a. A severe housing crisis exists in the state with the demand for housing outpacing supply.
- b. Accessory dwelling units (ADUs) provide flexible opportunities for infill housing.
- c. On October 9, 2019, Governor Newsom signed into law Assembly Bill (AB) 881 which is intended to increase the state's supply of affordable housing by facilitating the construction of ADUs and Junior ADUs.
- d. AB 881 amends California Government Code Section 65852.2 and, among other limitations on local authority, requires cities, counties, and utility districts to significantly relax regulation of ADUs by requiring a 60-day ministerial approval of ADUs on all lots that allow residential uses. These amendments to California Government Code Section 65852.2 become effective January 1, 2020.
- e. California Government Code Section 65852.2(a)(4), as amended, provides that any existing local ADU ordinance failing to meet the requirements of the new state law shall be null and void unless and until the local agency adopts a new ordinance complying with California Government Code Section 65852.2. In the absence of a valid local ordinance, the new state law instead provides a set of default standards governing local agencies' regulation and approval of ADUs.
- f. Berkeley's current ADU Ordinance, adopted by City Council on May 29, 2018, protects fire hazard areas by 1) prohibiting ADUs in the Environmental Safety Residential District and 2) requiring discretionary review and approval by the Fire Department of ADUs in the Hillside Overlay. These measures were adopted in order to mitigate impacts to public safety.
- g. Amendments to Government Code section 65852.2, effective January 1, 2020, provide no protections for fire hazard areas and provide no mechanism for

discretionary review. However, as amended, Government Code section 65852.2 will allow jurisdictions to prohibit ADUs from areas where their allowance would create an impact to public safety.

- h. Because Government Code section 65852.2 takes effect on January 1, 2020, ADUs would be permitted in high fire risk zones without discretionary review unless the City adopts an ADU ordinance that limiting the construction of ADUs in such zones that complies with the requirements of Government Code section 65852.2

before its effective date. The potential for construction of ADUs in high fire risk zones without discretionary review creates a current and immediate threat to the public health, safety, and welfare, and the approval of Zoning Certificates or building permits in such high fire risk zones would result in such an immediate threat to public health, safety, and welfare.

Section 2. That Berkeley Municipal Code Chapter 23C.24 is amended to read as follows:

Chapter 23.34 Accessory Dwelling Units

Sections:

23C.24.010 Applicability of Regulations

23C.24.020 Purposes

23C.24.030 Permit Procedures

23C.24.010 Applicability of Regulations

The provisions of this Chapter apply to all lots that are zoned for residential use, except 1) in the following zoning districts: Environmental Safety-Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MU-LI), and Unclassified (U); and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay.

23C.24.020 Purposes

The purposes of this Chapter are to:

- A. Implement California Government Code Section 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.

23C.24.030 Permit Procedures

Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section 65852.2 and 65852.22.

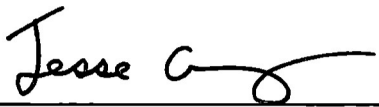
Section 3. Votes Required, Immediate Effectiveness

Based on the findings and evidence in Section 1 of this Urgency Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This ordinance shall go into effect immediately upon a four-fifths vote of the City Council, in satisfaction of the Charter of the City of Berkeley and Government Code Section 65858.

At a regular meeting of the Council of the City of Berkeley held on January 21, 2020, this Urgency Ordinance was adopted by the following vote:

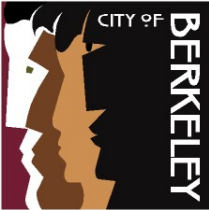
: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.
Noes: None.

Absent: None.
Jesse Arreguin, Mayor



ATTEST: 
Mark Numainville, City Clerk

In effect: Immediately



Disaster and Fire Safety Commission

Date: July 20, 2020
To: Planning Commission
From: Disaster and Fire Safety Commission

Submitted by: Gradiva Couzin, Chair, Disaster and Fire Safety Commission

A handwritten signature in black ink, appearing to be 'G. Couzin'.

Subject: Accessory Dwelling Units (ADUs) Ordinance Amendments

SUMMARY

This memo responds to the request for feedback from the Disaster and Fire Safety Commission (DFSC) to the Planning Commission as requested by the City Council regarding a local ADU Ordinance with a focus on Fire Zones 2 and 3 and the Hillside Overlay that will replace the January 2020 Urgency Ordinance scheduled to expire in September 2020.

The DFSC concludes that the prohibition on ADUs in Fire Zones 2 and 3 and the Hillside overlay (Option 1), should remain in effect

- 1. with additional language to clarify that our response involves "new" ADUs in Fire Zones 2 and 3 and the Hillside Overlay; and**
- 2. the additional inclusion of two designated evacuation routes in Fire Zones 2 and 3 and the Hillside Overlay where ADUs would be prohibited; and**
- 3. a request that the Planning Commission join with the DFSC's recommendation for additional funding: for a citywide alert system; continued work to improve the City's pathway system; implementation of the Safe Passages program that includes definite and continued enforcement of existing code regarding parking restrictions that impede**

emergency vehicle access; and an expanded vegetation management program.

In arriving at our recommendations, the DFSC acknowledges that the suggestion to establish an individualized approval process would be preferable. However, that option is unavailable to cities throughout the State due to limitations of California law.

BACKGROUND

Members of the DFSC held a virtual Special Session on July 6, 2020 at 7:00 pm at which time they reviewed a staff report and presentation by Katrina Lopera, Assistant Planner, Land Use Planning Division. and Arlene Pearson, Secretary, Berkeley Planning Commission. Members of the public also participated in the meeting. An

2180 Milvia Street, Berkeley, CA 94704 • Tel: (510) 981-7000 • TDD: (510) 981-6903 • Fax: (510) 981-7099
E-Mail: manager@CityofBerkeley.info Website: <http://www.CityofBerkeley.info/Manager>

additional virtual Special DFSC Session was held on July 13, 2020 to determine recommendations to be made to the Planning Commission.

The issue, in brief:

- May 29, 2018: Council adopted an ordinance prohibiting ADUs in the Environmental Safety-Residential District (ES-R) and requiring discretionary review and approval by the Fire Department of ADUs in the Hillside Overlay (R1h).
- October 9, 2019: State law (AB 881) mandated a statewide streamlined ADU permitting approval process. It provided no protections for local fire hazard areas, prohibited discretionary review, and allowed only ministerial, i.e., over-the-counter review granted within 60 days. An amendment to this law was later approved that allowed local jurisdictions to prohibit ADUs in areas where their allowance would create an impact on traffic flow and public safety. This law as amended was effective January 1, 2020.
- December 10, 2019 : Council adopted an initial 45-day Urgency Ordinance to allow time to consider what would be needed to provide protections in Fire Zones 2 and 3. The extension was scheduled to expire on January 24, 2020.
- January 21, 2020: Council unanimously adopted an amendment to Berkeley Municipal Code Chapter 23C.24. extending limits on ADU development for a period of 10 months and 15 days pending further analysis and adoption of local regulations that ensure public safety in Fire Zones 2 and 3.
- July 6, 2020: Special Session of DFSC to discuss ADUs in Fire Zones 2 and 3 and the Hillside Overlay.

- July 13, 2020: Special Session of DFSC to determine comments regarding ADUs in Fire Zones 2 and 3 and the Hillside Overlay which would be sent to the Planning Commission. The DFSC understands that after receiving comments from the DFSC, and holding a public hearing, staff will draft Zoning Ordinance amendments for the Planning Commission to consider in their recommendations they will propose to the City Council before expiration of the extension in September.

DISCUSSION

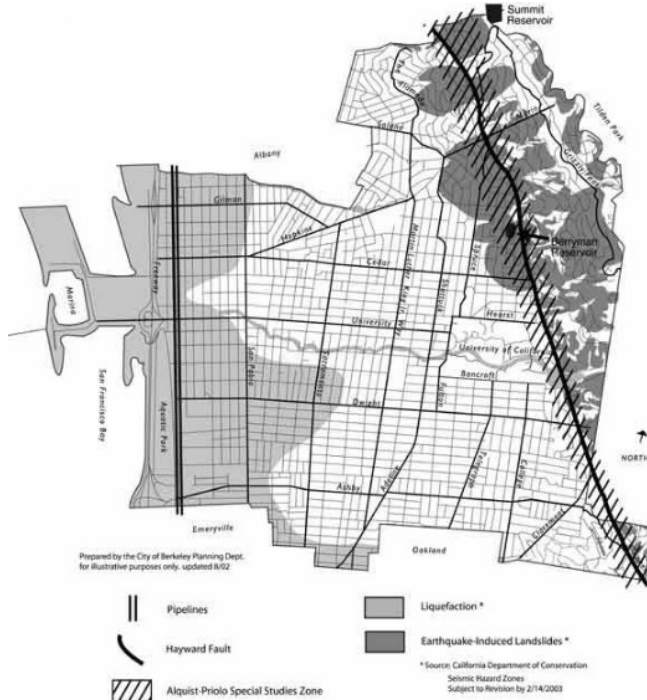
The July 6, 2020 Staff Memorandum from Ms. Lapira to the DFSC asks the DFSC Commission to consider three policy options that address potential health and safety hazards posed by development of ADUs in the hillside. These include:

1. Continue to prohibit all ADU development:
Existing prohibitions on ADUs in the Hillside Overlay and in the E-SR District would continue. Berkeley Municipal Code 23C.24 defines where existing provisions are currently allowed in Berkeley as follows:
Accessory Dwelling Units: Section 23C.24.010 Applicability of Regulations: The provisions of this Chapter apply to all lots that are zoned for residential use except 1) in the following zoning districts: Environmental Safety-Residential (ES- R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MU-LI) and Unclassified (U); and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay.
2. Allow only conversion of ADU development:
Conversion ADUs apply to the conversion of existing areas within a single-family dwelling, or in a legally built accessory structure. Conversions do not allow modification to building footprint/dimensions of legally built structures or buildings. Impacts through conversion would be assessed and protection of residential areas prioritized.
3. Allow only conversion with a set of objective standards which would be determined:
Same as above, but with objective standards that would exceed State standards where ADU development would otherwise be prohibited. ADUs would not be permitted unless objective standards related to fire safety were incorporated into the scope of the ADU project.

In considering each of the above options, there are four factors which must be addressed:

1. Geology:
Berkeley's General Plan which guides development decisions includes a Disaster Preparedness and Safety Element (DPSE). On December 10, 2019, the Council approved resolution 69,236-N.S. to adopt the five-year 2019 Local Hazard Mitigation Plan, to be incorporated into the General Plan as an appendix to the DPSE. In these documents, Earthquakes, Landslides (earthquake and rainfall triggered), and Wildland

and Urban Interface Fire are listed as "Likely" and "Catastrophic" in Fire Zones 2 and 3 and the Hillside Overlay.



The Hayward Fault runs south to north across Berkeley through the Hillside Overlay and Panoramic Way areas. Called the Alquist-Priolo Earthquake Zone, this area sits between other major faults, the San Andreas Fault to the west and the Rodgers Creek Fault to the east. Experts state that it isn't a question of "if" but "when" a major earthquake commonly referred to as the "Big One" will strike in the Bay Area. The U.S. Geologic Survey predicts a 72% probability of one or more magnitude 6.7 or greater earthquakes will strike in the San Francisco Bay Region between 2014 and 2043. The largest percentage predicted for any of the faults - 33% - is that it will occur on

the Hayward Fault during this time period. Berkeley can expect "lurch cracking" resulting in extensive fracturing of pavement, damage to sewer, gas, and water lines and landslides primarily in the hill areas, resulting in significant property damage, injury, and loss of life from this and the fires that often accompany earthquake damage. The map above (Figure 13 from the DPSE) shows the approximate location of areas vulnerable to this combination of hazards.

Geologists estimate that 45 to 65 percent of the landslide-susceptible areas will experience movement ranging from a few inches to 20 feet in an earthquake. It is further noted that most of Berkeley hillside development predates current best practices and codes making them vulnerable to the threat of landslides. This threat is affected by degree of slope, weather, improper grading, alteration of drainage patterns and careless removal of vegetation.

Following the October 1991 Berkeley/ Oakland Tunnel Fire which destroyed 3,500 homes, 2,000 automobiles, killed 25, injured 150 and caused \$3.4 billion in damages calculated in today's dollars, CALFIRE designated Fire Zones 2 and 3 in Berkeley. These

areas were given the highest rating of "very high severity" risk for wildfire. Our City's vulnerability is significantly expanded due to the combination of hazards that are clustered together within our designated fire zone areas.

Among the objectives listed in these plans which were adopted by the City Council, are to reduce the potential for loss of life, injury and economic damage from earthquakes, landslides and wildfires and to improve responder access and community evacuation in Fire Zones 2 and 3.

2. Climate Change:

Since 1991, a series of tragic California fires show a similar pattern of increased size, intensity and speed. An example being the November 2018 Camp Fire which destroyed the town of Paradise, CA. With an economic loss of around \$16.5 billion, the Camp Fire destroyed more than 18,000 structures and killed 85 people. On March 22, 2019, Governor Newsom declared a State of Emergency in California with regard to wildfire risk.

Wildfires have long been associated as starting from a combination of high wind speeds blowing from the northeast, high temperatures and low humidity, a situation referred to as "Diablo Winds." At one time, Diablo Winds occurred in the fall. With climate change this has shifted, and they are now expected to occur at any time of the year. These fires have been fueled by continuing long periods of drought and insect infestation which have promoted the build-up of fuel in the form of tinder dry brush and dead trees.

Development has contributed to this fuel build-up. Recent newspaper reports (July 10, East Bay Times) that the lack of rain this February combined with hot weather in June "has left vegetation in Northern California drier now than it has been in any July since the state's historic five-year drought from 2012 to 2016." The result being high fire risk over the next four or five months, or as one fire official says - this is the time of year when fires get bigger and more difficult to control. It is essential for Berkeley to enact as soon as possible an expanded, careful and rigorous program of vegetation management. This will be more challenging as it must be done within the reality of COVID-19 management.

3. Existing Development/Density:

Development in Fire Zones 2 and 3 and the Hills Overlay area is more dense than is found in most hill areas in other cities largely because development in Berkeley occurred on minimum lot sizes of 5,000 square feet or less. At one time, it was estimated that about 50% of all single-family zoning in Berkeley existed on these smaller lots. At that time, 90% of single-family zoning involved the Berkeley hills. In addition, flexible side setbacks resulted in houses being constructed more closely together. More housing in

smaller spaces, clustered tightly together adds to the problems of the fire spreading more rapidly and placing more people at risk. Adding ADUs to this picture further compounds the problems.

In 1983, the state approved SB 1534 allowing what was then called second units (known also as in-law apartments or "granny flats") in R-1 areas with a discretionary permit granted through the Zoning Adjustments Board. Parking for the second unit was to be provided on site. Because of the review process, which was often controversial, some number of people constructed second units without permit. The number of these illegal units is unknown, but it is commonly known that they exist, were built without permit so some may or may not fully meet code requirements, and some rented without paying the appropriate level of federal, state and local taxes. Second units are now considered as a component of ADUs. A current discussion is whether these older second units and subsequent ADUs should be placed under rent control regulation. This report does not take a position regarding rent control, but it does maintain that whether the Rent Board regulates them or not, such units which already exist should be "grandfathered in" and those built without a permit, should be legalized through inspection, and brought up to code. All, existing units should be subject to current COVID-19 related eviction regulations as part of the effort to prevent homelessness.

The number of housing units in the ES-R and Hill Overlay is not known. An attempt should be made to determine this factor and establish reliable density data. It should also be acknowledged that there are an unknown number of seniors and people with mobility challenges living in the ES-R and Hillside Overlay areas.

4. Evacuation of Residents:

The estimation of approximate population composition in these hazard areas is important from the standpoint of understanding what services need to be present to reduce fatalities and ensure safe evacuation of these most vulnerable residents. While pathways are rightly included in evacuation planning, fleeing a fire on foot by the elderly, disabled and parents with small children who need to be carried is not a good option. Most of this group will require early evacuation by car and ultimately evacuation of most residents in the Fire Zones 2 and 3 and the Overlay area will leave by car which will have to be done over narrow, winding roads which are, at times, blocked by parked vehicles. Many have been advised to leave their homes early and seek shelter elsewhere during high risk fire periods and Power Safety Shut Offs, if they have the resources to do so. However, many, not just in the hills but throughout the City, will not have the resources to periodically leave their homes, so the DFSC recommends that the City should consider providing temporary shelter for the early evacuation of vulnerable residents in safer locations during these times.

It is extremely important to understand that a response to a wildfire emergency involves BOTH access to the fire by responding equipment and personnel AND egress from the area by fleeing residents. State law does not require replacement of parking for the primary building if an ADU replaces an existing garage, car port or covered parking structure. Even if replacement parking were required, ADUs generate cars that are additional to cars associated with the primary building. Additional cars end up frequently being parked on the street. More cars on the street further clog both access and egress traffic.

In a 12/3/2019 report, the DFSC Commission noted that the problem of emergency equipment access problems in the hills has been known for at least 41 years. Despite numerous recommendations, only a few narrow streets have had parking restrictions enacted. While to date, there is increased awareness of the problem by residents and subsequent cooperation, misunderstandings and complaints about inappropriate and dangerous parking are still occurring far too often. In a wildfire scenario, rapid evacuation of residents is necessary and access must be assured. Both directions - up and out - must be accommodated. Experience has indicated that no one can out-run a wildfire and prompt fire suppression efforts are essential to establishing control which helps protect the entire City. It is essential that steps be taken as soon as possible to enforce existing code regarding parking restrictions.

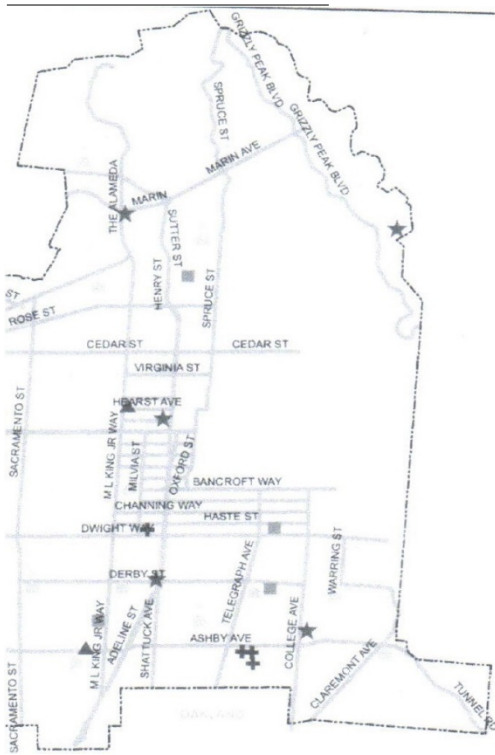
Option 1 as presented prohibits ADUs on streets that are less than 26 feet wide. A map indicating the location of such streets in the City is attached and the City has also produced a seven-page list of those streets by address. Most narrow streets are located in the hill areas, but there are a few in other parts of the City. In this report as requested, the DFSC considered only those streets in the ES-R and the Hillside Overlay. However, we recommend that the Planning Commission consider the other streets in the City that are less than 26 feet as a separate issue regarding ADUs, but in doing so, emergency vehicle access must be assured to those streets as well.

The DFSC is concerned, however, that designated evacuation routes have not been included for streets where ADUs should be prohibited, regardless of street width. Evacuation routes in the ES-R District and Hillside Overlay areas include: Marin Avenue, from The Circle to Grizzly Peak which is the most important and only east west evacuation route in the north hill area except for a very small portion of Cedar Street. Both of these streets are less than 26 feet wide so fall within the ADU prohibition guidelines. North south designated evacuation routes are parts of Spruce, Grizzly Peak Blvd (except for a portion at Fairlawn), are streets that are wider than 26 feet. The DFSC believes that all of Grizzly Peak and that portion of Spruce which are designated as evacuation routes should also fall within the ADU prohibited area. Because these streets

require two lanes of traffic - one for emergency vehicle traffic and one for fleeing residents, adding ADUs will increase on-street parking and hence hinder evacuation efforts in both directions. From any standpoint mass evacuation from Fire Zones 2 and 3 will be very difficult, given the population density, the speed of the wildfire and the lack of effective east west routes. Many people have died in their cars while fleeing from wildfires.

In discussions of this matter over the years, it has been said that so-called "pinch points" on otherwise adequate width streets that impede emergency vehicles should be recognized. If this is correct, such "pinch points" should be included in the area where ADUs are prohibited. These "pinch points" have not been sufficiently named for inclusion at this time, but continuation of the Safe Passage Program should identify them so parking restrictions can be enacted in the future.

EMERGENCY ACCESS AND EVACUATION NETWORK
June 13, 2011



While important efforts such as Wildfire Evacuation Drills and initiation of the Safe Passages Program have been made within the last year, much remains to be done as soon as possible. Some important components of the work that needs to be done includes the following:

- Initiation of a citywide alert system, including a method for early evacuation and possible shelter for our most vulnerable residents throughout the City, during periods of high risk and power outages;
- Full funding of the Safe Passages

Program which seeks to work with residents in designating where parking must be restricted. This program was initiated, then referred to a later budget for consideration, then put on hold due to the COVID-19 pandemic. Safe Passages has been considered to be a pilot program. While some details might vary from time to time in its implementation, it must be officially recognized that its purpose is to identify and enforce restricting parking based on existing code in certain locations because it is an essential component of the City's fire safety actions. The Program must begin and continue wherever it is needed as without

such restrictions in place, the discussion of added density in high risk fire areas has little meaning;

- Funding to continue the work to create a network of safe paths throughout the City. See map attached for a list of Unbuilt Pathways in Districts 5 and 6. Pathways that are clear, with railings and lights, as appropriate, remain an important part of the City's evacuation planning.; and
- Funding for an increased vegetation management program that could proceed within the requirements necessitated by COVID-19 safety precautions.

Vegetation management is important for the whole City in that controlling a fire when and where it first starts protects the rest of the City as the wind direction will carry embers to start new fires in areas far from an initial fire, until the whole City is aflame. Fire officials are reporting that of this date, the State is at heightened risk of wildfire.

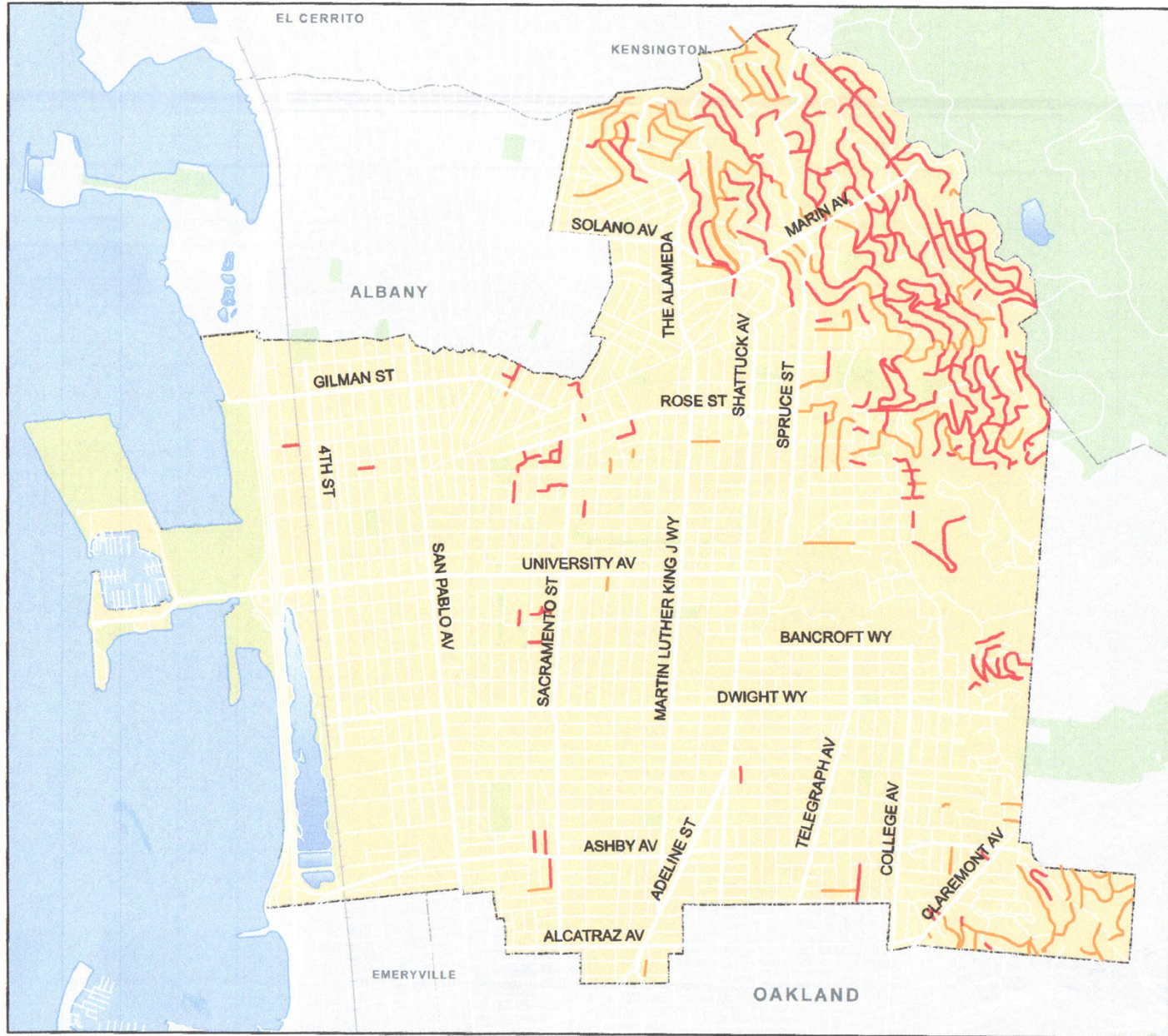
Additional funding is therefore an essential part of what needs to be set in place to ensure that we will save as many lives and protect property as is possible. In making this recommendation for additional funding, it should be noted that on October 15, 2020, the City Council adopted Resolution 69,147-N.S. making wildfire prevention and safety a top priority and that wildfire prevention and safety be addressed as the highest priority on the next updates to the City's General Plan, Climate Action Plan, Local Hazard Mitigation Plan, Resiliency Strategy, 2050 Vision and any other plans where it may be appropriate, and be reflected in City policies and allocation of resources.

A citywide ballot measure is in the process of being written. The DFSC has yet to receive any language to review.

CONCLUSION

1. That the DFSC sends to the Planning Commission that we support Option 1 to continue existing prohibitions on new ADUs in the ES-R District and Hillside Overlay on
 - a. streets less than 26 feet wide, and
 - b. additionally on those positions of Grizzly Peak Boulevard and Spruce that are designated evacuation routes in the ES-R District and Hillside Overlay, and
 - c. additionally on streets of wider width where there are "pinch points" that will not allow emergency vehicle access.
2. That we leave to the Planning Commission the issue of additional ADUs on streets less than 26 feet that are not in the ES-R, Fire Zones or Hillside Overlay, but in so doing, recommend that these streets must also have unimpeded emergency vehicle access.
3. That we include in our response to the Planning Commission the request that they join us in recommending to the Council funding for a citywide alert system with consideration of special temporary funding for low income vulnerable individuals during high risk days and power outages, full funding for the Safe Passage Program for the purpose of immediate

and continued enforcement of existing code regarding parking restrictions wherever needed, and a more rigorous vegetation management program.



FIRE ACCESS MAP

- Pavement Width Less than 24 ft
- Pavement Width Less than 26 ft
- Parks
- City Limits

This map is for reference purposes only.

Care was taken in the creation of this map, but it is provided "AS IS". Please contact the City of Berkeley to verify map information or to report any errors.

October 2, 2015



0 1,000 2,000 Feet



CITY OF BERKELEY
Land Use Planning Division
Dept. of Planning & Development
2120 Milvia Street, 2nd Floor
Berkeley, CA 94704



California Department of Housing and
Community Development

Accessory Dwelling Unit Handbook



Where foundations begin

Updated December 2020



California Department of Housing and
Community Development

Accessory Dwelling Unit Handbook

December 2020



Where foundations begin

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Understanding Accessory Dwelling Units (ADUs) and Their Importance



California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative

environmental impacts.

Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are Accessory Dwelling Units (ADUs - also referred to as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling Units (JADUs).

What is an ADU?

An ADU is an accessory dwelling unit with complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build and offer benefits that address common development barriers such as affordability and environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land, dedicated parking or other costly infrastructure required to build a new single-family home. Because they are contained inside existing single-family homes, JADUs require relatively modest renovations and are much more

affordable to complete. ADUs are often built with cost-effective one or two-story wood frames, which are also cheaper than other new homes. Additionally, prefabricated ADUs can be directly purchased and save much of the time and money that comes with new construction. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents often want better access to schools and do not necessarily require single-family homes to meet their needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. To address our state's needs, homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners who can receive extra monthly rent income.

ADUs also give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care, thus helping extended families stay together while maintaining privacy. The space can be used for a variety of reasons, including adult children who can pay off debt and save up for living on their own.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees and relaxing zoning requirements. A 2019 study from the Turner Center on Housing Innovation noted that one unit of affordable housing in the Bay Area costs about \$450,000. ADUs and JADUs can often be built at a fraction of that price and homeowners may use their existing lot to create additional housing, without being required to provide additional infrastructure. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, highopportunity areas. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.

Summary of Recent Changes to Accessory Dwelling Unit Laws



In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. Changes to ADU laws effective January 1, 2021, further reduce barriers, better streamline approval processes, and expand capacity to

accommodate the development of ADUs and junior accessory dwelling units (JADUs).

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the California Department of Housing and Community Development (HCD) has prepared this guidance to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. The following is a summary of recent legislation that amended ADU law: AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019). Please see Attachment 1 for the complete statutory changes for AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019).

AB 3182 (Ting)

Chapter 198, Statutes of 2020 (Assembly Bill 3182) builds upon recent changes to ADU law (Gov. Code, § 65852.2 and Civil Code Sections 4740 and 4741) to further address barriers to the development and use of ADUs and JADUs.

This recent legislation, among other changes, addresses the following:

- States that an application for the creation of an ADU or JADU shall be *deemed approved* (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days.
- Requires ministerial approval of an application for a building permit within a residential or mixed-use zone to create one ADU *and* one JADU per lot (not one or the other), within the proposed or existing singlefamily dwelling, if certain conditions are met.
- Provides for the rental or leasing of a separate interest ADU or JADU in a common interest development, notwithstanding governing documents that otherwise appear to prohibit renting or leasing of a unit, *and* without regard to the date of the governing documents.
- Provides for not less than 25 percent of the separate interest units within a common interest development be allowed as rental or leasable units.

AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski)

Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Gov. Code § 65852.2, 65852.22) and further address barriers to the development of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).
- Clarifies areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).

- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025 (Gov. Code, § 65852.2, subd. (a)(6)).
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and requires approval of a permit to build an ADU of up to 800 square feet (Gov. Code, § 65852.2, subds. (c)(2)(B) & (C)).
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of offstreet parking spaces cannot be required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).
- Clarifies that “public transit” includes various means of transportation that charge set fees, run on fixed routes and are available to the public (Gov. Code, § 65852.2, subd. (j)(10)).
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees (Gov. Code § 65852.2, subd. (f)(3)); ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd. (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd. (j)(2)).
- Authorizes HCD to notify the local agency if HCD finds that their ADU ordinance is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation (RHNA) housing needs (Gov. Code, §§ 65583.1, subd. (a), and 65852.2, subd. (m)).
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them (Gov. Code, § 65852.2, subds. (a)(3), (b), and (e)).
- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the singlefamily residence (Gov. Code § 65852.22, subd. (a)(4); former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).

AB 587 (Friedman), AB 670 (Friedman), and AB 671 (Friedman)

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an impact on state ADU law,

particularly through Health and Safety Code Section 17980.12. These pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households (Gov. Code, § 65852.26).
- AB 670 provides that covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civ. Code, § 4751).
- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Gov. Code, § 65583; Health & Safety Code, § 50504.5).

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Frequently Asked Questions:

Accessory Dwelling Units¹

1. Legislative Intent

a. Should a local ordinance encourage the development of accessory dwelling units?

Yes. Pursuant to Government Code Section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities and others. Therefore, ADUs are an essential component of California's housing supply.

ADU law and recent changes intend to address barriers, streamline approval,

Government Code 65852.150:

(a) The Legislature finds and declares all of the following:

- (1) Accessory dwelling units are a valuable form of housing in California.*
 - (2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.*
 - (3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.*
 - (4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.*
 - (5) California faces a severe housing crisis.*
 - (6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.*
 - (7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.*
 - (8) Accessory dwelling units are, therefore, an essential component of California's housing supply.*
- (b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.*

¹ Note: Unless otherwise noted, the Government Code section referenced is 65852.2.

and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU ordinances must be carried out consistent with Government Code, Section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

In addition, ADU law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies. (Gov. Code, § 65852.2, subd. (g)).

2. Zoning, Development and Other Standards

A) Zoning and Development Standards

- **Are ADUs allowed jurisdiction wide?**

No. ADUs proposed pursuant to subdivision (e) must be considered in any residential or mixed-use zone. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service, and the impacts on traffic flow and public safety. Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Examples of public safety include severe fire hazard areas and inadequate water and sewer service and includes cease and desist orders. Impacts on traffic flow should consider factors like lesser car ownership rates for ADUs and the potential for ADUs to be proposed pursuant to Government Code section 65852.2, subdivision (e). Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns. (Gov. Code, § 65852.2, subd. (e))

Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

- **Can a local government apply design and development standards?**

Yes. A local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and

standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources.

However, these standards shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

What does objective mean?

“objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Gov Code § 65913.4, subd. (a)(5)

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to do so. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with ADU law. Examples of these processes include areas where additional health and safety concerns must be considered, such as fire risk.

- **Can ADUs exceed general plan and zoning densities?**

Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning that does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C).)

- **Are ADUs permitted ministerially?**

Yes. ADUs must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks, or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways such as privacy, compatibility with neighboring properties or promoting harmony and balance in the community; subjective standards shall not be imposed for ADU development. Further, ADUs must not be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code, § 65852.2, subd. (a)(3).)

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure or a new construction detached ADU subject to certain development standards.

- **Can I build an ADU in a historic district, or if the primary residence is subject to historic preservation?**

Yes. ADUs are allowed within a historic district, and on lots where the primary residence is subject to historic preservation. State ADU law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards do not apply to ADUs proposed pursuant to Government Code section 65852.2, subdivision (e).

As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinance and submit these standards along with their ordinance to HCD. (Gov. Code, § 65852.2, subds. (a)(1)(B)(i) & (a)(5).)

B) Size Requirements

- **Is there a minimum lot size requirement?**

No. While local governments may impose standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (800 square feet ADU with a height limitation of 16 feet and 4 feet side and rear yard setbacks). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility.

What is a statewide exemption ADU?

A statewide exemption ADU is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with 4 feet side and rear yard setbacks. ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, ADU law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an

attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code section 17958.1.

The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance.

Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used for a maximum unit size?**

Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unit size for attached or detached ADUs but only if it does not restrict an ADU's size to less than the standard of at least 850 square feet (or at least 1000 square feet for ADUs with more than one bedroom). Local agencies must not, by ordinance, establish any other minimum or maximum unit sizes, including based on a percentage of the primary dwelling, that precludes a statewide exemption ADU. Local agencies utilizing percentages of the primary dwelling as maximum unit sizes could consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

Yes. Maximum unit sizes, by ordinance, can exceed 1,200 square feet for ADUs. ADU law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs (Gov. Code, § 65852.2, subd. (g)).

Larger unit sizes can be appropriate in a rural context or jurisdictions with larger lot sizes and is an important approach to creating a full spectrum of ADU housing choices.

C) Parking Requirements

- **Can parking requirements exceed one space per unit or bedroom?**

No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances.

What is Tandem Parking?

Tandem parking means two or more automobiles that are parked on a driveway or in any other location on a lot, lined up behind one another. (Gov. Code, § 65852.2, subs. (a)(1)(D)(x)(I) and (j)(11).)

Local agencies may choose to eliminate or reduce parking requirements for ADUs such as requiring zero or half a parking space per each ADU.

- **Is flexibility for siting parking required?**

Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi).)

- **Can ADUs be exempt from parking?**

Yes. A local agency shall not impose ADU parking standards for any of the following, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10).

- (1) Accessory dwelling unit is located within one-half mile walking distance of public transit.
- (2) Accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) Accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

Note: For the purposes of state ADU law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways and other forms of transportation that charge set fares, run on fixed routes and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the coastal zone.

D) Setbacks

- **Can setbacks be required for ADUs?**

Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. Additional setback requirements may be required in the coastal zone if required by a local coastal program. Setbacks may also account for utility easements or recorded setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant

to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks of less than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a statewide exemption ADU and must not unduly constrain the creation of all types of ADUs. (Gov. Code, § 65852.2, subd. (c).)

E) Height Requirements

- **Is there a limit on the height of an ADU or number of stories?**

Not in state ADU law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)

F) Bedrooms

- **Is there a limit on the number of bedrooms?**

State ADU law does not allow for the limitation on the number of bedrooms of an ADU. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs.

G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. Should an ADU be 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

What is "Proportionately"?

"Proportionately" is some amount that corresponds to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and ultimately, the creation of ADUs. In the case of the example above, anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs.

For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square foot expansion, a total ADU square footage over 750 square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A).)

- **Can local agencies, special districts or water corporations waive impact fees?**

Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may also use fee deferrals for applicants.

- **Can school districts charge impact fees?**

Yes. School districts are authorized but do not have to levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home. (Gov. Code, §§ 65852.2, subd. (f), and 66000)

- **Can I still be charged water and sewer connection fees?**

ADUs converted from existing space and JADUs shall not be considered by a local agency, special district or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. State ADU law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2)(A).)

H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e))

- **Are local agencies required to comply with subdivision (e)?**

Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of ADU law, most notably zoning and development standards. For example, ADUs under this subdivision should not have

to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e) are:

- b. One ADU and one JADU are permitted per lot within the existing or proposed space of a single-family dwelling, or a JADU within the walls of the single family residence, or an ADU within an existing accessory structure, that meets specified requirements such as exterior access and setbacks for fire and safety.**
- c. One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.**
- d. Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.**
- e. Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.**

The above four categories are not required to be combined. For example, local governments are not required to allow (a) and (b) together or (c) and (d) together. However, local agencies may elect to allow these ADU types together.

Local agencies shall allow at least one ADU to be created within the non-livable space within multifamily dwelling structures, or up to 25 percent of the existing multifamily dwelling units within a structure and may also allow not more than two ADUs on the lot detached from the multifamily dwelling structure. New detached units are subject to height limits of 16 feet and shall not be required to have side and rear setbacks of more than four feet.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards. This would enable the conversion of an accessory structure, such as a 2,000 square foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings. These types of ADUs are also eligible for a 150 square foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide replacement or additional parking. Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days, and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs shall not be counted as units when calculating density for the general plan and are not subject to owneroccupancy.

- **Can I convert my accessory structure into an ADU?**

Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through the state ADU law. These conversions of accessory structures are not subject to any additional development standard, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under building and safety codes. A local agency should not set limits on when the structure was created, and the structure must meet standards for health and safety. Finally, local governments may also consider the conversion of illegal existing space and could consider alternative building standards to facilitate the conversion of existing illegal space to minimum life and safety standards.

- **Can an ADU converting existing space be expanded?**

Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. In addition, an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.

As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.

I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per state law. For example, an applicant shall not be required to improve sidewalks, carry out street improvements, or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, an applicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).)

J) Renter and Owner-occupancy

- **Are rental terms required?**

Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, § 65852.2, subds. (a)(6) & (e)(4).)

- **Are there any owner-occupancy requirements for ADUs?**

No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.

However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU, or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. (Gov. Code, § 65852.2, subd. (a)(2).)

K) Fire Sprinkler Requirements

- **Are fire sprinklers required for ADUs?**

No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subds. (a)(1)(D)(xii) and (e)(3).)

Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence” for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

L) Solar Panel Requirements

- **Are solar panels required for new construction ADUs?**

Yes, newly constructed ADUs are subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, non-manufactured, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.

Please refer to the CEC on this matter. For more information, see the CEC’s website www.energy.ca.gov.

You may email your questions to: title24@energy.ca.gov, or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD's website at <https://www.hcd.ca.gov/policyresearch/AccessoryDwellingUnits.shtml>.

3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22

- **Are two JADUs allowed on a lot?**

No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1).)

- **Are JADUs allowed in detached accessory structures?**

No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the singlefamily residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subds. (a)(1), (a)(4), and (h)(1).)

- **Are JADUs allowed to be increased up to 150 square feet when created within an existing structure?**

No. Only ADUs are allowed to add up to 150 square feet “beyond the physical dimensions of the existing accessory structure” to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

Yes. There are owner-occupancy requirements for JADUs. The owner must reside in either the remaining portion of the primary residence, or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

4. Manufactured Homes and ADUs

- **Are manufactured homes considered to be an ADU?**

Yes. An ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes a manufactured home (Health & Saf. Code, § 18007).

Health and Safety Code section 18007, subdivision (a): “**Manufactured home**,” for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is

transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. "Manufactured home" includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

5. ADUs and the Housing Element

- **Do ADUs and JADUs count toward a local agency's Regional Housing Needs Allocation?**

Yes. Pursuant to Government Code section 65852.2 subdivision (m), and section 65583.1, ADUs and

JADUs may be utilized towards the Regional Housing Need Allocation (RHNA) and Annual Progress Report (APR) pursuant to Government Code section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition, and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey, can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other applications.

- **Is analysis required to count ADUs toward the RHNA in the housing element?**

Yes. To calculate ADUs in the housing element, local agencies must generally use a three-part approach:

(1) development trends, (2) anticipated affordability and (3) resources and incentives.

Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends.

Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code, § 65583 and Health & Saf. Code, § 50504.5.)

6. Homeowners Association

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU or JADU?**

No. Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance.

7. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General.

In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

8. Other

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

No. Ordinances existing prior to the new 2020 laws are only null and void to the extent that existing ADU ordinances conflict with state law. Subdivision (a)(4) of Government Code Section 65852.2 states an ordinance that fails to meet the requirements of subdivision (a) shall be null and void and shall apply the state standards (see Attachment 3) until a compliant ordinance is adopted. However, ordinances that substantially comply with ADU law may continue to enforce the existing ordinance to the extent it complies with state law. For example, local governments may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law. At the same

time, ordinances that are fundamentally incapable of being enforced because key provisions are invalid -- meaning there is not a reasonable way to sever conflicting provisions and apply the remainder of an ordinance in a way that is consistent with state law -- would be fully null and void and must follow all state standards until a compliant ordinance is adopted.

- **Do local agencies have to adopt an ADU ordinance?**

No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose to not adopt an ADU ordinance, any proposed ADU development would be only subject to standards set in state ADU law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with state ADU law. (See Attachment 4 for a state standards checklist.)

- **Is a local government required to send an ADU ordinance to the California Department of Housing and Community Development (HCD)?**

Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to HCD within 60 days after adoption. After the adoption of an ordinance, the Department may review and submit written findings to the local agency as to whether the ordinance complies with this section. (Gov. Code, § 65852.2, subd. (h)(1).)

Local governments may also submit a draft ADU ordinance for preliminary review by HCD. This provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with the new state ADU law.

- **Are charter cities and counties subject to the new ADU laws?**

Yes. ADU law applies to a local agency which is defined as a city, county, or city and county, whether general law or chartered. (Gov. Code, § 65852.2, subd. (j)(5)).

Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared ADU law as “...a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution” and concluded that ADU law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the Coastal Zone?**

Yes. ADU laws apply to jurisdictions in the Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (l)).

Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the [California Coastal Commission 2020 Memo](#) and reach out to the locality’s local Coastal Commission district office.

- **What is considered a multifamily dwelling?**

For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.

Resources



Attachment 1: Statutory Changes (Strikeout/Italics and Underline)

**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2
Combined changes from (AB 3182 Accessory Dwelling
Units) and (AB 881, AB 68 and SB 13 Accessory
Dwelling Units)**

(Changes noted in strikeout, underline/italics)

Effective January 1, 2021, Section 65852.2 of the Government Code is amended to read:

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling. (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required. (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

- (c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.
- (2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:
- (A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.
- (B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:
- (i) 850 square feet.
 - (ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.
- (C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.
- (d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:
- (1) The accessory dwelling unit is located within one-half mile walking distance of public transit.
 - (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
 - (3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
 - (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - (5) When there is a car share vehicle located within one block of the accessory dwelling unit.
- (e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:
- (A) One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
- (i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.
 - (ii) The space has exterior access from the proposed or existing single-family dwelling.
 - (iii) The side and rear setbacks are sufficient for fire and safety.
 - (iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.
- (B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:
- (i) A total floor area limitation of not more than 800 square feet.
 - (ii) A height limitation of 16 feet.
- (C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
- (ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.
- (D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.
- (2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section. (2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

- (ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
- (3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
- (B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
- (i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
- (j) As used in this section, the following terms mean:
- (1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:
- (A) An efficiency unit.
- (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
- (2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
- (3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
- (4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
- (5) "Local agency" means a city, county, or city and county, whether general law or chartered.
- (6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
- (7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
- (8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
- (9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
- (10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
- (k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
- (l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
- (m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
- (n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
- (1) The accessory dwelling unit was built before January 1, 2020.

- (2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
- (o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.
(Becomes operative on January 1, 2025)

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2021 statute noted in underline/italic):

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

- (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
- (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
- (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
- (D) Require the accessory dwelling units to comply with all of the following:
 - (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
 - (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
 - (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling. (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
 - (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
 - (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
 - (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
 - (viii) Local building code requirements that apply to detached dwellings, as appropriate.
 - (ix) Approval by the local health officer where a private sewage disposal system is being used, if required. (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are

made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or ~~imposed, including any owner-occupant requirement, except that~~ imposed except that, subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following: (A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following: (i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling

unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet. (ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).

~~(4)~~ (5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

~~(5)~~ (6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

~~(6)~~ (7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family ~~home.~~ dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its

drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section. (2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

- (10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
- (k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
- (l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
- (m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
- (n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
- (1) The accessory dwelling unit was built before January 1, 2020.
- (2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
- (o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed.~~ *become operative on January 1, 2025.*

Effective January 1, 2021, Section 4740 of the Civil Code is amended to read (changes noted in ~~strikeout~~, underline/italics) (AB 3182 (Ting)):

4740.

- (a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to ~~his or her~~ *their* separate interest.
- (b) ~~Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.~~
- (c) *(b)* For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:
- (1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.
- (2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.
- ~~(d)~~ *(c)* Prior to renting or leasing ~~his or her~~ *their* separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative. ~~(e)~~ *(d)* Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.
- ~~(f) This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.~~

Effective January 1, 2021 of the *Section 4741 is added to the Civil Code, to read (AB 3182 (Ting))*:

4741.

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.

(b) A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased. (c) This section does not prohibit a common interest development from adopting and enforcing a provision in a governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.

(d) For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.

(e) For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.

(f) A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governing documents to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.

(g) A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(h) In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Effective January 1, 2020, Section 65852.22 of the Government Code is was amended to read (AB 68 (Ting)):

65852.22.

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of proposed or existing single-family residence.

- (5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the proposed or existing single-family residence.
- (6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:
- (A) A cooking facility with appliances.
 - (B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
- (b) (1) An ordinance shall not require additional parking as a condition to grant a permit.
- (2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.
- (c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.
- (d) For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.
- (e) For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.
- (f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all singlefamily residences regardless of whether the single-family residence includes a junior accessory dwelling unit. (g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.
- (h) For purposes of this section, the following terms have the following meanings:
- (1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
 - (2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 is was added to the Health and Safety Code, immediately following Section 17980.11, to read (SB 13 (Wieckowski)):

17980.12.

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:

(A) The accessory dwelling unit was built before January 1, 2020.

(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.

(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.

(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).

(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2. (c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4,
ARTICLE 2**

AB 587 Accessory Dwelling Units

Effective January 1, 2020 Section 65852.26 is was added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

65852.26.

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

(1) The property was built or developed by a qualified nonprofit corporation.

(2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.

(B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.

(C) A requirement that the qualified buyer occupy the property as the buyer's principal residence.

(D) Affordability restrictions on the sale and conveyance of the property that ensure the property 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.

(4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(b) For purposes of this section, the following definitions apply:

(1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

**CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5,
ARTICLE 1**

AB 670 Accessory Dwelling Units

Effective January 1, 2020, Section 4751 is was added to the Civil Code, to read (AB 670 (Friedman)):
4751.

(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3,
ARTICLE 10.6**

AB 671 Accessory Dwelling Units

Effective January 1, 2020, Section 65583(c)(7) of the Government Code is was added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):
65583(c)(7).

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 is was added to the Health and Safety Code, to read (AB 671 (Friedman)):

50504.5.

- (a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.
- (b) The list shall be posted on the department's internet website by December 31, 2020.
- (c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

Attachment 2: State Standards Checklist

YES/NO	STATE STANDARD*	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains a proposed, or existing, dwelling.	65852.2(a)(1)(D)(ii)
	The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure, or detached from the proposed or existing dwelling and located on the same lot as the proposed or existing primary dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing primary dwelling but shall be allowed to be at least 800/850/1000 square feet.	65852.2(a)(1)(D)(iv), (c)(2)(B) & C)
	Total area of floor area for a detached accessory dwelling unit does not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.	65852.2(a)(1)(D)(vii)
	Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)(l)

Attachment 3: Bibliography

[ACCESSORY DWELLING UNITS: CASE STUDY](#) (26 pp.)

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

[THE MACRO VIEW ON MICRO UNITS](#) (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

[SECONDARY UNITS AND URBAN INFILL: A Literature Review](#) (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

[RETHINKING PRIVATE ACCESSORY DWELLINGS](#) (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed “accessory dwelling units” that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-law suites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.

[Regulating ADUs in California: Local Approaches & Outcomes](#) (44 pp.)

By Deidra Pfeiffer

Terner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting—contribute to these goals. This research helps to fill this gap by using data from the Terner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2) a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging in place. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to help align formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

[ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes](#) (8 p.)

By David Garcia (2017)

Terner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes.

In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of singlefamily homes that have an ADU could contribute meaningfully to California's housing shortage.

[Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver](#) (29 pp.)

By Karen Chapple et al (2017)

Terner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized.

The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and

Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

[Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain](#) (37 pp.)

By Darrel Ramsey-Musolf (2018)

University of Massachusetts Amherst, ScholarWorks@UMass Amherst

In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low-income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.

Date: March 16, 2021 DRAFT submitted by Shirley Dean
To: Berkeley City Council
From: Disaster and Fire Safety Commission
Submitted by: Jose Luis DeBolla, Chair, Disaster and Fire Safety Commission
Subject: Response to City Council Short Term Referral to City Manager, Disaster and Fire Safety Commission and Planning Commission to Amend Local Accessory Dwelling Unit (ADU) Zoning Ordinance and Berkeley's Fire Code.

SUMMARY:

On January 26, 2021 the City Council approved a referral to the Disaster and Fire Safety Commission (DFSC) and Planning Commission that requested comments on amendments to the Accessory Dwelling Unit (ADU) Zoning Ordinance related to high-risk fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3. Within that referral, it was requested that additional Objective Standards in Zones 2 and 3 and amendments to the Fire Code be considered as follows:

1. Newly constructed, detached ADUs be limited in Zones 2 and 3 to a base maximum of 850 sq. feet.
2. Compliance with front yard, side yard and open space and lot coverage requirements
3. Fire Code amendments to prohibit parking on streets where egress and ingress will be adversely impacted by additional vehicles and increased population.
4. Requiring sprinklers in new construction.
5. Explore California Health and Safety Code Sec. 13869.7 to mitigate the adverse impacts of ADU creation in requiring safe and adequate ingress and egress routes and sufficient off-street parking.

Given a 90-day response time, the deadline for reply is April 26, 1-2 days (depending on how the days are counted) before the next regularly scheduled DFSC meeting, April 28. Some parts of the referral involve Objective Development Standards and Fire Code amendments which may be submitted by separate item.

California Government Code Section 65852.2. (a) states that a local agency may “by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family use” and that the local ordinance can “(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. “The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.” Emphasis added.

In response to the Council referral referenced above, the DFSC recommends that ADUs be regulated as follows:

1. In Berkeley where significant public safety issues exist. These issues are the areas that:
 - a) contain the Hayward Fault; b) the USGS designated landslide areas; c) the CAL FIRE identified high-risk wildfire areas; and d) existing development that is served by 232,000 feet of curving roads which are 26 feet wide or less which will not accommodate both fire-fighting equipment and resident evacuation at the same time. The Fire Department indicates that these factors are present in Fire Zones 2 and 3 and the Hillside Overlay District. The presence of these significant public safety issues provides the basis for establishing the areas in which ADUs should be regulated.
2. The regulations within these high-risk public safety areas described above should include the following:
 - a. One Accessory Dwelling Unit (ADU) would be allowed entirely within an existing building, with a maximum size of 850 sq. ft.
 - b. A 150 sq. ft. ADU addition would be allowed attached to the existing building to allow access to the 850 sq. ft. inside the building.
 - c. If the ADU within the building is less than 850 sq. ft, an addition attached to the building and compliant with zoning standards for side, front and rear yards and building height, would be allowed to make the total square footage of the ADU within and outside the building, equal to 850 sq ft.
 - d. A Junior Accessory Dwelling Unit (JADU) which would be allowed in addition to the ADU on a single parcel by State law would not be allowed within the high-risk safety areas.
 - e. The application for the ADU must be made by an owner occupant of the existing building. This provision is in the existing Government Code. DFSC would prefer requiring owner occupancy when an ADU is allowed, but we understand that this is prohibited by the existing Code. We request a legal opinion regarding this point and if this can be done, owner occupancy should be a requirement.
 - f. While the existing State Code states that if a garage or car port is used for the ADU, the parking would not have to be replaced. However, DFSC recommends that one parking space for the existing unit and one parking space for the ADU be required with those spaces achieved by either tandem parking on-site, or one or both spaces provided in the front setback under design conditions set by the City, or where fronting streets provide parking limited to one side of the street that each abutting property be issued a permit for one of those spaces and if that parcel has a ADU, one permit must be provided on-site.
 - g. Designated evacuation sites located within the ADU regulated areas should be subject to these same regulations even if that part of the street is within a "Transit Corridor." However, the on-site parking space for ADUs in these areas would not be required. See below for further discussion of street parking in these areas.
3. Because of public safety issues, additional housing development over and above the provisions for ADUs should not be considered for Fire Zones 2 and 3 and the Hillside Overlay areas.
4. DFSC further requests that the City Council consider additional funding: for a citywide alert system; continued work to improve the City's pathway system; expanded

implementation of the Safe Passages Program and continued enforcement of existing parking restrictions that impede emergency vehicle access; an expanded robust vegetation management program including adoption of a Fire Code that is more specific regarding Berkeley structures, and the formation of a fire hardening program applicable to all existing structures within the ADU regulated areas.

In arriving at our recommendations, DFSC wants to acknowledge that an individualized approval process for permitting ADUs would be, by far, preferable. However, since that option is no longer available due to limitations of California law, we have, reluctantly, not included that preference among the factors that were considered.

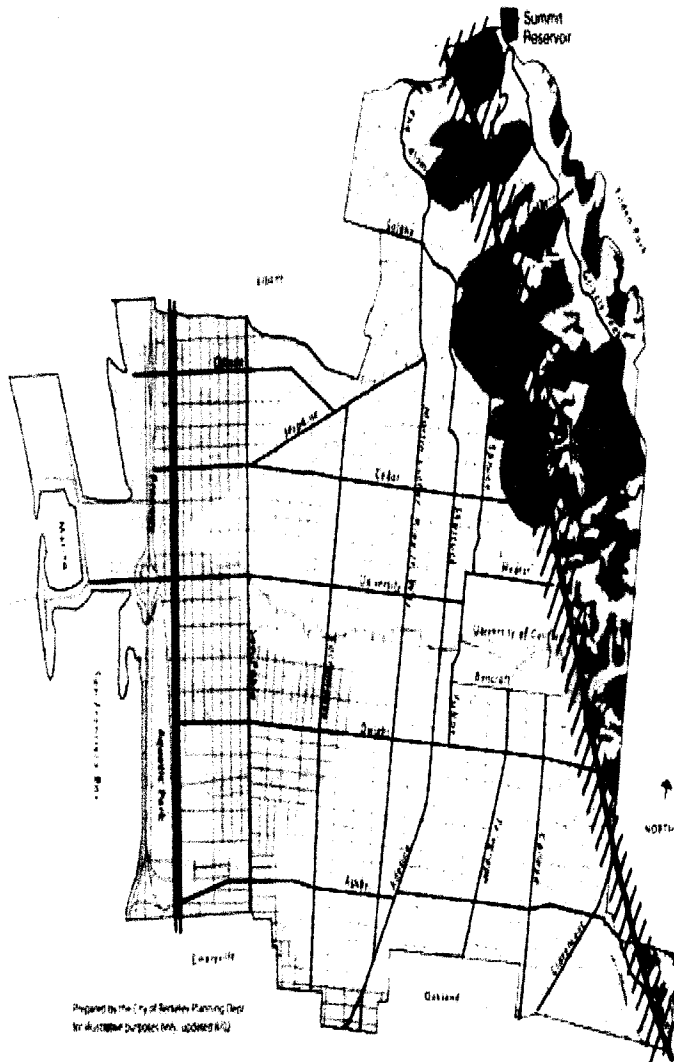
BACKGROUND:

- May 29, 2018: Council adopted an ordinance prohibiting ADUs in the Environmental Safety-Residential District (ESR) and requiring discretionary review and approval by the Fire Department of ADUs in the Hillside Overlay (R-1h).
- October 9, 2019: AB 881 mandated a statewide, streamlined ADU permitting approval process that applies to all California cities, including charter cities like Berkeley. Several amendments followed. Current State regulations, effective January 1, 2020, allow for ADU permits to be granted by a ministerial/over-the-counter process within 60 days of application to construct one ADU with a maximum size of 850 sq ft and one JADU of lesser size on each parcel. State law now prohibits the discretionary review of such permits that we formerly had in Berkeley. However, State law provides that local jurisdictions can regulate the areas in which ADUs and JADUs would impact water and sewage provision, traffic flow and public safety.
- December 10, 2019 : Council adopted an initial 45-day Urgency Ordinance to allow time to consider what would be needed to provide protections in Fire Zones 2 and 3. The extension was scheduled to expire on January 24, 2020.
- January 21, 2020: Council unanimously adopted an amendment to Berkeley Municipal Code Chapter 23C.24. extending limits on ADU development for a period of 10 months and 15 days pending further analysis and adoption of local regulations that were meant to ensure public safety in Fire Zones 2 and 3.
- July 6, 2020: DFSC discussed ADUs in Fire Zones 2 and 3 and the Hillside Overlay. The Urgency Ordinance would expire in September 2020 and the Council requested the Planning Commission to consider the issue and to seek feedback from the DFSC in making their response. The DFSC considered a presentation by Katrina Lapira, Assistant Planner, Land Use Planning Division. and Arlene Pearson, Secretary, Berkeley Planning Commission and received comments from members of the public.
- July 13, 2020: DFSC unanimously approved comments to the Planning Commission that would ban ADUs in Fire Zones 2 and 3 and the Hillside Overlay on streets that are 26 ft wide or less. The DFSC understood that these comments would appear on a Planning Commission agenda and that after holding a public hearing, staff would draft Zoning

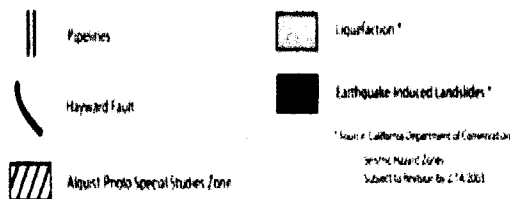
Ordinance amendments for the Planning Commission and City Council to consider before expiration of the existing Urgency Ordinance. However, for some unknown reason, the DFSC recommendations were never considered by the Planning Commission and the Urgency Ordinance prohibiting ADUs in Fire Zones 2 and 3 expired.

DISCUSSION:

In considering options which would increase population in high-risk safety areas there are four factors which must be addressed:



Prepared by the City of Berkeley Planning Dept for illustrative purposes only, updated 8/10/12



1. Local Hazards

Berkeley's General Plan which guides development decisions includes a Disaster Preparedness and Safety Element (DPSE). On December 10, 2019, the Council approved resolution 69,236-N.S. to adopt the five-year 2019 Local Hazard Mitigation Plan, to be incorporated into the General Plan as an appendix to the DPSE. In these documents, Earthquakes, Landslides (earthquake and rainfall triggered), and Wildland and Urban Interface Fire are listed as "Likely" and "Catastrophic" in Fire Zones 2 and 3 and the Hillside Overlay.

The Hayward Fault runs south to north across Berkeley through Fire Zones 2 and 3 and the the Hillside Overlay. Called the Alquist-Priolo Earthquake Zone, this area sits between other major faults, the San Andreas Fault to the west and the Rodgers Creek Fault to the east.

Experts state that it is not a question of "if" but "when" a major earthquake, commonly referred to as the "Big One," will strike in the Bay Area. The U.S. Geologic Survey predicts a 72% probability that one or more magnitude 6.7 or greater earthquakes will strike in the San Francisco Bay Region between 2014 and 2043. The largest percentage predicted for any of the faults - 33% - is

that it will occur on the Hayward Fault during this time period.

Berkeley can expect "lurch cracking" resulting in extensive fracturing of pavement, damage to sewer, gas, and water lines and landslides primarily in the hill areas, resulting in significant property damage, injury, and loss of life from this and the fires that accompany earthquake damage. The map (Figure 13 from the DPSE) shows the approximate location of areas vulnerable to these hazards.

Geologists estimate that 45 to 65 percent of the landslide-susceptible areas will experience movement ranging from a few inches to 20 feet in an earthquake. It is further noted that most of Berkeley hillside development predates current best practices and codes. This makes large number of existing structures vulnerable to the threat of landslides. This threat is affected by degree of slope, weather, improper grading, alteration of drainage patterns and careless removal of vegetation.

There are also identified wildfire hazards to be considered. It should not be forgotten that in 1926, North Berkeley burned from the hills to about Oxford Street and was stopped only due to a shift in the wind. Following the October 1991 Berkeley/ Oakland Tunnel Fire which destroyed 3,500 homes, 2,000 automobiles, killed 25, injured 150 and caused \$3.4 billion in damages calculated in today's dollars, CAL FIRE designated Fire Zones 2 and 3 in Berkeley, giving them the highest rating of "very high severity" risk for wildfire. It cannot be denied that Berkeley's vulnerability is significantly higher than that of most cities due to this combination of hazards that are clustered together within the areas being recommended for ADU regulation.

Among the objectives listed in all the plans which have already been adopted by the City Council, are to reduce the potential for loss of life, injury and economic damage from earthquakes, landslides and wildfires and to improve responder access and community evacuation.

2. Climate Change:

Since 1991, a series of tragic California fires show a similar pattern of size, intensity and speed. An example being the November 2018 Camp Fire which destroyed the town of Paradise, CA. With an economic loss of around \$16.5 billion, the Camp Fire destroyed more than 18,000 structures and killed 85 people. On March 22, 2019, Governor Newsom declared a State of Emergency in California with regard to wildfire risk.

Wildfires have long been associated as starting from a combination of high wind speeds blowing from the northeast, high temperatures and low humidity, a situation referred to as "Diablo Winds." At one time, Diablo Winds occurred only in the fall. With climate change this has shifted, and they are now expected to occur throughout the whole year. These fires have been fueled by continuing long periods of drought and insect infestation which have promoted the build-up of fuel in the form of tinder dry brush and dead trees.

Recent newspaper reports indicate that the lack of rain this February combined with hot weather in June has left vegetation in Northern California drier now than it has been in any July since the state's historic five-year drought from 2012 to 2016. As one fire official said – we can expect the resulting fires to be bigger and more difficult to control. It is more essential than ever before for Berkeley to enact as soon as possible an expanded, careful and

rigorous program of vegetation management and fire hardening measures for structures to prevent fires as much as possible and protect residents and reduce property loss.

3. Existing Development/Density:

Development in Fire Zones 2 and 3 and the Hills Overlay area is more dense than is found in most hill areas in other cities largely because development in Berkeley occurred on minimum lot sizes of 5,000 square feet or less. At one time, it was estimated that about 50% of all single-family zoning in Berkeley existed on these smaller lots. In addition, flexible side setbacks resulted in houses being constructed more closely together. More housing in smaller spaces, clustered tightly together with dense vegetation around and between houses adds to the problems of fire spreading more rapidly and placing more people at risk. Adding both an ADU and a JADU on each lot as State law provides would compound the level of risk.

In 1983, the state approved SB 1534 allowing what was then called second units (known also as in-law apartments or "granny flats") which were then approved in R-1 single-family zoned areas with a discretionary permit granted through the Zoning Adjustments Board. Parking for the second unit was to be provided on site. Because of the review process, which was often controversial, some number of people constructed second units without permit. The number of these illegal units is unknown, but it is commonly known that they exist, and were built without permit so some may or may not fully meet code requirements, and some were rented without declaring and paying the appropriate level of federal, state and local taxes. Second units are now considered as a component of ADUs. A current discussion is whether these older second units and subsequent ADUs should be placed under rent control regulation. This report maintains that whether the Rent Board regulates them or not, such units which already exist should be "grandfathered in" and those built without a permit, should be legalized through inspection, and brought up to code. All existing units should be subject to current COVID-19 related eviction regulations as part of the effort to prevent homelessness.

The number of housing units, including units that have not been recorded in Fire Zones 2 and 3 and Hill Overlay District is not known. An attempt should be made to establish reliable population density data. It should also be acknowledged that there are an unknown number of seniors and disabled people with mobility challenges living in the public safety high-risk areas that will require special consideration. Such data should be used to protect and provide services to these residents both before and after a disaster occurs.

4. Evacuation of Residents:

The estimation of approximate population composition in these hazard areas is important from the standpoint of understanding what services need to be present to reduce fatalities and ensure safe evacuation of these most vulnerable residents. While pathways are rightly included in evacuation planning, fleeing a fire on foot by the elderly, disabled and parents with small children who need to be carried is not a good option.

Most of this group will require early evacuation by car and ultimately evacuation of most residents in the Fire Zones 2 and 3 and the Hillside Overlay area will leave by car which will have to be done over narrow, winding roads which are, at times, blocked by parked vehicles. Many should be advised to leave their homes early and seek shelter elsewhere during high-risk

fire periods and Power Safety Shut Offs, if they have the resources to do so. However, many, not just in the hills, but throughout the City, will not have the resources to periodically leave their homes, so DFSC recommends that the City adopt a plan that provides temporary shelter for the early evacuation of vulnerable residents to safer locations during these times.

It is extremely important to understand that a response to a wildfire emergency involves BOTH access to the fire by responding equipment and personnel AND egress from the area by fleeing residents at the same time. State law does not require replacement of parking for the primary building if an ADU replaces an existing garage, car port or covered parking structure. Even if replacement parking were required, ADUs generate cars that are additional to cars associated with the primary building. Additional cars end up frequently being parked on the street. More cars on the street increase the possibility of clogging both access and egress traffic.

In a 12/3/2019 report, the DFSC Commission noted that the problem of emergency equipment access problems in the hills has been known for at least 41 years. Despite numerous recommendations, only a few narrow streets have had parking restrictions enacted. While to date, there is increased awareness of the problem by residents and subsequent cooperation, misunderstandings and complaints about inappropriate and dangerous parking are still occurring far too often. In a wildfire scenario, rapid evacuation of residents is necessary and emergency vehicle access must be assured. Both directions - up and out - must be accommodated.

Experience has indicated that no one can out-run a wildfire and prompt fire suppression efforts are essential to establishing control which helps protect the entire City. It is essential that steps be taken as soon as possible to enforce existing code regarding parking restrictions.

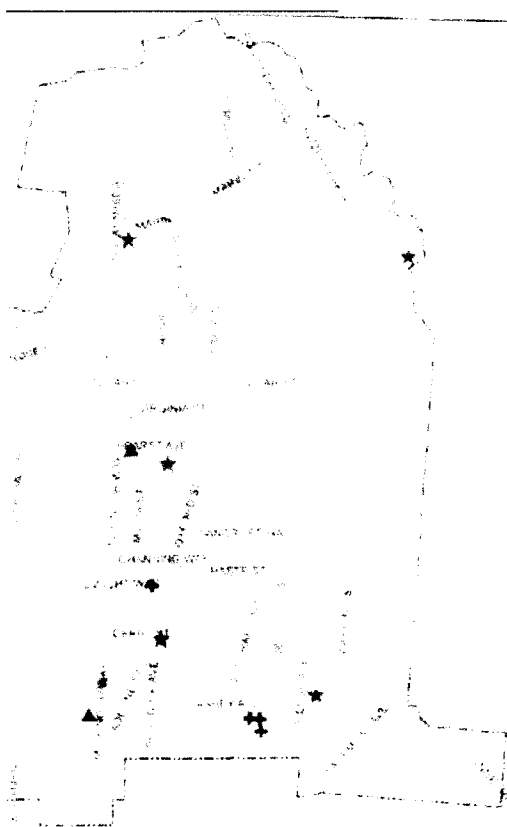
In 2015, a map indicating the streets in the City that are 26 feet wide or less is attached. The City has also produced a seven-page list of homes on those streets by address. Most narrow streets are located in the hill areas, but there are a few in other parts of the City. In this report as requested, the DFSC considered only those streets in the Fire Zones and the Hillside Overlay District. However, we recommend that the Planning Commission consider the other streets in the City that are less than 26 feet wide as a separate issue regarding ADUs, and in doing so, emergency vehicle access must be assured to those streets as well.

The DFSC is concerned, moreover, that designated evacuation routes have not been included for streets where ADUs should be regulated regardless of street width. In the northern area for example, Marin Avenue, from The Circle to Grizzly Peak, and except for a very small portion of Cedar Street, both streets are less than 26 feet wide and will fall within the proposed ADU regulation guidelines. However, the other two evacuation routes in this area are north south routes – one on Grizzly Peak Blvd (except for a portion at Fairlawn) and the other is a portion of Spruce Street that is also designated as being in a “Transit Corridor” which is considered appropriate for a much greater density than would be allowed under the proposed ADU regulations. Adding ADUs to this part of Spruce Street without requiring on-site parking will increase on-street parking and increase the possibility of hindering the two-lane necessity for emergency vehicle access and evacuation efforts in both directions. Mass evacuation from Fire

Zones 2 and 3 and the Hillside Overlay will be difficult and heavy, given the population density, the speed of the wildfire and the lack of effective east west routes. Many people have died in their cars while fleeing from wildfires.

Additionally, in discussions of evacuation issues over the years, it has been established that there are "pinch points" on otherwise adequate width streets that impede emergency vehicles. Such pinch points in the ADU regulated areas should be identified. These points have not been sufficiently named for inclusion at this time, but continuation of the Safe Passage Program should identify them so parking restrictions can be enacted in the future.

The Emergency Access and Evacuation Network Map, June 13, 2011



While important efforts such as Wildfire Evacuation Drills and initiation of the Safe Passages Program have been made within the last year, much remains to be done as soon as possible. Some important components of the work that needs to be done includes the following:

- Initiation of a citywide alert system, including a method for early evacuation and possible shelter for our most vulnerable residents throughout the City during periods of high-risk and power outages;
- Full funding of the Safe Passages Program which seeks to work with residents in designating where parking must be restricted. This program was initiated, then referred to a later budget for consideration, then put on hold due to the COVID-19 pandemic. Safe Passages has been considered to be a pilot program. While some details might vary from time to time in its implementation, it must be officially recognized that its purpose is to identify areas where parking based on existing

code in certain locations must be restricted because it is an essential component of the City's fire safety actions. The Program must begin and continue wherever it is needed as without such restrictions in place the lives of residents throughout the City are at risk.

- Funding to continue the work to create a network of safe paths throughout the City. See map attached for a list of Unbuilt Pathways in Districts 5 and 6. Pathways that are clear, with railings and lights, as appropriate, remain an important part of the City's evacuation planning.; and
- Funding for an increased vegetation management program that could proceed within any requirements necessitated by COVID-19 safety precautions. Vegetation management is important for the whole City in that controlling a fire when and where it first starts is added protection for the rest of the City as the wind direction

will carry embers to start new fires in areas far from an initial fire, until the whole City is aflame. Fire officials are reporting that of this date, the State is at heightened risk of wildfire.

Additional funding is therefore an essential part of what needs to be set in place to ensure that we will save as many lives and protect property as is possible. In making this recommendation for additional funding, it should be noted that on October 15, 2020, the City Council adopted Resolution 69,147-N.S. making wildfire prevention and safety a top priority and that wildfire prevention and safety be addressed as the highest priority on the next updates to the City's General Plan, Climate Action Plan, Local Hazard Mitigation Plan, Resiliency Strategy, 2050 Vision and any other plans where it may be appropriate, and be reflected in City policies and allocation of resources.

CONCLUSION:

In considering the significant public safety impacts described above, DFSC understands that the recommendation that will allow one ADU with a maximum size of 850 sq ft per parcel will increase population in our identified high-risk areas. However, we also hold that such an increase cannot be denied based on the facts that seniors and disabled residents have a real need for in-house care, that some families also need housing for family members to return home, and that some residents have a social desire to offer small rentals, particularly to students, and have a real need for the income that allows them to remain in their homes for a longer time. In response to these kinds of needs, we have tried to frame our recommendations in ways that support a response that recognizes the public safety issues involved. We remind you to review the section concerning owner occupancy.

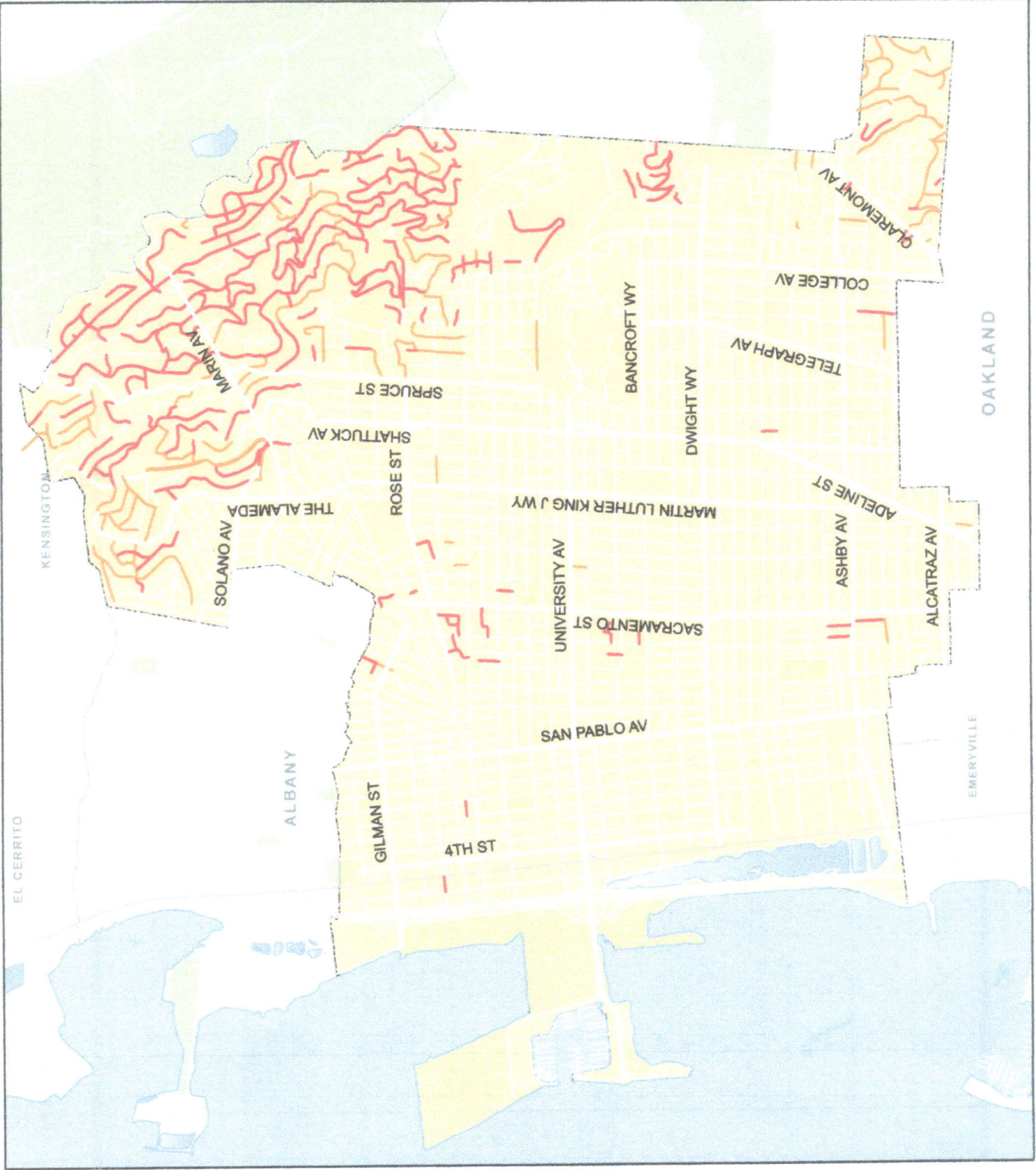
DFSC also recognizes the need for affordable housing in Berkeley. We could find no way to ensure that ADU units are affordable, but we know that small units will not be the most expensive in the City and that Section 8 vouchers can be used.

However, regardless of all these matters, it is imperative that the significant public safety issues present in Berkeley be recognized in order to save resident lives in not only in the designated high-risk areas but also throughout Berkeley. Even when the State is working hard to produce more housing and they find they are confronting public safety, the State chooses safety over increasing housing. Witness the current example in Lake County where residents want to build 1,400 homes in Guenoc Valley, the State filed a lawsuit to stop the housing project on the basis of wildfire danger. The State has also done this in Monterey and San Diego. In January 2021, the prestigious San Francisco law firm, Shute, Mihaly and Weinberger, filed two lawsuits with an emphasis on wildfire protection. It is possible that in today's world the homes in our Fire Zones 2 and 3 and the Historic Overlay would never have been built, but they were constructed, and we must now protect that area and our City.

cc: Planning Commission

FIRE ACCESS MAP

- Pavement Width
Less than 24 ft
- Pavement Width
Less than 26 ft
- Parks
- City Limits



This map is for reference purposes only.
 Care was taken in the creation of this map, but it is provided "AS IS". Please contact the City of Berkeley to verify map information or to report any errors.

October 2, 2015








CITY OF BERKELEY
 Department of Planning & Development
 2120 Milvia Street, 2nd Floor
 Berkeley, CA 94704

Unbuilt Pathways in Berkeley

Completely blocked or encroached

-  Avenidea Path - District 6
-  Cragmont Path - District 6
-  Halkin Walk (Lwr) - District 6
-  Miller Path West - District 6
-  Path 71 - District 6
-  Shasta Walk - District 6
-  Devon Lane (Uppr)-District 5

Trees or walls in Right of Way

-  Columbia Path (Uppr)-Dist 6
-  Harding Path - District 6
-  Hilgard Path - District 6
-  Summit Path - District 6
-  Wilson Path - District 6






Unencroached but steep

-  Grizzly Path - District 6
-  Delmar Path - District 6
-  Hill Path - District 6

No information

-  Parnassus Path - District 6
-  Twain Way - District 6

Dead end/private, no build possible

-  Eleanor Path - District 6
-  Highland Path - District 6
-  Laurel Lane - District 5
-  Le Conte Path - District 6
-  Path 74 - District 6



The Rights of Way for unbuilt paths are owned by the City of Berkeley. The paths are built & maintained by the Berkeley Path Wanderers Association with assistance from City of Berkeley Public Works. Base Map=Terrain. Author: C. Cullander

March 22, 2021: I am submitting amendments to the March 16 DRAFT of this item. The amendments are in red for your convenience in finding them. They are based on conversations I have had with Chairperson Bedolla and they are corrections and clarifications regarding the item which was submitted to you earlier.

Shirley Dean

Date: March XXX

To: Berkeley City Council

From: Disaster and Fire Safety Commission

Submitted by: Jose Luis Bedolla, Chair, Disaster and fire Safety Commission

Subject: Response to City Council Short Term Referral to City Manager, Disaster and Fire Safety Commission and Planning Commission to Amend Local Accessory Dwelling Unit (ADU) Zoning Ordinance and Berkeley's Fire Code.

SUMMARY:

Council Referral: On January 26, 2021 the City Council approved a referral to the Disaster and Fire Safety Commission (DFSC) and Planning Commission that requested comments on amendments to the Accessory Dwelling Unit (ADU) Zoning Ordinance related to high-risk fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3. Within that referral, it was requested that additional Objective Standards in Zones 2 and 3 and amendments to the Fire Code be considered as follows:

1. Newly constructed, detached ADUs with a base maximum of 850 sq. feet be limited in Zones 2 and 3.
2. Compliance with front yard, side yard and open space and lot coverage requirements
3. Fire Code amendments to prohibit parking on streets where egress and ingress will be adversely impacted by additional vehicles and increased population.
4. Requiring sprinklers in new construction.
5. Explore California Health and Safety Code Sec. 13869.7 to mitigate the adverse impacts of ADU creation in requiring safe and adequate ingress and egress routes and sufficient off-street parking.

DFSC Response: Given a 90-day response time, the deadline for reply is April 26, 1-2 days (depending on how the days are counted) before the next regularly scheduled DFSC meeting, April 28. Some parts of the referral involve the Objective Development Standards Group and Fire Code amendments which may be submitted by separate item.

Current State Law, California Government Code Section 65852.2. (a) states that a local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family use" that designates areas within the jurisdiction of the local agency where accessory dwelling units may be permitted "based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety." Emphasis added.

In response to the Council referral referenced above, the DFSC recommends that ADUs be regulated as follows:

1. Significant public safety issues exist throughout the City of Berkeley. However, the Council referral asked for comments concerning Fire Zones 2 and 3. Public safety in these issues center around a) the Hayward Earthquake Fault; b) the USGS designated landslide areas; c) the CAL FIRE identified High-Risk Wildfire Urban Interface areas; and d) existing dense development that is served by 232,000 feet of curving roads which are 26 feet wide or less which will not accommodate both fire-fighting equipment and resident evacuation at the same time. The Fire Department indicates that high-risk public safety factors are present in Fire Zones 2 and 3 and the Hillside Overlay District. The presence of these significant public safety issues provides the basis for establishing the areas in which ADUs should be regulated by local ordinance.
2. The regulations within these high-risk public safety areas described above should include the following:
 - a. One Accessory Dwelling Unit (ADU) with a maximum size of 850 sq ft would be allowed entirely within an existing building.
 - b. A 150 sq. ft. ADU addition would be allowed attached to the existing building to allow separate access to the ADU inside the building.
 - c. If the ADU is less than 850 sq ft within the existing building, an addition which is attached to the existing building and compliant with objective zoning standards for side, front and rear yards and building height, would be allowed to make the total square footage of the ADU within and outside the building, equal to 850 sq ft. It is further recommended that such a addition should be built with fire resistant materials.
 - d. State law provides that two ADUs (One ADU with a maximum of 850 sq ft and a second, Junior Accessory Dwelling Unit (JADU) is allowed on a single parcel. The DFSC recommends that a second JADU unit on a single parcel not be allowed within the ADU regulated high-risk safety areas.
 - e. State law provides that the application to construct an ADU must be made by an owner occupant of the existing building. DFSC has no objection to this provision but DFSC would additionally prefer requiring owner occupancy in either the existing building or within the ADU when an ADU is allowed. We request a legal opinion regarding this point and if this can be done, DFSC recommends that owner occupancy should be a requirement.
 - f. State law provides that if a garage, car port or similar parking space is used for the construction of an attached ADU, the parking area which had formerly existed would not have to be replaced. However, DFSC recommends that one parking space for the existing unit and one parking space for the ADU would be required on-site.
 - g. Designated evacuation routes located within the ADU regulated area would be subject to these same regulations even if that part of the street is within a "Transit Corridor."
3. Additional housing development over and above the provisions for ADUs that are currently being considered should not include Fire Zones 2 and 3 and the Hillside Overlay areas for the very same reasons we are recommending regarding ADUs in these areas.
4. DFSC further requests that the City Council consider additional funding: for a citywide alert system; continued work to improve the City's pathway system; expanded

implementation of the Safe Passages Program and continued enforcement of existing parking restrictions that impede emergency vehicle access; an expanded robust vegetation management program including adoption of a Fire Code that is more specific regarding Berkeley structures; and the formation of a fire hardening program applicable to all existing structures within the ADU regulated areas.

In arriving at our recommendations, DFSC wants to acknowledge that an individualized approval process for permitting ADUs would be, by far, preferable. However, since **State law replaces the former discretionary review of ADU permits with ministerial review within a 60-day period, DFSC has** reluctantly, not included that preference among the factors that were considered.

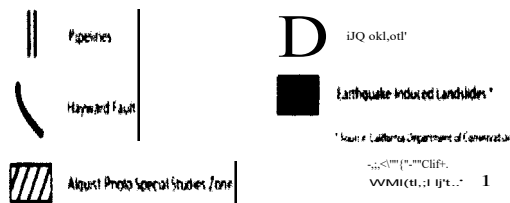
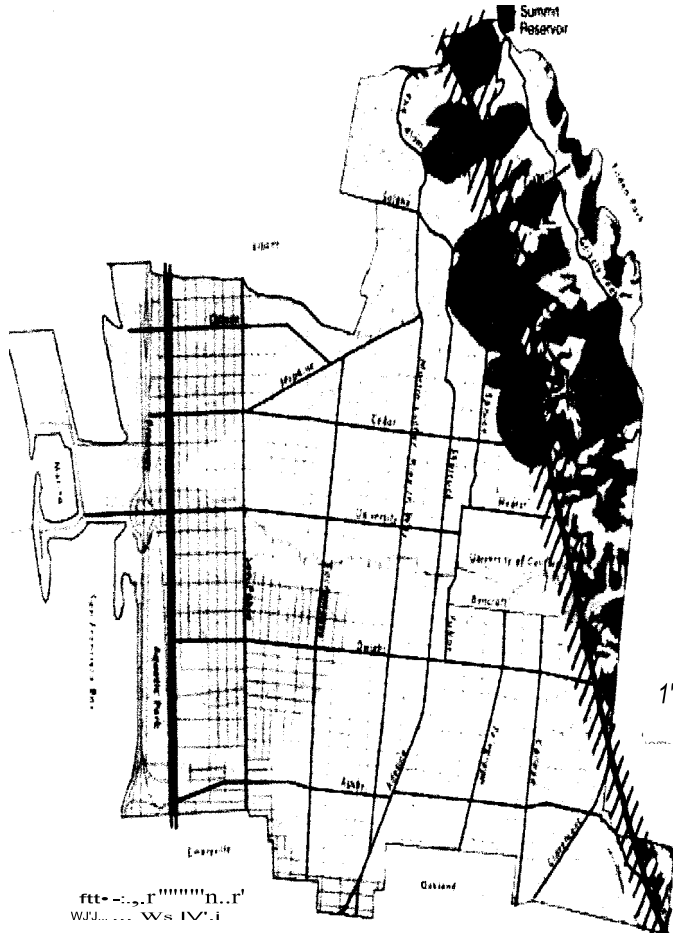
BACKGROUND:

- **May 29, 2018:** Council adopted an ordinance prohibiting ADUs in the Environmental Safety-Residential District (ESR), requiring discretionary review and approval by the Fire Department **regarding** ADUs in the Hillside Overlay (R-lh).
- **October 9, 2019:** AB 881 mandated a statewide, streamlined ADU permitting approval process that applies to all California cities, including charter cities like Berkeley. Several amendments followed. Current State regulations, effective January 1, 2020, allow for ADU permits to be granted by a ministerial/over-the-counter process within 60 days of application to construct one ADU with a maximum size of 850 sq ft and one JADU of lesser size on each parcel. State law now prohibits the discretionary review of such permits that we formerly had in Berkeley. However, State law provides that local jurisdictions can regulate the areas in which ADUs and JADUs would impact water and sewage provision, traffic flow and public safety.
- **December 10, 2019:** Council adopted an initial 45-day Urgency Ordinance to allow time to consider what would be needed to provide protections in Fire Zones 2 and 3. The extension was scheduled to expire on January 24, 2020.
- **January 21, 2020:** Council unanimously adopted an amendment to Berkeley Municipal Code Chapter 23C.24. extending limits on ADU development for a period of 10 months and 15 days pending further analysis and adoption of local regulations that were meant to ensure public safety in Fire Zones 2 and 3.
- **July 13, 2020:** **DFSC held a special meeting on July 6, 2020 to receive a report from staff and hear comments from the public regarding a Council referral to the Planning Commission to consider the expiring ADU ordinance and for the Planning Commission to obtain feedback from the DFSC in making their comments. On July 13, the DFSC** unanimously approved comments to the Planning Commission that would ban ADUs in Fire Zones 2 and 3 and the Hillside Overlay on streets that are 26 ft wide or less. The DFSC understood that these comments would appear on a Planning Commission agenda and that after holding a public hearing, staff would draft Zoning

Ordinance amendments for the Planning Commission and City Council to consider before expiration of the existing Urgency Ordinance. However, for some unknown reason, the DFSC recommendations were never considered by the Planning Commission and the Urgency Ordinance prohibiting ADUs in Fire Zones 2 and 3 expired.

DISCUSSION:

In considering options which would increase population in high-risk safety areas there are four factors which must be addressed:



1. Local Hazards

Berkeley's General Plan which guides development decisions includes a Disaster Preparedness and Safety Element (DPSE). On December 10, 2019, the Council approved resolution 69,236-N.S. to adopt the five-year 2019 Local Hazard Mitigation Plan, to be incorporated into the General Plan as an appendix to the DPSE. In these documents, Earthquakes, Landslides (earthquake and rainfall triggered), and Wildland and Urban Interface Fire are listed as "Likely" and "Catastrophic" in Fire Zones 2 and 3 and the Hillside Overlay.

The Hayward Fault runs south to north across Berkeley through Fire Zones 2 and 3 and the the Hillside Overlay. Called the Alquist-Priolo Earthquake Zone, this area sits between other major faults, the San Andreas Fault to the west and the Rodgers Creek Fault to the east.

Experts state that it is not a question of "if but "when" a major earthquake, commonly referred to as the "Big One," will strike in the Bay Area. The U.S. Geologic Survey predicts a 72% probability that one or more magnitude 6.7 or greater earthquakes will strike in the San Francisco Bay Region between 2014 and 2043 The largest percentage predicted for any of the faults - 33% - is that it will occur on the Hayward

Fault during this time period.

Berkeley can expect "lurch cracking" resulting in extensive fracturing of pavement, damage to sewer, gas, and water lines and landslides primarily in the hill areas, resulting in significant property damage, injury, and loss of life from this and the fires that accompany earthquake damage. The map (Figure 13 from the DPSE) shows the approximate location of areas vulnerable to these hazards.

Geologists estimate that 45 to 65 percent of the landslide-susceptible areas will experience movement ranging from a few inches to 20 feet in an earthquake. It is further noted that most of Berkeley hillside development predates current best practices and codes. This makes large number of existing structures vulnerable to the threat of landslides. This threat is affected by degree of slope, weather, improper grading, alteration of drainage patterns and careless removal of vegetation.

There are also identified wildfire hazards to be considered. It should not be forgotten that in 1923, North Berkeley burned from the hills to about Oxford Street and was stopped only due to a shift in the wind. Following the October 1991 Berkeley/ Oakland Tunnel Fire which destroyed 3,500 homes, 2,000 automobiles, killed 25, injured 150 and caused \$3.4 billion in damages calculated in today's dollars, CAL FIRE designated Fire Zones 2 and 3 in Berkeley, giving them the highest rating of "very high severity" risk for Wildfire Urban Interface areas. It cannot be denied that Berkeley's vulnerability is significantly higher than that of most cities due to this combination of hazards that are clustered together within the areas being recommended by DFSC for ADU regulation.

Among the objectives listed in all the plans which have already been adopted by the City Council, are to reduce the potential for loss of life, injury and economic damage from earthquakes, landslides and wildfires and to improve responder access and community evacuation.

2. Climate Change:

Since 1991, a series of tragic California fires show a similar pattern of size, intensity and speed. An example being the November 2018 Camp Fire which destroyed the town of Paradise, CA. With an economic loss of around \$16.5 billion, the Camp Fire destroyed more than 18,000 structures and killed 85 people. On March 22, 2019, Governor Newsom declared a State of Emergency in California with regard to wildfire risk.

Wildfires have long been associated as starting from a combination of high wind speeds blowing from the northeast, high temperatures and low humidity, a situation referred to as "Diablo Winds." At one time, Diablo Winds occurred only in the fall. With climate change this has shifted, and they are now expected to occur throughout the whole year. These fires have been fueled by continuing long periods of drought and insect infestation which have promoted the build-up of fuel in the form of tinder dry brush and dead trees.

Recent newspaper reports indicate that the lack of rain this February combined with hot weather in June has left vegetation in Northern California drier now than it has been in any July since the state's historic five-year drought from 2012 to 2016. As one fire official said- we can expect the resulting fires to be bigger and more difficult to control. It is more essential than ever before for Berkeley to enact as soon as possible an expanded, careful and

rigorous program of vegetation management and fire hardening measures for structures to prevent fires as much as possible and protect residents and reduce property loss.

3. Existing Development/Density:

The existing development in Fire Zones 2 and 3 and the Hills Overlay area is more dense than is found in most hill areas in other cities largely because development in Berkeley occurred on minimum lot sizes of 5,000 sq feet or less. At one time, it was estimated that about 50% of all single-family zoning in Berkeley existed on these smaller lots. In addition, flexible side setbacks resulted in houses being constructed more closely together. More housing in smaller spaces, clustered tightly together with dense vegetation around and between houses adds to the problems of fire spreading more rapidly and placing more people at risk. Adding both an ADU and a JADU on each lot as State law provides would compound the level of risk.

In 1983, the state approved SB 1534 allowing what was then called second units (known also as in-law apartments or "granny flats") which were then approved in R-1 single-family zoned areas with a discretionary permit granted through the Zoning Adjustments Board. Parking for the second unit was to be provided on site. Because of the review process, which was often controversial, some number of people constructed second units without permit. The number of these illegal units is unknown, but it is commonly known that they exist, and were built without permit so some may or may not fully meet code requirements, and some were rented without declaring and paying the appropriate level of federal, state and local taxes. Second units are now considered as a component of ADUs. A current discussion is whether these older second units and subsequent ADUs should be placed under rent control regulation. This report maintains that whether the Rent Board regulates them or not, such units which already exist should be "grandfathered in" and those built without a permit, should be legalized through inspection, and brought up to code. All existing units should be subject to current COVID-19 related eviction regulations as part of the effort to prevent homelessness.

The number of housing units, including units that have not been recorded in Fire Zones 2 and 3 and Hill Overlay District is not known. An attempt should be made to establish reliable population density data. It should also be acknowledged that there are an unknown number of seniors and disabled people with mobility challenges living in the public safety high-risk areas that will require special consideration. Such data should be used to protect and provide services to these residents both before and after a disaster occurs.

4. Evacuation of Residents:

The estimation of approximate population composition in these hazard areas is important from the standpoint of understanding what services need to be present to reduce fatalities and ensure safe evacuation of these most vulnerable residents. While pathways are rightly included in evacuation planning, fleeing a fire on foot by the elderly, disabled and parents with small children who need to be carried is not a good option.

Most of this group will require early evacuation by car. Ultimately evacuation of most residents in the Fire Zones 2 and 3 and the Hillside Overlay area will be by car which will have to be done over narrow, winding roads which are, at times, blocked by parked vehicles. Many should be advised to leave their homes early and seek shelter elsewhere during high-risk

fire periods and Power Safety Shut Offs if they have the resources to do so. However, many, not just in the hills, but throughout the City, will not have the resources to periodically leave their homes, so DFSC recommends that the City adopt a plan that provides temporary shelter for the early evacuation of vulnerable residents to safer locations during these times.

It is extremely important to understand that a response to a wildfire emergency involves BOTH access to the fire by responding **emergency** equipment and personnel AND egress from the area by fleeing residents at the same time. State law does not require replacement of parking for the primary building if an ADU replaces an existing garage, car port, or covered parking structure. Even if replacement parking were required, ADUs generate cars that are additional to cars associated with the primary building. Additional cars end up frequently being parked on the street. More cars on the street increase the possibility of clogging both access and egress traffic.

In a 12/3/2019 report, the DFSC Commission noted that the problem of emergency equipment access problems in the hills has been known for at least 41 years. Despite numerous recommendations, only a few narrow streets have had parking restrictions enacted. While to date, there is increased awareness of the problem by residents and subsequent cooperation, misunderstandings and complaints about inappropriate and dangerous parking are still occurring far too often. In a wildfire scenario, rapid evacuation of residents is necessary and emergency vehicle access must be assured. Both directions - up and out - must be accommodated.

Experience has indicated that no one can out-run a wildfire and prompt fire suppression efforts are essential to establishing control which helps protect the entire City. It is essential that steps be taken as soon as possible to enforce existing code regarding parking restrictions.

In 2015, a map indicating the streets in the City that are 26 feet wide or less **along with a** seven-page list of homes on those streets by address. **A copy of the map is attached.** Most narrow streets are located in the hill areas, but there are a few in other parts of the City. In this report as requested, the DFSC considered only those streets in the Fire Zones and the Hillside Overlay District. However, we recommend that the Planning Commission **City Council** consider the other streets in the City that are less than 26 feet wide as a separate issue regarding ADUs, and in doing so, emergency vehicle access must be assured to those streets as well.

Moreover, The DFSC is concerned that designated evacuation routes have not been included for streets where ADUs should be regulated regardless of street width. **Take for example, evacuation routes** in the northern area. **There are two east west evacuation routes:** Marin Avenue, from The Circle to Grizzly Peak, and except for a very small portion of Cedar Street. **Both streets are less than 26 feet wide and will fall within the proposed ADU regulation guidelines.** However, the other two evacuation routes in this area are north south routes- one on Grizzly Peak Blvd (except for a portion at Fairlawn) and the other is a portion of Spruce Street that is also designated as being in a "Transit Corridor" which is considered appropriate for a much greater density (**up to 4-units on each parcel**) than would be allowed **in addition to ADUs.** Adding ADUs to this part of Spruce Street without requiring on-site parking **is likely to increase on-street parking that will result in increasing** the possibility of hindering the two-lane necessity for emergency vehicle access and evacuation efforts in both directions. Mass evacuation from Fire Zones 2 and 3 and the Hillside Overlay **District** will be difficult and

heavy, given the population density, the speed of the wildfire and the lack of effective east west routes. Many people have died in their cars while fleeing from wildfires. **DFSC** therefore, recommends that parcels located on evacuation routes within the ADU regulated area be removed from the "Transit Corridor" classification and be subject only to the ADU regulations that are included in this report.

Additionally, in discussions of evacuation issues over the years, it has been established that there are "pinch points" on otherwise adequate width streets that impede emergency vehicles. Such pinch points in the ADU regulated areas should be identified. These points have not been sufficiently named for inclusion at this time, but continuation of the Safe Passage Program should identify them so parking restrictions can be enacted in the future.

The Emergency Access and Evacuation Network Map, June 13, 2011



While important efforts such as Wildfire Evacuation Drills and initiation of the Safe Passages Program have been made within the last year, much remains to be done as soon as possible. Some important components of the work that needs to be done includes the following:

- Initiation of a citywide alert system, including a method for early evacuation and possible shelter for our most vulnerable residents throughout the City during periods of high-risk and power outages;
- Full funding of the Safe Passages Program which seeks to work with residents in designating where parking must be restricted. This program was initiated, then referred to a later budget for consideration, then put on hold due to the COVID- 19 pandemic. Safe Passages has been considered to be a pilot program. While some details might vary from time to time in its implementation, it must be officially recognized that its purpose is to identify areas where parking based on existing

code in certain locations must be restricted because it is an essential component of the City's fire safety actions. The Program must begin and continue wherever it is needed as without such restrictions in place the lives of residents throughout the City are at risk.

- Funding to continue the work to create a network of safe paths throughout the City. See map attached for a list of Unbuilt Pathways in Districts 5 and 6. Pathways that are clear, with railings and lights, as appropriate, remain an important part of the City's evacuation planning.; and
- Funding for an increased vegetation management program that could proceed within any requirements necessitated by COVID-19 safety precautions. Vegetation management is important for the whole City in that controlling a fire when and where it first starts is added protection for the rest of the City as the wind direction

will carry embers to start new fires in areas far from an initial fire, until the whole City is aflame. Fire officials are reporting that as of this date, the State is at heightened risk of wildfire.

Additional funding is therefore an essential part of what needs to be set in place to ensure that we will save as many lives and protect property as is possible. In making this recommendation for additional funding, it should be noted that on October 15, 2020, the City Council adopted Resolution 69,147-N.S. making wildfire prevention and safety a top priority and that wildfire prevention and safety be addressed as the highest priority on the next updates to the City's General Plan, Climate Action Plan, Local Hazard Mitigation Plan, Resiliency Strategy, 2050 Vision and any other plans where it may be appropriate, and be reflected in City policies and allocation of resources.

CONCLUSION:

We, as a City, need to make tradeoffs between the need to consider the safety of people residing in homes that have already been built in high-risk public safety areas and the need for more housing within our City. In weighing those tradeoffs, DFSC looked at four factors: 1) significant local hazards that are uniquely combined within Berkeley; 2) climate change that has brought an increase in the intensity and frequency of wildfires; 3) the higher than usual existing density in these high-risk public safety areas; and 4) the safe evacuation of residents in high-risk public safety areas.

Based upon the existence of the Hayward Fault, USGA designated landslide areas; CAL FIRE identified high-risk wildfire areas and the high number of streets that are 26 ft wide or less which will not accommodate both fire-fighting equipment and resident evacuation at the same time DFSC recommends that the City establish Fire Zones 2 and 3 and the Hillside Overlay District as the area in Berkeley in which ADUs should be regulated due to public safety issues. ADUs within this area would be subject to the following:

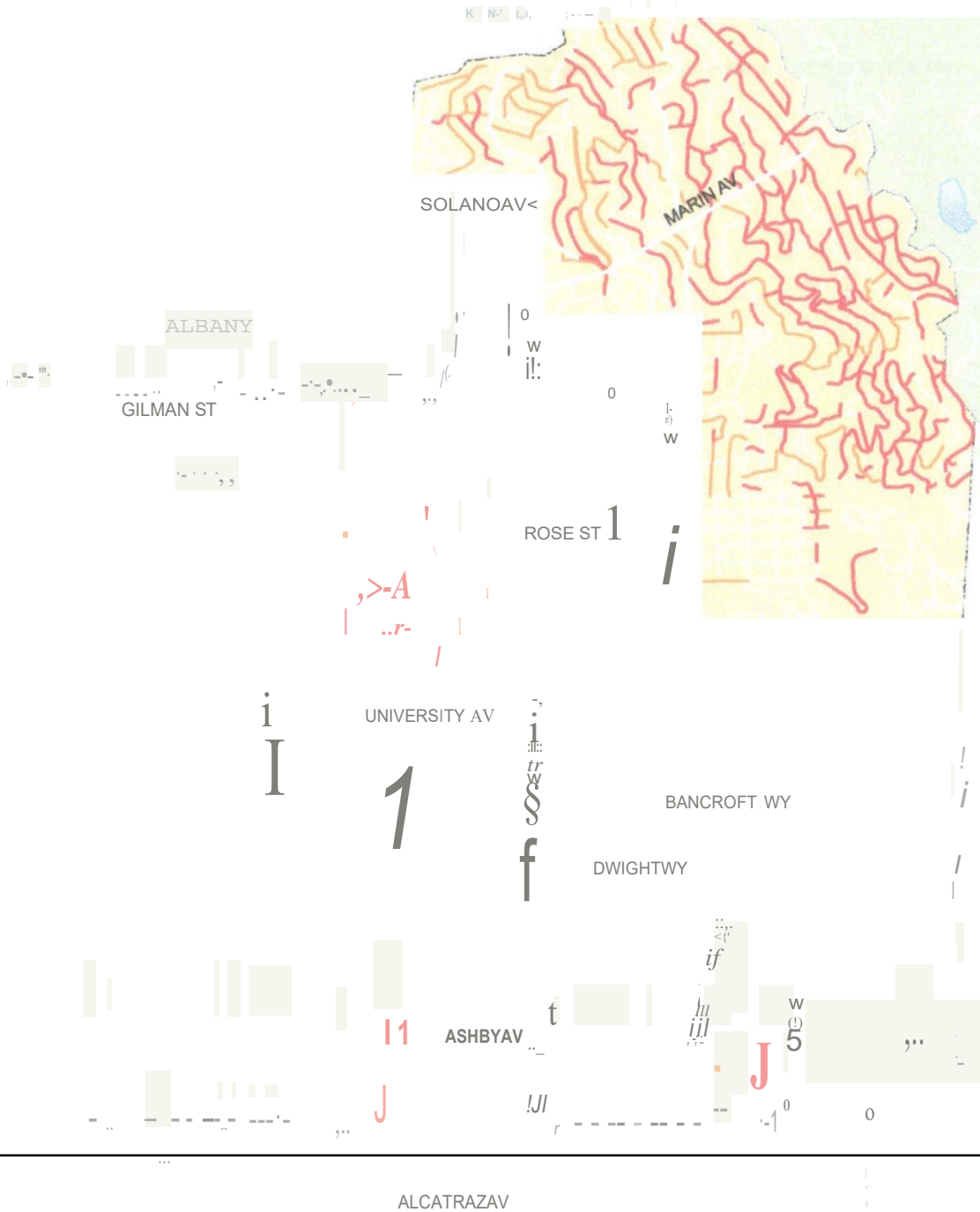
1. ADUs of a maximum size within an existing building would be allowed
2. ADU less than the maximum size would be allowed in an attached building of a size that when combined with the space within the building would total the maximum size but must be in compliance with existing setback requirements.
3. An additional limited allowance would be allowed to grant direct access to the new unit.
4. Limit ADUs to owner occupants if legally possible.
5. Parking options that do not hinder access by Berkeley Fire Department would be required.
6. Continued investment in programs that will mitigate fire disasters.

In considering the significant public safety impacts described above, DFSC understands that the recommendation that will allow one ADU with a maximum size of 850 sq ft per parcel will result in some, but not too-large increase to density in the identified high-risk areas. However, we also hold that such an increase cannot be denied based on the facts that seniors and disabled residents have a need for in-house care, that some families also need housing for family members to return home, and that some residents have a social desire to offer small rentals, and some have a need for the income that allows them to remain in their homes for a longer time. In response to these kinds of needs, we have tried to frame our recommendations in ways that support a response that recognizes both Berkeley's significant public safety issues in order to save lives balanced with additional housing needs. However, we cannot ensure that any of these ADU units will be affordable or help alleviate the homelessness rate in our City.

Even when the State is working hard to produce more housing and they find they are confronting public safety, the State chooses safety over increasing housing. Witness the current example in Lake County where residents want to build 1,400 homes in Guenoc Valley, the State filed a lawsuit to stop the housing project on the basis of wildfire danger. The State has also done this in Monterey and San Diego. It is possible that in today's world the homes in our Fire Zones 2 and 3 and the Historic Overlay would never have been built, but they were constructed, and we must now protect that area and our City.

cc: Planning Commission

E crRRR 0



Pavement Width

Less than 24 ft

Pavement Width
Less than 26 ft

Parks

f.---:J City Limits .

This map is for informational purposes only

Care was taken in the creation of this map but it is not guaranteed. Please contact the City of Albany for more information.

For more information on our services, please visit our website at www.cityofalbanycalifornia.gov.
November 2015



ALCATRAZ AV

Unbuilt Pathways in Berkeley

Completely blocked or encroached

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Trees or walls in Right of Way

- Colu mbia Path (Uppr)-Dist 6
- Harding Path - District 6
- Hilgard Path - District 6
- Summit Path - District 6
- Wilson Path - District 6

Sunset View Cemetery & Mortuary



Eucalyptus

Rock



Point



Unencroached but steep

- Gnzzly Path - District 6
- Delmar Path - District 6
- Hill Path - District 6

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No information

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Dead end/private, no build possible

- Eleanor Path - District 6
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nd Path: E-x Art L-Art 1

Berkeley

Oxford St

e Hall of Science
Temporarily closed

Map data 2020 Google

The Rights of Way for unbuilt paths are owned by the City of

Berkeley. The paths are built & maintained by the Berkeley Path Wanderers Association with assistance from City of Berkeley Public Works. Base Map=Terrain. Author: C. Cullander

[Alternate Proposed Memo from Commissioner Nancy Rader]

Date: March XXX

To: Berkeley City Council

From: Disaster and Fire Safety Commission

Submitted by: Jose Luis Bedolla, Chair, Disaster and fire Safety Commission

Subject: Response to City Council Short Term Referral to City Manager, Disaster and Fire Safety Commission and Planning Commission to Amend Local Accessory Dwelling Unit (ADU) Zoning Ordinance and Berkeley's Fire Code.

SUMMARY:

Council Referral: On January 26, 2021 the City Council approved a referral to the Disaster and Fire Safety Commission (DFSC) and Planning Commission that requested comments on a set of ordinance amendments and implementation programs to address emergency ingress and egress, parking and objective development standards to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Zones 2 and 3. (Attachment 1.) The Referral included five specific recommendations as follows:

Recommendations to Additional Objective Development Standards in Zones 2 and 3:

Zone 2 and 3 - limit the base maximum size of newly constructed, detached ADUs to 850 sq. feet.

Zone 2 and 3 – require compliance with front yard, side yard and open space and coverage requirements of the applicable zoning district.

Recommendations to amend the Fire Code:

Prohibit parking on streets where egress and ingress will be adversely impacted by additional vehicles and increased population.

Require sprinklers in new construction, consistent with local Fire Code

Explore their authority under California Health and Safety Code Sec. 13869.7 to mitigate the adverse impacts of ADU creation in requiring safe and adequate ingress and egress routes and sufficient off-street parking.

DFSC Response: The DFSC generally concurs with the recommendations but makes the following recommended changes, shown as edits to the recommendations shown above:

Recommendations to Additional Objective Development Standards in Zones 2 and 3:

Zone 2 and 3 - limit the base maximum size of newly constructed, detached ADUs to ~~850~~ 800 sq. feet.

Zone 2 and 3 – require ~~compliance with front yard, side yard and open space and coverage requirements of the applicable zoning district.~~ that, to establish a detached, newly constructed ADU larger than 800 square feet, the project comply with front yard setbacks, open space and coverage requirements of the applicable zoning district.

Recommendations to amend the Fire Code:

Amend the Fire Code to implement parking restrictions that apply to both sides of the street on roads with less than 26 feet in width and apply to one side of the street on roads with less than 32 feet in width in Fire Zones 2 and 3. The Fire Department should implement these restrictions with priority given to areas ~~Prohibit parking on streets~~ where egress and ingress will be adversely impacted by additional vehicles and increased population. Prior to implementation, the City should conduct a public education and outreach campaign to notify the community of the planned parking restrictions.

~~Require sprinklers in new construction, consistent with local Fire Code~~

Explore their authority under California Health and Safety Code Sec. 13869.7 to mitigate the adverse impacts of ADU creation in requiring safe and adequate ingress and egress routes and sufficient off-street parking.

Recommendation to Seek State Law Changes

The Mayor and Council should formally request that Berkeley’s elected representatives to the State Legislature advocate amendments to existing law that enable local jurisdictions to regulate ADUs in wildfire-urban-interface zones to promote public health and safety.

Discussion: A January 5, 2021, memo from the City Manager to the Mayor and Council discussed 2019 legislation that prevents local jurisdictions from imposing any restrictions on ADUs that conflict with state law. (Attachment 2.) State law requires local governments to allow ADUs that meet State-mandated minimum criteria. The City Manager outlined the limited steps that the City can take to regulate maximum ADU sizes. The modifications to the first two recommendations contained in the Council Referral conform to the City Manager’s recommendations.

Measure FF provides funding to support the City’s Safe Passages Program, which is intended to promote ingress and access during a wildfire and other emergencies. Promoting such access will require amending the Fire Code to implement parking restrictions that apply to both sides of the street on roads with less than 26 feet in width and apply to one side of the street on roads with less than 32 feet in width in Fire Zones 2 and 3. Therefore, the third recommendation in the Council Referral was modified to expand it beyond prohibiting parking “where egress and ingress will be adversely impacted by additional vehicles and

increased population,” but gives priority to these areas in addressing narrow streets throughout Fire Zones 2 and 3. The third recommendation also now states that, prior to implementing these parking restrictions, the City should conduct a public education and outreach campaign to notify the community of the planned parking restrictions. Amend the Fire Code is necessary to consistent application of these restrictions. Note that it will be necessary to sufficiently fund the Safe Passages Program to implement this recommendation in a timely way. It will be important for homeowners considering ADUs to be aware of any upcoming parking restrictions in their area.

The fourth recommendation is removed because the City Manager’s January 5, 2021, memo states that “Discussions are currently underway to assess the value of implementing fire sprinklers requirements under limited circumstances and applicable to all projects across the City” and the DFSC is not aware of the outcome of these discussions and so cannot make any recommendation on this point.

The last, added recommendation addresses the fact that the 2019 ADU laws provide local jurisdictions with extremely limited discretion to impose restrictions on the development of ADUs, even in areas at high risk for devastating wildfires. It is inappropriate to increase housing and population density in such high-risk areas where the ability to evacuate is already highly compromised. Therefore, local jurisdictions must have the ability to regulate ADUs in wildfire-urban interface areas. Our State Senator and Assembly Member should be strongly encouraged to seek corrective legislation.



Disaster and Fire Safety Commission

ACTION CALENDAR

[Date]

To: Honorable Mayor and Members of the City Council
From: Disaster and Fire Safety Commission
Submitted by: Jose Bedolla, Chairperson, Disaster and Fire Safety Commission
Subject: Amending Chapter 19.34 of the Berkeley Municipal Code to Expand Automatic Gas Shut-Off Valve Requirements in Multifamily, Condominium and Commercial Buildings Undergoing Renovations

RECOMMENDATION

The proposed ordinance modifications in the referral dated October 29, 2019, shown in Attachment 2 (the Referral), can be briefly summarized as:

- Expand the Gas Shut-Off Valve requirements to remove exceptions for multi-family, condominium, and commercial buildings

The Disaster and Fire Safety Commission (DFSC) recommends ~~that the Berkeley Municipal Code (BMC) 19.34.040 that changes of the Berkeley Municipal Code be referred to the City Manager and Planning Department to~~ be modified in accordance with the Referral as part of the 2022 Code adoption cycle, ~~with-including~~ the following changes:

1. Do not allow excess flow valves to substitute for motion-activated shut-off valves as a way to comply with this ordinance.
2. Clarify requirements for excess flow valves and motion activated (seismic) valves.
3. Include a provision for common areas of buildings.
4. Do not include any requirements regarding sale or transfer of the building.
5. Remove the dollar limit on the modifications and replace with a requirement to comply any time a plumbing or mechanical permit is issued.

~~A proposal for this ordinance modification, including DFSC's edits, is attached as Attachment 1.~~

In addition, we recommend the inclusion of wording in the Berkeley Emissions Saving Ordinance (BESO) to require that in any transfer of property, that the property be required to equipped with a seismic gas shutoff valve.

FISCAL IMPACTS OF RECOMMENDATION

Staff savings realized from first responders not having to shut off valves manually in case of emergency.

Costs will include staff time to submit ordinance to the Building Standards Commission. In addition, building inspector staff time will be necessary to ensure compliance with new provisions.

CURRENT SITUATION AND ITS EFFECTS

Currently, BMC 19.34.040 requires automatic gas shut-off valves in all new construction or existing buildings that undergo repair or alteration exceeding \$50,000 consistent with sewer lateral requirements. However, it makes several exceptions for multi-unit buildings, as described in Attachment 2. As a result, residents of multi-unit buildings as well as neighboring buildings that may be impacted by a gas-driven fire after an earthquake, are not protected by a gas shut-off valve requirement.

BACKGROUND

In October of 2019 the Disaster and Fire Safety Commission received a referral from Councilmembers Harrison, Wengraf, Hahn, and Bartlett on modifications to the BMC 19.34.040 Gas Shut-Off Valves ordinance.

The Referral's proposed ordinance modifications expands the Gas Shut-Off Valves requirement by removing several exceptions, including an exception for multi-unit buildings.

The Referral was discussed by the DFSC in the 12/4/19, 1/22/20, and 2/26/20 meetings. Several meetings subsequent were cancelled due to Covid-19.

Additional background can be found in the Referral, Attachment [12](#).

ENVIRONMENTAL SUSTAINABILITY

In addition to potentially saving lives and property, increasing gas shut-off valve use may reduce the spread of house-fires and wildland-urban interface fires, reducing the pollution, hazardous waste, loss of habitat, and other environmental damage caused by uncontrolled fires, and reducing greenhouse gas emissions caused by gas leaks after an earthquake.

RATIONALE FOR RECOMMENDATION

The DFSC generally concurs with the rationale for this recommendation described in the Referral. The modifications to the ordinance are intended to increase the use of automatic gas shutoff valves to help reduce or prevent gas-related fires in the event of an earthquake.

In a major earthquake, gas piping is subjected to forces which may result in significant leaks of natural gas. These leaks can in turn result in serious fires or explosions.

A good article about the dangers of gas fires in an earthquake and the performance of Motion Activated Gas Shutoff Valves can be found here:

<http://www.strandearthquake.com/psqsv.html>.

The DFSC differs from the Referral regarding excess flow valves:

The ordinance modifications in the Referral allow the use of excess flow shut-off valves in place of motion-activated shut-off valves. The DFSC recommends against allowing excess flow valves to substitute for motion-activated shut-off valves.

Excess flow valves are appropriate for connection to individual appliances and are readily available incorporated in appliance connection lines. However, these valves would have to allow for a very large flow if connected to a whole house, and the leaks resulting from an earthquake may not be adequate to trigger an excess flow valve, while still being large enough to create a severe potential for fire or explosion.

Therefore, we recommend against allowing excess flow valves at the whole-house level to satisfy the requirements of the ordinance. Our edits in Attachment 1 incorporate this suggestion.

The DFSC believes that setting a minimum project value to trigger the installation of seismic gas shutoff valves is not the right way to trigger that requirement. In practice, the installation of a Seismic Gas Shutoff Valve is a simple task for a plumbing or mechanical contractor, however it is not within the designated ability of many other contractors. The \$10,000 minimum value set could easily be exceeded by work done by persons not approved to contract for such work, which could add significantly to the cost of a contract. On the other hand, the work required to install a seismic shutoff valve is generally less than an hour for a mechanical or plumbing contractor and the valve itself will usually cost less than \$150. The change in cost to the property owner should be minor compared to the cost of the other work performed under mechanical or plumbing permits. Therefore, it makes sense to require that having an operational seismic gas shutoff valve in place to receive a final signoff on a permit is not a significant burden to the property owner.

Finally, the DFSC has been informed that the building department does not get involved with transfer of property except as permit applications are filed. Any requirements affecting the transfer of property, especially those involving natural gas service, should be addressed through the Office of Energy and Sustainable Development.

ALTERNATIVE ACTIONS CONSIDERED

n/a This is in response to a City Council referral.

CITY MANAGER

Recommendation to Immediately Fund and Implement the Safe Passages Program ACTION CALENDAR and Additional Actions to Ensure Emergency Equipment Access to All Parts of the City [Date]

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, Secretary, Disaster and Fire Safety Commission, 510-981-5508

Attachments:

~~1. Proposed BMC 19.34.010 revisions~~

~~2.1.~~ 10/19/2019 referral to the Disaster and Fire Safety Commission

Chin, Khin

From: Chin, Khin
Sent: Tuesday, March 23, 2021 5:11 PM
To: Chin, Khin
Cc: May, Keith
Subject: Disaster and Fire Safety Commission Budget Reporting Draft Bulletpoints

Hi Commissioners,

Chief May developed the below draft outline and bullet points regarding the budget reporting to the commission. We will discuss at the meeting but providing it ahead for review.

- 1) April 15: Staff presents Fire Department budget to City Council Budget Committee, DFSC is encouraged to have a representative there chosen at this week's meeting to contribute to the conversation on FF and GG.
- 2) TBD: Fire Department work session presentation to the entire City Council on Measure FF and wildfire preparedness initiatives, possibly May, could be as late as July in which case won't highlight the budget as it will be adopted by then.

Upcoming City Council Meetings:

May 11	6:00 p.m.
May 25	6:00 p.m.
June	
June 1	6:00 p.m.
June 15	6:00 p.m.
June 29	6:00 p.m.

- 3) The budget is adopted on June 29 so the full council will consider budget items probably on May 25, June 1, and June 15 although those meeting agendas aren't set and it could be that they schedule special meetings for the budget.
- 4) The budget process has never been granular although that will change some this year. We plan to present on a general fire budget but be very specific about FF. The big issues will be around what it means to cover the EMS Tax deficit, Measure P vs FF for mental health transport, and overtime costs as they are way over budget.

Khin

From: Chin, Khin
Sent: Tuesday, March 23, 2021 9:58 AM
To: May, Keith <KMay@cityofberkeley.info>
Subject: Re: DFSC

Bedolla said he'd discussed these with you and that you had agreed on reporting about those items. I think he's thinking fire department could report back on why the budget reporting process to the commission will be. I'm not 100% on his intent on how this will pan out in this an future agendas. I think he's trying something new .. his approach.

I'd expect that some of his approach will have to be adjusted for how information flows actually are practically implemented. I would worry about it too much but expect a discussion at the meeting about what his expectations were and what can actually be executed in the commission scope and format.

On Mar 23, 2021, at 9:18 AM, May, Keith <KMay@cityofberkeley.info> wrote:

Khin,

Item #8 on the DFSC Agenda (Budget Timelines and Process) has the Fire Department attached. I am a little confused as to why we would have an item under "Discussion". We are not leading that discussion and do not have a report for the item. Can you confirm if there are questions for this item or if the DFSC is just discussing it during the meeting?

Keith May

Assistant Chief, Special Operations Division

Public Information Officer

Berkeley Fire Department

2100 Martin Luther King Jr. Way

Berkeley, CA 94704

510-981-5508 office

510-693-2221 cell

kmay@cityofberkeley.info

"We are what we repeatedly do. Excellence, therefore, is not an act, but a habit." Aristotle

<image001.jpg>

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