

ORDINANCE NO. 7,445–N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23D.10, ACCESSORY DWELLING UNITS, TO IMPROVE CLARITY, SPECIFY FIRE ROAD ACCESS MINIMUM WIDTH, AND CORRECT A TECHNICAL ERROR IN 23D.10.060.B REGARDING FINDINGS FOR MODIFICATIONS TO PARKING REQUIREMENTS.

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

Section 1. That Berkeley Municipal Code Chapter 23D.10, Accessory Dwelling Units, is amended to read as follows:

Chapter 23D.10
Accessory Dwelling Units

Sections:

Section 23D.10.010 Applicability of Regulations

Section 23D.10.020 Purposes

Section 23D.10.030 Permit Requirement

Section 23D.10.040 Standards for by-right Accessory Dwelling Units

Section 23D.10.050 Accessory Dwelling Units may exceed or modify standards with a use permit

Section 23D.10.060 Findings

Section 23D.10.010 Applicability of Regulations

The provisions of this Chapter shall apply to all lots that are occupied by one Single Family Dwelling Unit and zoned R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, and R-SMU.

Section 23D.10.020 Purposes

The purposes of this Chapter are to:

- A. Increase the supply and range of housing options in Berkeley while maintaining the residential character of neighborhoods.
- B. Encourage new housing units to locate near transit and provide alternative transportation options to residents.
- C. Minimize the impacts of the new accessory dwelling units on neighboring properties.

Section 23D.10.030 Permit Requirement

The Zoning Officer shall issue a Zoning Certificate to establish an Accessory Dwelling Unit in compliance with this Chapter if all requirements of Section 23D.10.040 and other

applicable requirements of this Title are met. The Zoning Officer may approve an AUP to establish an Accessory Dwelling Unit that is not in compliance with Section 23D.10.040.B, as set forth in Section 23D.10.050.

Section 23D.10.040 Accessory Dwelling Unit Standards

A. Special Provisions:

1. No subdivision of land, air rights or condominium is allowed so as to enable the sale or transfer of the Accessory Dwelling Unit independently of the main Dwelling Unit or other portions of the property.
2. Prior to issuance of a Building Permit, all owners of record of the subject property shall sign and file a Declaration of Restrictions with the County Recorder, in a form satisfactory to the Zoning Officer, which makes any transfer of the property specifically subject to the restrictions contained in this section, and requires that either the primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property. Non-occupancy of an owner for periods of up to three years are allowed before the property will be found to be in non-compliance with this requirement.

B. Development Standards

1. The subject lot shall meet the open space and coverage requirements of the applicable zoning district.
2. The gross floor area of an Accessory Dwelling Unit shall be no less than 250 square feet, and no greater than 750 square feet or 75% of the gross square footage of the primary residence, whichever is less.
3. An Accessory Dwelling Unit may be created by conversion of floor area in a pre-existing primary dwelling unit, or by an addition thereto, subject to providing a separate entrance that is not located on the front of the primary dwelling unit and complying with the requirements of the applicable zoning district for residential additions.
4. An Accessory Dwelling Unit may be created within a new or existing Accessory Building or Structure, except that the following height limits and setback requirements shall apply:
 - a. In no case shall the building be located within the required front yard setback.
 - b. In no case shall the building be taller than 14 feet maximum height as measured at the highest point of the roof, taller than the main dwelling unit, or have an eave height higher than 10 feet. In the case of a shed or flat roof, no portion of the building may be more than 10 feet in height when measured at the required setback.

- c. The building shall be set back four feet from the rear and side property lines.
 - d. A legal Accessory Building or Structure existing as of July 14, 2015 located less than four feet from a rear or side property line may be converted to an ADU if the maximum building height is 10 feet or less and all other provisions of this Chapter are met.
5. The subject lot shall provide one off-street parking space for the Accessory Dwelling Unit in conformance with Chapter 23D.12, except as provided below:
- a. Parking shall not be required for the Accessory Dwelling Unit when the subject lot is within one-quarter (1/4) mile of a BART station or within one-quarter(1/4) mile of a rapid bus transit stop. In residential Parking Permit Zones, no Residential Parking Permit for on-street parking may be issued to the address of the Accessory Dwelling Unit.
 - b. Tandem parking may be used to satisfy the parking requirement. Tandem parking shall not be subject to the applicable standards of Section 23D.12.080, and may be located within the required front and side setbacks when located within an existing lawfully created driveway that does not comply with these standards.
6. An ADU may only be approved when located on a lot with access from a roadway with a minimum 26 feet in pavement width, unless an AUP is approved.

Section 23D.10.050 Accessory Dwelling Units may modify standards with an Administrative Use Permit.

An Accessory Dwelling Unit that does not conform with the standards in Section 23D.10.040.B may be permitted with an Administrative Use Permit subject to the applicable findings in Section 23D.10.060.

Section 23D.10.060 Findings

- A. In order to deny an Administrative Use Permit under Section 23D.10.050, the Zoning Officer or Zoning Adjustments Board shall find that the Accessory Dwelling Unit would be detrimental to the residential character of the neighborhood, or would unreasonably obstruct sunlight, air, or views, or would introduce unreasonable privacy impacts to the immediate neighbors.
- B. In order to approve an Administrative Use Permit under Section 23D.10.050 to waive required Accessory Dwelling Unit parking, the Zoning Officer or Zoning Adjustments Board shall find that additional or new on-site parking would be detrimental, and that granting the waiver will meet the purposes of this Chapter.
- C. In order to approve an Administrative Use Permit under Section 23D.10.050 to allow an ADU on a lot with access from a roadway with less than 26 feet in pavement width, the Fire Chief shall find that sufficient fire flow and water pressure are available to meet minimum fire safety requirements.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on November 3, 2015, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Maio, Wengraf and Bates.

Noes: Worthington.

Abstain: Capitelli, Droste and Moore.

Absent: None.