SUPPLEMENTAL AGENDA MATERIAL

for Supplemental Packet 2

Meeting Date: January 25, 2022

Item Number: B (Continued Item #24 from 1/18/2022)

Item Description: Response to City Council Action on October 26, 2021 regarding Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns

Submitted by: Councilmembers Sophie Hahn and Susan Wengraf

This Memorandum provides background and rationales for changes proposed in the Hahn/Wengraf 1/18/2022 Supplemental and is intended to be read in conjunction with the previous Supplemental filing, which is included here as well, for ease of reference.
ADDITIONAL MATERIALS FOR HAHN/WENGRAF JANUARY 25, 2022 ITEM B
(CONTINUED ITEM 24 FROM THE JANUARY 18 AGENDA)

Last week, we filed a supplemental with proposed ordinance language related to the City Council’s January 19 meeting agenda Item 24, which was continued as Item B on the January 25 meeting agenda (the Hahn/Wengraf Supplemental).

Coincidently, this weekend a wildfire was ignited in Big Sur, close to the coast, where the ground is currently wet and the air would be expected to be more humid in January. On the first night of the fire, over 1000 acres had been consumed, and mandatory nighttime evacuation was issued. This wildfire in late January is a wake up call for those of us who live in Berkeley. Fire season, fueled by strong winds like those we just experienced, is year round. It is estimated that a wildfire cresting over the densely populated Berkeley hills under extreme weather conditions will burn from Grizzly Peak to the Arlington/Marin Circle, destroying approximately 8,000 homes, in less than 27 minutes.

With climate change, the air is drier, winds are stronger, and devastating fires can ignite any month of the year, regardless of recent rains. A spokesperson from the National Weather Service in San Francisco commented on the Big Sur fire in a CNN report:

. . . it seems as though the long term drought is acting like a chronic illness where even recent rains and cold winter wx [weather] isn't helping to keep fires from developing.

In addition to all of the information provided in the staff report for Action Item B (previous Item 24), the Hahn/Wengraf proposal reflects:

1. Our extreme concern for the safety and well-being of the people of Berkeley - in every part of the City, as reiterated in a 2019 unanimously approved City Council item.
2. The extraordinary dangers that exist in Berkeley’s hillside areas, with respect to wildfire, earthquakes, and landslides.
3. Our trust and reliance on the expertise of our Fire Department Professionals, CalFire and other experts in fire science, earthquakes, evacuations, and other areas of risk assessment and public safety.
4. Our respect for action taken by the City Council in reliance on such expertise, to designate and redesignate (in 2019) Berkeley’s Very High Fire Hazard Severity Zones (VHFHSZ), as required and recognized by CalFire.
5. Recognition that the Hayward Fault, which straddles our the eastern hills, is considered the most dangerous in California at this time, with high probability of a catastrophic event in less than 30 years.
6. Recognition that, with climate change, probability of a catastrophic fire in Berkeley has increased significantly in just the past few years.

7. Knowledge that the Berkeley hills are estimated to be among the 1% most difficult to evacuate Very High Fire Hazard Severity areas in Northern California, and that at our current density, we face the potential for loss of lives.

8. Knowledge that State ADU law, pursuant to Government Code 65852.2, subdivision (a)(1)(A) allows jurisdictions to regulate ADUs based on “adequacy of water and sewer service, and the impacts of traffic flow and public safety.”

The following sections of this memorandum explain the content and reasoning of our proposal (attached here for reference).

● We support allowing one ADU or JADU in all areas of Berkeley’s Very High Fire Hazard Severity Zone (VHFHSZ).

● In addition, in areas of the VHFHSZ where more than two units are already allowed (R-3 and R-4, and Commercial areas), we support allowing more than one ADU/JADU because the number of lots affected is small, and the addition of more than one ADU will not represent a material difference from the density that is currently allowed.

● In the remainder - and overwhelming majority - of the VHFHSZ area, lots currently allow only one unit (R-1H), and a small number allow two (R-2H and R-2AH).
  ○ A UC Berkeley study estimates there will already be many “vehicles overtaken” by fire due to inability to evacuate existing VHFHSZ residents quickly enough in case of a catastrophic fire.

  ○ The addition of one more unit (an ADU or JADU) on these lots has the potential to double the density of units, representing a 100% increase in allowable density, a material increase in both residents and, given limited options for alternative transit, vehicles.

  ○ Allowing two ADUs (both an ADU and a JADU) would increase allowable density on most parcels by 200%. We believe this represents a material increase that will bring a dangerous and unacceptable number of new residents, vehicles, and structures to the VHFHSZ, with no mitigating factors.

  ○ A 200% increase in allowable density will significantly reduce public safety and exacerbate already-impeded traffic flow in a catastrophic fire, earthquake or other evacuation scenario.
- State law allows regulation of ADUs based on “the impact of traffic flow and public safety.”
- *Both traffic flow and public safety will be significantly and materially impacted by a 200% increase in density in areas of the VHFHSZ where currently only one unit (and in a few instances, two) is allowed.*

  - In summary, each major increase in density (100% and 200%) in the low-density (R-1H, R-2H, and R-2AH) areas of the VHFHSZ is *material* and has the potential to negatively impact the safety of both existing and new residents.
- Doubling the number of units allowed to be permitted in these areas (allowing just one ADU or JADU) adds to known and quantifiable risks, but is mitigated by the fact that current unpermitted second units, many already occupied by residents counted in evacuation plans and scenarios, will be permitted and brought to current building and fire codes.
- Tripling allowable households (allowing both an ADU *and* a JADU) brings a very significant number of new households into harm’s way, severely impacting public safety and, with inevitable added vehicles, further exacerbating extreme traffic flow challenges in case of evacuation.

- The VHFHSZ is bisected by the Hayward Fault, which also poses extraordinary life-safety and traffic circulation challenges in this area.

  - The Hayward Fault is the most dangerous in California, with *an earthquake of 6.7 magnitude or greater predicted in the next 26 years.*
  - All of the VHFHSZ (and some additional areas in Berkeley) are rated Level IX (9 of 10 levels) for “violent” shaking by the US Geological Services in its
HayWired Earthquake scenario

- A short video describes the scenario.
- The more households and structures allowed on and within the most violent shaking areas of the Hayward Fault, the more lives and property will be at risk when the catastrophic earthquake hits.
- Road and utility ruptures, landslides, and fires are expected. Traffic circulation to and from impacted areas will end on many streets, blocking first responders from driving fire trucks, police vehicles, and ambulances into the Berkeley Hills and blocking residents, including a higher percentage of senior citizens than in other areas of Berkeley, trying to flee damaged homes and access medical care.

Background on Very High Fire Hazard Severity Zones:
Berkeley has only one VHFHSZ. There are no conflicting State/CalFire and City-designated zones. Here’s how it works, in lay terms:

CalFire publishes a map of proposed VHFHSZs. These are generated through high level data analysis and modeling. In areas where only the State has responsibility for fire safety and management, CalFire’s map is the official map. In areas where there is a locally responsible Fire Department (Local Responsibility Areas/LRAs), such as a County, City or other jurisdiction with a Fire Department (Berkeley is a LRA), the locality has a certain period of time to adopt VHFHSZ boundaries, which can be larger, but not smaller, than CalFire’s proposed boundaries.

Broader boundaries must adhere to certain standards, with findings made to support their inclusion in the VHFHSZ. They reflect the superior knowledge of a local fire department about hazard levels in their jurisdiction, taking more factors into account than CalFire is able to assess, given their responsibility for vast areas statewide. Once a LRA has adopted VHFHSZ boundaries (the Berkeley City Council most recently re-adopted Berkeley’s VHFHSZ in 2019) and made the required findings, the designation “shall not be rebuttable by the State Fire
The LRA designated boundaries ARE the State/CalFire-recognized VHFHSZs; CalFire’s originally proposed map, essentially a “draft,” is superseded.

What makes all of this especially confusing is that CalFire does not publish on its own website the official, State/CalFire recognized VHFHSZ boundaries that are adopted by LRAs. So while their proposed VHFHSZs still appear on their website, they specifically refer people to local maps that have been adopted by LRAs for final, official VHFHSZ boundaries.

Click HERE for links to CalFire’s regulations relating to adoption of VHFHS Zones. (This section was adopted after the Oakland-Berkeley fire and is referred to as the “Bates Bill”).
Click HERE for adoption of Berkeley’s VHFHSZs November 9, 2010 - See Page 14.
Click HERE for findings made for adoption of the VHFHSZ
Click HERE for the Berkeley City Council’s most recent (2019) re-adoption of VHFHS Zones.

Factors Considered in Designation of Very High Fire Hazard Severity Zones:
There is an official process for adopting a VHFHSZ, based on expertise in fire science. A wide variety of factors is considered. While capacity and navigability of streets may be one of many factors, street widths and number of egress opportunities via streets of certain widths - 26, 28, 33, or any other width - is only one of many measures considered in evaluating Very High Fire Severity risks and hazards.

The Firefighting profession is a highly developed and active profession across the globe, with deep scientific and real-world expertise and many codes, guidelines and other resources to draw from. Some of the resources LRAs (Local Responsibility Areas) draw upon for guidance in determining which factors to consider in designating a VHFHSZ include The National Fire Protection Association (NFPA) 1144 Standard for Reducing Structure Ignition Hazards from Wildland Fire, the Wildland/Urban Interface Danger Rating System, and the International Wildland/Urban Interface Code.

The findings made by the Berkeley City Council in its resolution of necessity lay out the basis for adoption of Berkeley’s VHFHSZ and more stringent elements of the City’s Health & Safety code. Factors studied include ignition hazards such as roof materials and attic vent configurations (older homes with wood roofs, shingles and unshielded vents behave differently in fire than newer, fire-hardened construction); roadway width, geometry (curves, corners, and grade), surface, load bearing capacity, and obstructions (trees, vehicles, power lines, etc.); history of previous fires; potential impacts to critical structures such as reservoirs and fire stations; availability of water; evacuation capacity and speed given the size of population to evacuate); means of ingress for first responders in a catastrophic scenario; exposure to loss of life and property, and more. These are in addition to basic topography, wind, humidity, likelihood of fire, and other geographic and weather factors.

Any attempt to supplant these findings with an improvised set of criteria goes against the research, science, and professional experience upon which these findings were made, and
against repeated action taken by the City Council in the past decade; most recently in 2019 with readoption of the VHFHSZ. Should there be a reason to revisit the designation of Berkeley’s VHFHSZ, there is a process for doing so, based on updated science, research, and experience provided by qualified professionals, discussed with ample opportunities for public comment, and adopted according to the process required by State code.

**Berkeley’s Hazard Mitigation Plan, General Plan, the USGS and other Official Sources document the extraordinary hazards focused in the Berkeley Hills:**

- General Plan Disaster Preparedness and Safety Element
- 2019 Local Hazard Mitigation Plan
- USGS HayWired Scenario for the Hayward Fault

The City of Berkeley and regional, State and Federal agencies have exhaustively documented the extreme hazards impacting the Berkeley Hills, in particular from wildfire and earthquakes. The above linked resources and excerpts below represent a tiny fraction of available data and action at every level of government related to these hazards.

**Berkeley General Plan Disaster Preparedness and Safety Element Objectives:**
The policies and actions of the Disaster Preparation and Safety Element are intended to . . . reduce the potential for loss of life, injury, and economic damage resulting from earthquakes and associated hazards [and] decrease the potential for loss of life, injury, and economic damage resulting from urban and wildland fire.

**Policy S-16 Residential Density in the Hills**
Consider changes to the existing residential zoning in high-risk, residential areas, such as the Hill Hazardous Fire Area, to reduce the vulnerability of these areas to future disasters.

*Actions:* (A) Consider zoning amendments to prevent future development, including the prohibition of new second units, in these areas or sites in these areas that are particularly vulnerable to natural disaster. . . . (B) Consider fire safety, evacuation, and emergency vehicle access when reviewing secondary unit or other proposals to add residential units in these areas.

*From the City of Berkeley Local Hazard Mitigation Plan:* Earthquake and Wildland-Urban Interface Fires are rated both “Likely” and “Catastrophic.”

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**Review of Changes submitted in our previous Supplemental (attached):**
With respect to Chapter 12.99, our previously filed supplemental supports and accepts staff’s proposed language for **Section 12.99.020 - Applicability,** offering a reformulated (easier to comprehend) restatement with a slight modification. The modification places zones R2-H and R-2AH within the area where one ADU or JADU is allowed. We do not support the “Alternative Actions” proposed in the Staff Report on pages 5-8, nor do we support the proposal submitted in a supplemental filed by another Councilmember.
Staff’s originally proposed language for Chapter 12.99 best reflects the purposes of mitigating wildfire and earthquake hazard, evacuation, and other public safety and circulation risk, and is supported by the City’s VHFHSZ designation and by the science, expertise and experience of the many agencies and studies cited in this memorandum - and many others.

- Replacing Fire Zones 2 and 3 with the “State Recommended” VHFHSZ replaces the City’s formally adopted, State-recognized VHFHSZ with a proposed map that has been superseded by the City Council’s (repeated) formal adoption of Berkeley’s VHFHSZ. *Neither the City of Berkeley, nor CalFire, recognizes the “proposed” map as a map with any force or effect, and nor should we.*

Should the City of Berkeley wish to revisit its VHFHSZ designations, there is a process to do so, and new findings will need to be made in conformity with State law. That process will involve new study, modeling, evaluations, and expertise and could result in adoption of the same, expanded, or reduced VHFHSZ boundaries. Until such new boundaries are studied and adopted, *the City Council cannot arbitrarily decide that half of the VHFHSZ is free of those Very High Fire Severity hazards.*

Narrowing to this geography also negates entirely the presence and impact of the Hayward Fault, which also poses extreme life safety and traffic circulation risks.

- Further narrowing applicability based on street width or egress suffers from the same defects as the option discussed immediately above, but compounds the arbitrary nature of unfounded determinations of safety, based on “street width and egress.” The studies and findings underlying adoption of the City/State’s VHFHSZ already considered street width and egress, as well as the many other factors impacting fire behavior and ability to safely evacuate and bring in first responders in case of a likely catastrophic fire. *These streets were found to entail Very High Fire Severity Hazards with their current width and connections to other streets of other widths.*

*Areas proposed to be “carved out” from the VHFHSZ appear to have no scientific or rational basis.* Safe passage of both private and emergency vehicles is based on a combination of factors, not just street width. Road “geometry” (curves, corners, and grade) play significant roles in determining where streets are safely passable, as well as other factors (see above). An analysis based solely on road widths - of any of the measurements contemplated - will fail to capture pinch points and other non-navigable street features.
In addition, the concept of “two” means of egress presented does not take into account (1) that uphill egress is dangerous and will likely be impossible when all lanes of roadways are being used for downhill traffic, (2) the fire is expected to move from East to West, prohibiting uphill evacuation, and (3) some streets will be closed due to obstructions or for use by first responders.

Finally, the arbitrary and limited analysis of street widths as a measure of safety and egress does not consider the impacts of the predicted catastrophic rupture of the Hayward Fault, which runs through some areas proposed for carve outs.

In summary, the proposed system for suggesting that streets of certain widths connect to streets of other widths is not supported by accepted methodologies for determining evacuation safety in a fire or earthquake scenario. The full set of criteria were already considered by the Fire Department, based on mathematical and industry standard criteria, in determining which areas to include in the VHFHSZ.

With respect to Staff’s implementation concerns regarding “rooftop decks and balconies,” we have solved Staff’s dilemma by finding an appropriate definition in the Zoning Code glossary that can be used to fashion this clause. The definition is for “Usable Open Space.” Language is provided that accomplishes the intent of this element of Council’s referral using an appropriate defined term.

With respect to Chapter 23.306 our proposal uses a single defined and consistent formulation of areas covered that is identical to what was adopted with Item 23 on January 18, 2022.

Attachment: Hahn/Wengraf Supplemental 2 for January 19, 2022 Council Item 24
ORDINANCE NO.    -N.S.

AMENDMENTS TO THE ACCESSORY DWELLING UNIT (ADU) ORDINANCE (BMC 23.306) AND ADOPTION OF A WILDFIRE HAZARD EVACUATION RISK MITIGATION ORDINANCE (BMC 12.99)

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

Section 1. Berkeley Municipal Code Chapter 23.306 is amended to read as follows (additions are shown in underlined text and deletions are shown in strikethrough):

23.306 Accessory Dwelling Units

Sections:

23.306.010 Purposes
23.306.020 Applicability
23.306.030 Permit Procedures
23.306.040 Development Standards
23.306.050 Deed Restrictions
23.306.060 Neighborhood Noticing
23.306.070 Rooftop Decks and Balconies

23.306.010 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.

F. Reduce potential impacts of new development in high fire severity Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas, as designated in BMC Chapter 19.48 and as may be amended from time to time, areas and the Hillside Overlay District (HOD) due to unique conditions and hazards within these areas that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety consistent with Government Code 65852.2, subdivision (a)(1)(A), which allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."
23.306.020 Applicability and Definitions

A. The provisions of this chapter apply to zoning districts where residential uses are permitted, on lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.

A-B. For purposes of this chapter the Hillside Overlay District (HOD) includes all lots within Berkeley’s designated Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas that are zoned R-1H (Single-Family Residential—Hillside Overlay), R-2H (Restricted Two-Family Residential—Hillside Overlay), or R-2AH (Restricted Multiple-Family Residential—Hillside Overlay).

1. Exceptions. The provisions of this chapter that permit ADUs and JADUs do not apply to lots in the R-1H (Single-Family Residential—Hillside Overlay), R-2H (Restricted Two-Family Residential—Hillside Overlay), or R-2AH (Restricted Multiple-Family Residential—Hillside Overlay) districts. In such districts, ADUs and JADUs shall only be permitted to the extent required by subdivision (e)(1) of Government Code section 65852.2.

B. Number of ADUs and JADUs Permitted Per Lot. Except as expressly modified by Chapter 12.99, the following number of ADUs and JADUs shall be the maximum number of accessory units permitted on lots subject to this Chapter.

1. Lot with one Single Family Dwelling: One ADU and/or one JADU.
2. Lot with more than one Single Family Dwelling: One ADU.
3. Lot with a Duplex or Multiple-Family Dwelling, either:
   a. Up to two detached ADUs; or
   b. At least one ADU converted from non-habitable portions of the existing Main Building (e.g. basement, attic, storage room). The maximum number of ADUs converted from non-habitable portions of the existing Main Building shall not exceed 25% of the total number of existing Dwelling Units on the lot.
4. Lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory: One ADU.

23.102.010 Permit Procedures

A. Zoning Certificate. An application for an ADU or JADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including Development Standards, Deed Restrictions, and Neighborhood Noticing.
1. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a Building Permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.

2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code Section 65852.2(e)(1).

3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or JADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.

23.306.040 Development Standards

A. Basic Standards. See Table 23.306-1: ADU and JADU Development Standards.

**TABLE 23.306-1 ADU AND JADU DEVELOPMENT STANDARDS**

<table>
<thead>
<tr>
<th></th>
<th>ADU¹</th>
<th>JADU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Size Outside of HOD²,³</td>
<td></td>
<td>500 sf</td>
</tr>
<tr>
<td>Studio or 1 bedroom</td>
<td>850 sf</td>
<td>N/A</td>
</tr>
<tr>
<td>2 + bedrooms</td>
<td>1000 sf</td>
<td></td>
</tr>
<tr>
<td>Maximum Size Within HOD</td>
<td>800 sf</td>
<td>500 sf</td>
</tr>
<tr>
<td>Maximum Height Outside of HOD</td>
<td>20 ft.</td>
<td>N/A</td>
</tr>
<tr>
<td>Maximum Height Within HOD</td>
<td>16 ft.</td>
<td>N/A</td>
</tr>
<tr>
<td>Front Yard Setback</td>
<td>Same as underlying district</td>
<td></td>
</tr>
<tr>
<td>Rear Setback</td>
<td>4 ft³</td>
<td></td>
</tr>
<tr>
<td>Side Setback</td>
<td>4 ft³</td>
<td></td>
</tr>
<tr>
<td>Required Off-Street Parking Outside of HOD</td>
<td>None⁴</td>
<td></td>
</tr>
<tr>
<td>Required Off-Street Parking Within HOD</td>
<td>The lesser of 1 space per bedroom or ADU⁵</td>
<td>None⁶</td>
</tr>
</tbody>
</table>

[1] An ADU converted from an Accessory Building or Accessory Structure legally established prior to December 1, 2021 that does not comply with the Maximum Height, Size, and/or Rear and Side Setback requirements is allowed to maintain non-conformity to the same dimensions of the existing Accessory Building or Accessory Structure, provided that the existing side and rear setbacks are sufficient for fire and safety as determined by the Building Official and the Fire Marshal. Any physical additions to the existing Accessory Building or Accessory Structure shall comply with the development standards in this table.

[2] An ADU created entirely through conversion with no modifications to the existing building envelope that is non-compliant with the standards in this table is allowed a physical addition of no more than 150 square feet that complies with Maximum Height and Setback requirements in this table.

Commented [SH2]: Renumber
If there is a lesser setback allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district, that setback shall apply.

Replacement of off-street parking for the Main Building is allowed and does not need to comply with Parking Maximums (BMC 23.322.070) nor Parking Layout and Design (BMC 23.322.080).

For purposes of Table 23.306-1, ‘HOD’ means lots that are within Fire Zones 2 or 3 (BMC 19.48.020, para. III.), but does not include lots located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple Family Residential—Hillside Overlay), R-3H (Multiple Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts.

No off-street parking shall be required for ADUs that satisfy the criteria defined in subdivision (d) of California Government Code section 65852.2 or any successor provision thereto.

If an applicant provides off-street parking for an ADU or a JADU in the HOD, parking shall be allowed in any configuration on the lot, including within the front yard setback.

B. Projections.

1. Except as limited by Paragraph B.2 of this Section, architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows may not project into a setback.

2. No projections shall be allowed within the required setbacks on lots that are within the Hillside Overlay District, Fire Zones 2 or 3 (BMC 19.48.020, para. III.), except on lots located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple Family Residential—Hillside Overlay), R-3H (Multiple Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts.

23.306.050 - Deed Restrictions

A. The property owner shall file a deed restriction with the Alameda County Recorder which states:

1. The JADU shall not be sold separately from the Main Building;
2. The ADU shall not be sold separately from the Main Building unless the conditions of BMC 23.306.050 B are met;
3. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days; and
4. If the property includes a JADU, the JADU, or the Single Family Dwelling in which the JADU is located, shall be owner-occupied.
B. **ADUs Developed by a Qualified Nonprofit Developer.** An ADU built or developed by a “qualified nonprofit corporation” may be sold or conveyed separately from the Main Building to a “qualified buyer,” as such terms are defined in subdivision (b) of Section 65852.26 of the California Government Code. The ADU must be held pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:

1. Delineation of all areas of the property that are for the exclusive use of a cotenant;
2. Delineation of each cotenant’s responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;
3. Procedures for dispute resolution among cotenants before resorting to legal action;
4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;
6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer’s principal residence; and
7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility.

### 23.306.060 – Neighbor Noticing

**A. Scope and Timing of Notice.** Notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department.

**B. Content of Notice.** Notice shall provide the address of the project, allowable hours of construction, and a link to the City’s ADU webpage.

**C. Mailing Fees.** The applicant shall be responsible for the cost of materials, postage and staff time necessary to process and mail notices.

### 23.306.070 Rooftop Decks and Balconies

**A.** Notwithstanding any provisions of this Title to the contrary, **roofs rooftop-decks and balconies shall be prohibited on lots that are within the Hillside Overlay District may not be designed, converted, or used as Usable Open Space.** Fire Zones 2 or 3 (BMC Commented [SH7]: Usable Open Space. Outdoor space, including natural and landscaped ground areas, pools, patios, decks and balconies designed for active or passive recreational use and which is accessible to the occupants of a building on the same lot.)
19.48.020, para. III.) except on lots located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts.
Section 2. Berkeley Municipal Code Chapter 12.99 is adopted to read as follows:

12.99   Wildfire Hazard Evacuation Risk Mitigation Ordinance

Sections
12.99.010   Title and Purposes
12.99.020   Applicability
12.99.030   Total Number of Units Permitted

12.99.010   Title and Purposes

A. This Chapter may be referred to as the “Wildfire Hazard Evacuation Risk Mitigation Ordinance.”

B. The purposes of this chapter are to permit and promote the construction of accessory dwelling units and junior accessory dwelling units while protecting human life and health, promoting the public health, safety, and general welfare, and minimizing public and private losses due to dangerous conditions in specific areas.

C. Government Code 65852.2, subdivision (a)(1)(A) allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."

D. The Hillside Overlay District, as defined in BMC 23.306.020 B, has unique conditions and hazards that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety:

1. Wildfires, earthquakes and landslides put residents of the Hillside Overlay District at significant risk.

2. The Hayward fault bisects the Hillside Overlay District.

3. Due to the maze of narrow, steep, and winding streets, the Hillside Overlay District has extremely poor emergency access, egress and egress evacuation conditions. Safety is compromised by a substandard street infrastructure that has limited accessibility for emergency responders as well as inadequate capacity for fast and reliable escape. A majority of street widths in the North Berkeley Hillside Overlay District hills have substandard widths, and difficulty of navigation in most areas is exacerbated by one or more conditions including steep slopes, sharp curves, and acute-angled corners.

4. A study published by UC Berkeley researchers concluded that in the best-case scenario, if each household evacuated from the Berkeley hills with one vehicle, estimated evacuation time would be two hours and 245 vehicles would be exposed to immediate fire danger. However, if each household evacuated...
with 1.7 vehicles, evacuation time would increase to three hours and 782 vehicles would be exposed to immediate fire danger. Doubling the number of households in these areas through the addition of just one ADU or JADU, assuming only one evacuation vehicle per household, would likely produce similar outcomes to the 1.7 vehicle-per-household evacuation scenario, likely with a larger total number of residents at risk.

5. Berkeley’s Hillside Overlay District is comprised of the most difficult-to-access and evacuate areas in Berkeley’s Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas. In addition, the Hayward Fault traverses the full length of these zones, with violent (Level 9 of 10) shaking predicted in the US Geologic Services Hayward Fault earthquake scenario (HayWired). Scientists at UC Berkeley’s Seismology Lab have determined that the Hayward Fault is probably California’s most dangerous, with a 31.7% chance of a 6.7 magnitude or greater earthquake in the next 26 years.

6. The City’s Hazard Mitigation Plan, adopted December 10, 2019, identifies Earthquake and Wildland-Urban Interface Fire as “Likely” and “Catastrophic” events. Increasing density and intensity by permitting both one ADU and one JADU (2 total) in addition to the primary home, on every parcel zoned residential in the Hillside Overlay District, representing a 200% increase in units allowed on most parcels, or in a very high fire hazard severity zone will seriously exacerbate the already very extremely hazardous conditions that currently exist with respect to traffic flow and public safety in the likely event of a catastrophic wildfire or earthquake, necessitating reasonable limitations that reduce exposure to hazardous conditions.

12.99.020 Applicability

A. Lots within the Hillside Overlay District (HOD), as defined in BMC 23.306.020 B, A lot that meets all of the following criteria shall be subject to the provisions of this Chapter.

1. Lots that are located within the very high fire hazard severity zone (“Fire Zone 2” or “Fire Zone 3”) as designated in paragraph III. of Berkeley Municipal Code Section 19.48.020; and

2. Lots that are not located within the R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), R-3H (Multiple-Family Residential—Hillside Overlay), or R-4H (Multi-Family Residential) districts.

12.99.030 Total Number of Units Permitted
A. Notwithstanding any provisions of Chapter 23.306 to the contrary, no more than one ADU or JADU shall be permitted per lot that is subject to this Chapter.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.