

Councilmember Susan Wengraf  
Mayor Jesse Arreguín  
Councilmember Sophie Hahn

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

- 1. Recommending adoption of the draft ordinance presented by Planning Staff in the October 3, 2023 Revised Agenda Material for the Supplemental Packet 1 to be in compliance with Housing and Community Development guidance and conform to State Law, including a revised Table 23.322.1 in Section 10.***

While waiting for the Fire Department Evacuation study, this supplemental advocates for the adoption of default State standards for the development of ADUs in the Hillside Overlay, in compliance with new laws and guidance from the California Department of Housing and Community Development. Re-evaluation and analysis of Berkeley-specific standards for ADUs in the Hillside Overlay would be undertaken after results from the Fire Evacuation study and other data are released in the coming months. In the interim, we recommend amending elements of the ADU ordinance that relate to the Hillside Overlay to conform to State Law by adopting the Amendments to Title 23 relating to Accessory Dwelling Units as proposed by Planning Staff in the October 3, 2023, Revised Agenda Material for the Supplemental Packet.

- 2. Recommending adoption of Policy Alternative 1, Front Setbacks:***

For ADUs sited within front setbacks, slightly amended language is proposed for adoption, as provided by the City Attorney's Office. The amended language is for clarity of drafting and does not change the operation of the Policy Alternative.

Policy Alternative 1 proposes an objective standard that addresses the issue of constructing an ADU in the front yard while still complying with State law. This Policy Alternative allows intrusions into the front setback in a graduated manner, with siting of

an ADU at the front lot line available only as a last resort, if an 800 sq foot ADU cannot be accommodated elsewhere in the front yard setback.

***Section 23.306.030 (A)(4) Front Setback, New Construction.***

***An ADU shall not occupy area within the front setback unless the requirement would preclude an ADU of 800 square feet. Should an ADU require area within the front setback, the ADU shall maintain a minimum 10-foot setback from the front lot line, unless such setback would preclude an ADU of 800 square feet. If a 10-foot setback would preclude an ADU of 800 square feet, the ADU shall maintain a 5-foot setback from the front lot line. If a 5-foot setback would preclude an ADU of 800 square feet, the ADU may be sited up to the front lot line.***

**3. *Recommending Adoption of Policy Alternative 2, Conversion of ADUs to maintain time limit for conversion based on when the accessory building or structure was created:***

Restore policies previously adopted by the City Council on conversion of non-conforming Accessory Buildings and Structures, closing a loophole that allows for circumventing ADU requirements, using language provided by Staff as Policy Alternative 2. By limiting conversion of non-conforming Accessory Buildings and Structures to structures at least 3 years old, Council previously closed a loophole whereby a new Accessory Building or Structure that would not comply with ADU standards is constructed and immediately converted into a non-conforming ADU, thereby circumventing ADU requirements.

***Section 23.306.030 Development Standards:***

***Accessory Building or Accessory Structure Conversion. An ADU converted from an accessory building or accessory structure legally established at least three years prior to submission of an ADU application that does not comply with the maximum height, size, and/or rear and side setbacks requirements allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure, provided that the ADU meets fire and safety standards set forth in the California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing accessory building or accessory structure shall comply with the development standards in Table 23.306.2***

#### **4. Recommending Adoption of Policy Alternative 3, Neighborhood Noticing**

Berkeley's existing ADU code includes a neighbor noticing requirement that includes adjacent, confronting, and abutting properties. This Supplemental recommends adoption of Policy Alternative 3, to maintain the currently existing requirement of notice to owners and tenants of adjacent, confronting, and abutting properties. Staff has already updated the City's noticing document to ensure neighbors understand that this notice is a courtesy and does not imply any right to contest or appeal an ADU application.

#### ***Section 23.306.040 Permit Procedures***

##### ***B. Noticing***

- 1.Scope and Timing of Notice. Notice of an ADU application shall be mailed to tenants of the subject property and all owners and tenants of the adjacent, confronting and abutting properties within ten working days of submission of the building permit application to the City.***
- 2. Content of Notice. Notice shall provide the address of the project and include allowable hours of construction, a link to the City's ADU webpage, information for tenants of the subject property on how to contact a Rent Board Housing Counselor by email or phone and any other resources deemed relevant.***
- 3. Mailing feed. The applicant shall be responsible for the cost of materials, postage and staff time necessary to process and mail notices.***

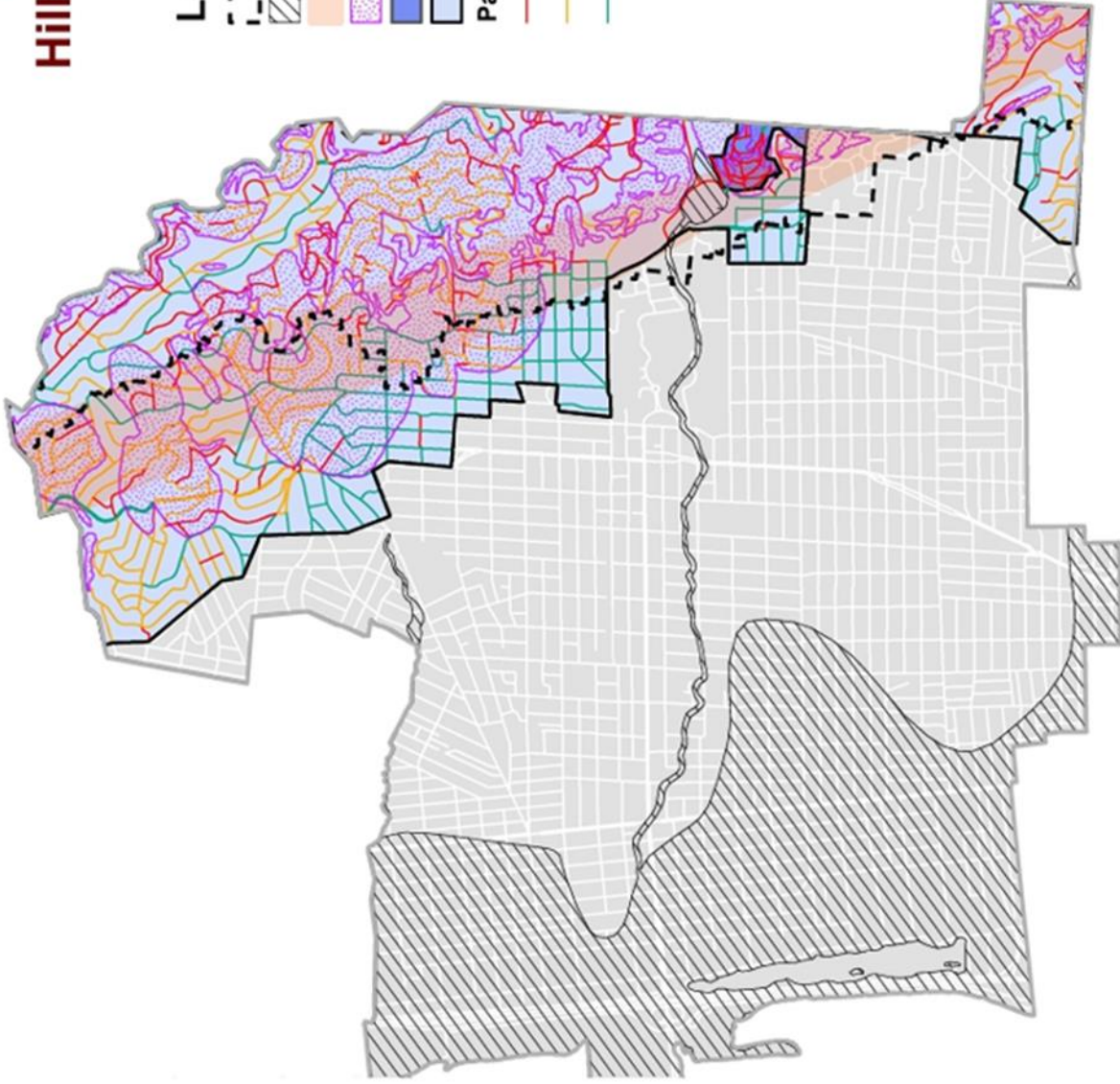
#### **Attachment for the record:**

- 1. City of Berkeley "Hillside Conditions Map"**

# City of Berkeley Hillside Conditions Map

## Legend

-  Very High Hazard Severity Zone
  -  CGS Seismic Hazard Zone: Liquefaction
  -  CGS Seismic Hazard Zone: Earthquake Fault
  -  CGS Seismic Hazard Zone: Landslide
  -  ES-R Zoning District
  -  Hillside Overlay
- Pavement Width**
-  Less than or equal to 20 feet
  -  21 to 26 feet
  -  Greater than 27 feet



Updated:  
November 14, 2019



