

**ACTION CALENDAR**

September 13, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Sophie Hahn, Susan Wengraf, and Kate Harrison  
Subject: Accessory Dwelling Unit Ordinance Updates

**RECOMMENDATION**

Refer to the Planning Commission to consider additional elements for Berkeley's Accessory Dwelling Unit Ordinance (BMC 23C.24), on an expedited basis, and refer to the Disaster and Fire Safety Commission bullet point #5, relating to potential obstruction of emergency vehicles, and request that their recommendations be sent directly to the Planning Commission to inform the Planning Commission's review and recommendations.

**FINANCIAL IMPLICATIONS**

None

**BACKGROUND**

On Tuesday May 15, 2018, the City Council unanimously passed amendments to the City's Accessory Dwelling Unit (ADU) ordinance, BMC Section 23C.24, and amendments to other affected provisions of the BMC. Simultaneous with passage of these ADU amendments, Councilmembers expressed the desire for a number of additional elements to be considered by the Planning Commission as soon as possible, for possible incorporation into the Ordinance.

The following items are referred for consideration:

1. **Incentives or requirements for Universal Design.** Because many ADUs are expected to be created at "ground level," including within the footprint of existing garages, a unique opportunity exists to create housing that is accessible to individuals with disabilities, seniors aging in place, and other residents who would most benefit from incorporation of Universal Design features. Consultation with individuals and organizations helping to house individuals with disabilities and supporting aging in place is encouraged, to determine needs and potential incentives or requirements for Universal Design in ADUs.
2. **Notice Requirements regarding rental opportunities and obligations for individuals creating ADUs, and notice for ADU tenants.** Consider requiring notice of rental opportunities and obligations, including a list of landlord/renter resources and written acknowledgement of receipt of such notice, to individuals seeking permits for ADUs. Such notice would clarify that Short Term Rentals are prohibited, and specify what Rent Control and/or Tenant Protections, if any, apply. In addition, consider requiring ADU owners to provide notice to their renters stating what rent control and/or

tenant protections, if any, apply to the rental relationship and, where not applicable, notice of the lack of such protections. Standard required language for such notices would be provided by the Rent Stabilization Board.

3. **Under Section 23C.24.050(C), consider how to allow for ADUs to be created through expansion of an existing structure at a level with a roof height above 14 or 18 feet.** As written, the code appears to preclude converting attic or second story space in an existing structure into an ADU if any expansion is required. If this was intentional, clarify the underlying concerns.
4. **Under Section 23C.24.050(D), consider removing paragraph (3)** which addresses a state-level concern that cities not require more than 5 foot side or rear setbacks. Pursuant to paragraph (2) of the same Section, Berkeley requires only a 4 foot setback, and with an Administrative Use Permit the 4 foot setback may be reduced. Thus, Berkeley's ADU ordinance as adopted fulfills the State's mandate and Section (3) appears to be redundant or moot.
5. **Consider allowing the Zoning Officer to require off street parking for ADUs on roadways with less than 26 feet in pavement width,** to mitigate the potential for obstruction of emergency vehicles. Under 23C.24.050(A) an ADU on a roadway with less than 26 feet of pavement width requires an Administrative Use Permit and findings under 23C.24.070 that the Fire Chief has determined that the project meets minimum fire and safety requirements. Consider amending the Parking Requirements at 23C.24.050(G) to allow the Zoning Officer to require a parking space if the Fire Chief determines that additional vehicles parked on the street may negatively impact access for emergency vehicles.

Suggested language (underlined):

- a. 23C.24.050(G): Parking is not required for an Accessory Dwelling Unit, but may be required in the case of an ADU subject to 23C.24.050(A), with the required finding in 23C.24.070(A).
- b. 23C.24.070(A): In order to approve an AUP under Section 23c.24.050(A) [...] the Zoning Officer must be provided with evidence that the Fire Chief has determined that the project will meet minimum fire safety requirements, including whether off-street parking is required to mitigate the potential for additional on-street parking to obstruct access for emergency vehicles.

Consider also whether a parking space should be required for two bedroom ADUs on streets with less than 26 feet in pavement width.

7. **Explore alternatives to Deed Restrictions** as means to enforce limitations on use of ADUs.
8. **From the items listed under the heading “Need Additional Research and Analysis” on pages 5 and 6 of the City Manager’s May 15, 2018 Referral Response report<sup>1</sup>, the following should also be considered:**
  - a. Regulating conversions versus demolition of existing non-conforming buildings;  
and
  - b. Incentivizing affordability restrictions on ADU rentalsAll other items listed under this heading should be considered at a later time.

#### ENVIRONMENTAL SUSTAINABILITY

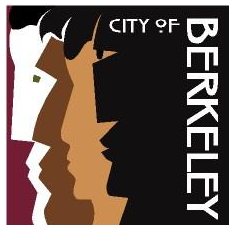
There are no environmental opportunities or risks associated with this recommendation

#### CONTACT PERSON

Councilmember Sophie Hahn, District 5, (510) 981-7150

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<sup>1</sup>[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/05\\_May/Documents/2018-05-15\\_Item\\_40\\_Referral\\_Response\\_Repeal.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/05_May/Documents/2018-05-15_Item_40_Referral_Response_Repeal.aspx)



Sophie Hahn  
Councilmember District 5

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** July 24, 2018

**Item Number:** 66

**Item Description:** Accessory Dwelling Units Ordinance Updates

**Submitted by:** Councilmember Sophie Hahn

Amended to include an additional recommendation relating to exploring alternatives to Deed Restrictions as a means to enforce limitations on use of ADUs. Also refers parking considerations and potential obstruction of emergency access to the Disaster and Fire Safety Commission



**SOPHIE HAHN**

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CONSENT CALENDAR

June 12, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Sophie Hahn, Susan Wengraf, and Kate Harrison  
Subject: Accessory Dwelling Unit Ordinance Updates

RECOMMENDATION

Refer to the Planning Commission to consider additional elements for Berkeley's Accessory Dwelling Unit Ordinance (BMC 23C.24), on an expedited basis, [and refer to the Disaster and Fire Safety Commission bullet point #5, relating to potential obstruction of emergency vehicles, and request that their recommendations be sent directly to the Planning Commission to inform the Planning Commission's review and recommendations.](#)

FINANCIAL IMPLICATIONS

None

BACKGROUND

On Tuesday May 15, 2018, the City Council unanimously passed amendments to the City's Accessory Dwelling Unit (ADU) ordinance, BMC Section 23C.24, and amendments to other affected provisions of the BMC. Simultaneous with passage of these ADU amendments, Councilmembers expressed the desire for a number of additional elements to be considered by the Planning Commission as soon as possible, for possible incorporation into the Ordinance.

The following items are referred for consideration:

1. **Incentives or requirements for Universal Design.** Because many ADUs are expected to be created at "ground level," including within the footprint of existing garages, a unique opportunity exists to create housing that is accessible to individuals with disabilities, seniors aging in place, and other residents who would most benefit from incorporation of Universal Design features. Consultation with individuals and organizations helping to house individuals with disabilities and supporting aging in place is encouraged, to determine needs and potential incentives or requirements for Universal Design in ADUs.
2. **Notice Requirements regarding rental opportunities and obligations for individuals creating ADUs, [and notice for ADU tenants.](#)** Consider requiring notice of rental opportunities and obligations, including a list of landlord/renter resources and written acknowledgement of receipt of such notice, to individuals seeking permits for ADUs. Such notice would clarify that Short Term Rentals are prohibited, and [specify what Rent Control and/or Tenant Protections, if any, apply. In addition, consider requiring ADU owners to provide notice to their renters stating what rent control and/or](#)

tenant protections, if any, apply to the rental relationship and, where not applicable, notice of the lack of such protections. Standard required language for such notices would be provided by the Rent Stabilization Board. ~~that renting an ADU triggers the same responsibilities as apply to all other landlords within the City of Berkeley.~~

3. **Under Section 23C.24.050(C), consider how to allow for ADUs to be created through expansion of an existing structure at a level with a roof height above 14 or 18 feet.** As written, the code appears to preclude converting attic or second story space in an existing structure into an ADU if any expansion is required. If this was intentional, clarify the underlying concerns.
4. **Under Section 23C.24.050(D), consider removing paragraph (3)** which addresses a state-level concern that cities not require more than 5 foot side or rear setbacks. Pursuant to paragraph (2) of the same Section, Berkeley requires only a 4 foot setback, and with an Administrative Use Permit the 4 foot setback may be reduced. Thus, Berkeley's ADU ordinance as adopted fulfills the State's mandate and Section (3) appears to be redundant or moot.
5. **Consider allowing the Zoning Officer to require off street parking for ADUs on roadways with less than 26 feet in pavement width,** to mitigate the potential for obstruction of emergency vehicles. Under 23C.24.050(A) an ADU on a roadway with less than 26 feet of pavement width requires an Administrative Use Permit and findings under 23C.24.070 that the Fire Chief has determined that the project meets minimum fire and safety requirements. Consider amending the Parking Requirements at 23C.24.050(G) to allow the Zoning Officer to require a parking space if the Fire Chief determines that additional vehicles parked on the street may negatively impact access for emergency vehicles.

Suggested language (underlined):

- a. 23C.24.050(G): Parking is not required for an Accessory Dwelling Unit, but may be required in the case of an ADU subject to 23C.24.050(A), with the required finding in 23C.24.070(A).
- b. 23C.24.070(A): In order to approve an AUP under Section 23c.24.050(A) [...] the Zoning Officer must be provided with evidence that the Fire Chief has determined that the project will meet minimum fire safety requirements, including whether off-street parking is required to mitigate the potential for additional on-street parking to obstruct access for emergency vehicles.

Consider also whether a parking space should be required for two bedroom ADUs on streets with less than 26 feet in pavement width.

6. **Consider how to protect views from obstruction due to new building or building expansions for ADUs.** Views are significant elements for homes in Berkeley, and are recognized throughout the BMC as important interests to be considered in zoning

approvals. This is true for homes in flatter/western portions of the city, where views of the East Bay Hills, the Campanile, the Bay, Bridges, San Francisco Skyline, Alcatraz and Angel Islands, and Marin County are important features, for homes in the hilly/eastern portions of Berkeley with views of these same features, and for homes on the Eastern side of the Berkeley hills, whose views may include Wildcat Canyon and Tilden Park.

While height and size limits for ADUs mitigate the potential for ADUs to obstruct views, it is likely that some ADUs that conform to these limits will nevertheless obstruct neighbors' views, especially given new, taller ADU height limits. This is an outcome our ADU provisions must take into account and mitigate, especially in light of the fact that ADUs can be built in a variety of configurations and locations, and thus likely can be built in such a way that neighboring views are not overly impacted. Achieving both goals - production of new ADUs and preservation of important views, is optimal - and possible. ~~A companion item with suggestions for objective standards for views is being presented to Council separately, and would clarify view protections for ADUs as well as for other structures.~~

7. Explore alternatives to Deed Restrictions as means to enforce limitations on use of ADUs.

~~7.8.~~ **From the items listed under the heading “Need Additional Research and Analysis” on pages 5 and 6 of the City Manager’s May 15, 2018 Referral Response report<sup>1</sup>, the following should also be considered:**

- a. Regulating conversions versus demolition of existing non-conforming buildings; and
- b. ~~Incentivizing~~ ~~Imposing~~ affordability restrictions on ADU rentals

All other items listed under this heading should be ~~considered at a later timetable,~~ ~~unless specifically referred by Council in the future.~~

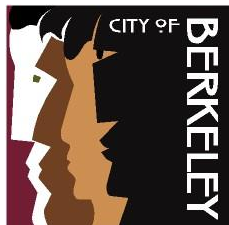
**ENVIRONMENTAL SUSTAINABILITY**

There are no environmental opportunities or risks associated with this recommendation

**CONTACT PERSON**

Councilmember Sophie Hahn, District 5, (510) 981-7150

<sup>1</sup>[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/05\\_May/Documents/2018-05-15\\_Item\\_40\\_Referral\\_Response\\_Repeal.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/05_May/Documents/2018-05-15_Item_40_Referral_Response_Repeal.aspx)



Sophie Hahn  
Councilmember District 5

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** June 12, 2018

**Item Number:** 33

**Item Description:** Accessory Dwelling Unit Ordinance Updates

**Submitted by:** Councilmember Sophie Hahn

Following conversation with a representative of the ADU Task Force and consideration of the points raised in the Task Force's letter of June 5, 2018, amendments to bullet points 2 and 7 are proposed.





# Item 33

**Supplemental 2  
Revision**

## CONSENT CALENDAR

June 12, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Sophie Hahn, Susan Wengraf, and Kate Harrison  
Subject: Accessory Dwelling Unit Ordinance Updates

### RECOMMENDATION

Refer to the Planning Commission to consider additional elements for Berkeley's Accessory Dwelling Unit Ordinance (BMC 23C.24), on an expedited basis.

### FINANCIAL IMPLICATIONS

None

### BACKGROUND

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#### ENVIRONMENTAL SUSTAINABILITY

There are no environmental opportunities or risks associated with this recommendation

#### CONTACT PERSON

Councilmember Sophie Hahn, District 5, (510) 981-7150

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**SOPHIE HAHN**

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Berkeley, CA 94704  
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shahn@cityofberkeley.info

ACTION CALENDAR

September 13, 2018

*(Continued from July 31, 2018)*

To: Honorable Mayor and Members of the City Council

From: Councilmembers Sophie Hahn, Susan Wengraf, and Kate Harrison

Subject: Accessory Dwelling Unit Ordinance Updates

RECOMMENDATION

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**ENVIRONMENTAL SUSTAINABILITY**

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**CONTACT PERSON**

Councilmember Sophie Hahn, District 5, (510) 981-7150

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