



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

October 7, 2026

To: Members of the Planning Commission  
From: Branka Tatarevic, Associate Planner  
Subject: Amendments to Title 23 (Zoning) to ensure compliance with State ADU and JADU laws

### **RECOMMENDATION**

Conduct a public hearing, receive public comment, and, upon conclusion, recommend that the City Council adopt amendments to the Zoning Ordinance (see ***Attachment 1***) to bring the City's accessory dwelling unit (ADU) and junior accessory dwelling unit (JADU) regulations into compliance with current State law and the California Department of Housing and Community Development's (HCD) ordinance-review findings.

### **BACKGROUND AND DISCUSSION**

In 2025, the City amended Berkeley Municipal Code Chapter 23.306 in response to changes in State law and an earlier HCD review. HCD subsequently reviewed the amended ordinance and issued a new six-item compliance letter dated June 16, 2026 (***Attachment 2***). This report presents amendments required to address that letter and additional State ADU and JADU laws effective January 1, 2026. It also asks the Planning Commission to provide direction on the maximum size of certain detached new-construction ADUs within the Hillside Overlay.

As drafted, the amendments retain Berkeley's existing size and height allowances while making the changes required by HCD and State law. The Commission may instead recommend applying an 800-square-foot maximum to the detached new construction State Standards ADUs for which that limitation is authorized by Government Code section 66323.

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## **HCD ORDINANCE REVIEW FINDINGS**

HCD identified six required corrections concerning unit allowances, application completeness, deed restrictions, and the measurement of unit size. The proposed ordinance addresses the findings as follows:

- **Single-family lots with one primary dwelling.** Table 23.306-1 currently permits two ADUs and one JADU, including conversion or interior ADUs and new-construction ADUs. The proposed amendments would allow up to *three* ADUs and one JADU, including conversion or interior ADUs and new-construction ADUs. This provides the full combination of units required by Government Code section 66323(a)(1)-(2), together with at least one additional ADU processed under sections 66314 and 66317, as directed by HCD Comment 1.
- **Lots with multiple detached single-family dwellings.** Currently, Chapter 23.306 permits one ADU on lots with multiple detached single-family dwellings. The proposed amendments would allow up to two ADUs and one JADU per lot.
- **Multifamily primary dwellings.** For an existing multifamily dwelling, Table 23.306-1 would retain the interior and new-construction ADUs allowed under State law and add one conversion, interior, or new-construction ADU. For a proposed multifamily dwelling, the table would allow up to three new construction ADUs. These revisions respond to HCD Comment 3 by providing at least one ADU under sections 66314 and 66317 in addition to the units required by section 66323.
- **Application completeness.** Section 23.306.040(A) is a new requirement under Government Code sections 66317(a)(2) and 66335(a)(2). It would establish the 15-business-day completeness review and state that an incomplete notice must identify each incomplete item and explain how it may be cured. The City may not add new completeness items during review of the resubmittal and an application is deemed complete if the City misses the applicable deadline. This responds to HCD Comment 4.
- **ADU and JADU deed restrictions.** HCD's June 2026 letter notes that State law prohibits applying deed restrictions to ADUs. Section 23.306.040(C) would remove the recorded deed-restriction requirement for ADUs while retaining it for JADUs. The substantive ADU sale and rental provisions would be placed in a separate subsection rather than imposed through a deed restriction. This responds to HCD Comment 5 and Government Code sections 66315 and 66333(c).
- **Interior livable space.** Currently, the Zoning Ordinance controls ADU and JADU area in terms of Gross Floor Area. HCD's June 2026 letter notes that State law requires all size maximums for ADUs to be in terms of "Interior Living Space." The proposed amendments would use Interior Livable Space when measuring ADU and JADU size

maximums and would add a corresponding definition to BMC Chapter 23.106., Rules of Measurement This responds to HCD Comment 6 and tracks Government Code sections 66313(d)-(e), 66321(b), and 66323(a)(2). The numerical size limits are not reduced.

### **2026 STATE LAW UPDATES**

Senate Bill 543 (Chapter 520, Statutes of 2025) amended State ADU and JADU Law effective January 1, 2026. In addition to the completeness procedures described above, SB 543 requires written notice explaining the reasons for a denial and how deficiencies may be corrected. It also r

- SB 543 requires a written appeal process for an incompleteness determination or denial and a final written appeal determination within 60 business days. The proposed Section 23.306.040(A) incorporates these requirements for both ADUs and JADUs. The proposed amendments designate ZAB to hear written appeals of an application incompleteness determination or denial under Government Code sections 66317(d) and 66335(e). A final written determination must be issued within 60 business days after receipt of the written appeal.
- SB 543 renumbered several provisions within State ADU Law. The proposed purpose statement therefore references Government Code Chapter 13, sections 66310 through 66342.
- SB 543 also extends legalization protections to unpermitted JADUs constructed before January 1, 2020, and requires related public information. Building & Safety will implement these requirements through its permit procedures, checklists, and website; no additional zoning amendment is proposed.

Assembly Bill 1154 (Chapter 507, Statutes of 2025), also effective January 1, 2026, requires a local JADU ordinance to restrict rentals to terms longer than 30 days. It limits owner-occupancy requirements to JADUs that share sanitation facilities with the primary dwelling and exempts governmental agencies, land trusts, and qualifying housing organizations. The proposed amendments conform the JADU deed restriction to these requirements.

### **HILLSIDE OVERLAY SIZE STANDARDS**

During the 2025 ADU ordinance process, the Planning Commission recommended amendments concerning ADU size standards and the treatment of attached ADUs. The City Council subsequently adopted amendments with modifications intended to apply only the minimum size allowances required by State law within the Hillside Overlay.

At that time, the ordinance incorporated the unit categories described in Government Code section 66323 for purposes of determining the number of ADUs allowed but did not distinguish those units from ADUs approved under the City's local standards.

Consequently, Berkeley's local maximum size standards—850 square feet for a studio or one-bedroom ADU and 1,000 square feet for an ADU with two or more bedrooms—applied to the ADUs allowed within the Hillside Overlay. These are the lowest maximum size limits that a jurisdiction adopting a local ADU ordinance may generally impose.

For purposes of this report, "State Standards ADUs" are the categories of units required by Government Code section 66323. "Local Standards ADUs" are ADUs allowed under Government Code section 66314 and subject to Berkeley's locally adopted standards. The applicable detached new-construction State Standards ADU would be limited to 800 square feet, while the Local Standards ADU would remain subject to Berkeley's 850- and 1,000-square-foot maximums.

In its June 2026 letter, HCD determined that lots with one single-family primary dwelling and lots with multifamily primary dwellings must be allowed the full allotment of State Standards ADUs, in addition to at least one Local Standards ADU. Under this framework, the detached new-construction State Standards ADU may be limited to 800 square feet. The additional Local Standards ADU must be permitted up to 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two or more bedrooms. Applying the City Council's prior minimum-compliance direction under HCD's new interpretation would therefore result in different size standards for State Standards and Local Standards ADUs.

The proposed amendments instead reflect the Planning Commission's 2025 policy recommendation of applying Berkeley's local standards to all ADU categories (i.e. all ADUs are Local Standard ADUs), rather than limiting the applicable detached new-construction State Standards ADU to 800 square feet. This approach retains Berkeley's existing size allowances while providing the unit types and combinations required by State law and HCD.

**Attachment 3** compares the standards currently in effect, the proposed amendments reflecting the Planning Commission's recommendation, and the alternative reflecting the City Council's prior minimum compliance direction.

**The policy question for the Planning Commission is** whether to recommend an 800-square-foot maximum for the detached new construction State Standards ADU for which that limitation is authorized by Government Code section 66323, consistent with the City Council's prior minimum-compliance direction, or to apply Berkeley's Local Standards to all ADU types, consistent with the Planning Commission's 2025 recommendation. Both approaches are consistent with State law.

## **SUMMARY OF PROPOSED AMENDMENTS**

The proposed zoning amendments are contained in BMC Chapter 23.306 (Accessory Dwelling Units) and BMC Chapter 23.106 (Rules of Measurement). The following table summarizes the revisions and identifies the authority for each change:

**TABLE 1. SUMMARY OF ADU ORDINANCE CHANGES - BMC CHAPTER 23.306**

| Ord Section | BMC Section                                   | Summary of Change                                                                                                                                                                                               | Authority / Rationale                                                                     |
|-------------|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| 1           | 23.106.045<br>Interior Livable Space          | Adds definition for Interior Livable Space.                                                                                                                                                                     | HCD Comment 6; Gov. Code Section 66313(e); HCD ADU Handbook (March 2026).                 |
| 2           | 23.306.010(A)<br>Purpose                      | Updates the State-law reference to Government Code Chapter 13, sections 66310-66342.                                                                                                                            | Technical conforming change; SB 543 (2025).                                               |
| 3           | 23.306.020(D)                                 | Adds a reference for Interior Livable Space.                                                                                                                                                                    | HCD Comment 6; Gov. Code Section 66313(e); HCD ADU Handbook (March 2026).                 |
| 4           | Table 23.306-1, Single-Family Unit Allowances | Allows up to three ADUs and one JADU on a lot with one single-family dwelling and increases the allowance on a lot with multiple detached single-family dwellings from one ADU to up to two ADUs and one JADU.. | HCD Comments 1-2; Gov. Code Sections 66314(d)(3), 66317(a)(3), 66322(b), 66323(a)(1)-(2). |
|             | Table 23.306-1, Multifamily Unit Allowances   | Adds one conversion, interior, or new-construction ADU to the allowances for existing multifamily dwellings and allows up to three new-construction ADUs with a proposed multifamily dwelling.                  | HCD Comment 3; Gov. Code Sections 66314(d)(3), 66317(a)(3), 66323(a)(3)-(4).              |
| 5           | Table 23.306-2; ADU Size Measurement          | Replaces Gross Floor Area with Interior Livable Space as the measurement for maximum ADU size.                                                                                                                  | HCD Comment 6; Gov. Code Sections 66321(b)(2)-(3), 66323(a)(2)(A).                        |
| 6           | 23.306.030 (A)(1)                             |                                                                                                                                                                                                                 |                                                                                           |

| Ord Section | BMC Section                               | Summary of Change                                                                                                                                                  | Authority / Rationale                                                      |
|-------------|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
|             | Existing Building or Accessory Conversion |                                                                                                                                                                    |                                                                            |
| 7           | 23.306.030 (B)(1), (3), JADU Size         | Applies the 500-square-foot Interior Livable Space limit and clarifies treatment of shared sanitation space.                                                       | HCD Comment 6; Gov. Code Section 66313(d)-(e); SB 543 (2025).              |
| 6           | 23.306.040 (A)(1) Completeness            | Adds the 15-business-day completeness review, itemized cure notice, resubmittal limitations, and deemed-complete consequence.                                      | HCD Comment 4; Gov. Code Sections 66317(a)(2), 66335(a)(2); SB 543 (2025). |
|             | 23.306.040(A) (2)-(3), Decision Deadlines | Clarifies the 60-day decision period for lots with existing dwellings and the timing rule for applications submitted with a new primary dwelling.                  | Gov. Code Sections 66317(a)(3), 66335(a)(3)-(5); SB 543 (2025).            |
|             | 23.306.040(A) (6)-(7) Denial and Appeal   | Requires a complete written denial with cure instructions and establishes a written appeal with a final determination within 60 business days.                     | Gov. Code Sections 66317(b), (d), 66335(b), (e); SB 543 (2025).            |
| 7           | 23.306.040(C), JADU Deed Restriction      | Retains the State-required JADU deed restriction and updates its rental and owner-occupancy terms.                                                                 | HCD Comment 5; Gov. Code Section 66333(b), (c), (g); AB 1154 (2025).       |
| 8           | 23.306.040(E), ADU Sale and Rental        | Removes these provisions from an ADU deed restriction and states them as substantive operating requirements, including the authorized exceptions to separate sale. | HCD Comment 5; Gov. Code Sections 66314(d)(1), 66315, 66340-66342.         |

## **ENVIRONMENTAL REVIEW**

The proposed ordinance amendments are statutorily exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section 15282(h), because they amend a City ordinance implementing State ADU Law.

### **NEXT STEPS**

Following the public hearing, the Planning Commission may recommend that the City Council adopt the proposed amendments, with any modifications identified through Commission discussion and action. Following adoption, staff will submit the amended ADU and JADU ordinance to HCD within 60 days as required by Government Code sections 66326 and 66333.5.

### **CONTACT PERSON**

Branka Tatarevic, Associate Planner, Planning and Development, 510-981-7472

#### **Attachments:**

1. Planning Commission Resolution;
  - a. Exhibit A: Zoning Ordinance amendments
2. HCD ADU Ordinance Review Letter
3. Hillside Size Standards Comparison Table
4. Public Hearing Notice.

Internal

**ATTACHMENT 1**

Commented [JH1]: Always Attachment 1

**PLANNING COMMISSION  
RESOLUTION NO. 2026-14**

**A RESOLUTION OF THE CITY OF BERKELEY PLANNING COMMISSION  
RECOMMENDING THE CITY COUNCIL ADOPT PROPOSED AMENDMENTS TO BMC  
CHAPTER 23.106 (RULES OF MEASUREMENT) and BMC CHAPTER 23.306  
(ACCESSORY DWELLING UNITS) TO ENSURE COMPLIANCE WITH STATE ADU LAWS**

**WHEREAS**, the City of Berkeley must ensure that its Zoning Ordinance complies with State law with respect to Accessory Dwelling Units (ADUs), so from time to time must amend the Zoning Ordinance; and

**WHEREAS**, the amendments do not change the designation of any parcel to reduce the intensity of use allowed under the existing General Plan or zoning pursuant to Gov. Code section 66300(b)(1); and

**WHEREAS**, on September 9, 2025, the City amended Berkeley Municipal Code Chapter 23.306 in response to changes in State ADU and Junior Accessory Dwelling Unit (JADU) law and an earlier review by the California Department of Housing and Community Development (HCD); and

**WHEREAS**, HCD subsequently reviewed the amended ordinance and issued written findings in a letter dated June 16, 2026 identifying six recommended changes to comply with State ADU law; and

**WHEREAS**, State laws effective January 1, 2026, including Senate Bill 543 and Assembly Bill 1154, amended requirements applicable to the review and approval of ADUs and JADUs; and

**WHEREAS**, the proposed amendments address HCD's ordinance review findings and current State law requirements concerning unit allowances, application completeness, permit denials and appeals, deed restrictions, Junior Accessory Dwelling Unit requirements, and the measurement of interior livable space; and

**WHEREAS**, a public hearing notice was published in the Berkeley Voice and posted in three public places pursuant to California Government Code Section 65090 on September 25, 2026 for the public hearing held on October 7, 2026; and

**WHEREAS**, on October 7, 2026, the Planning Commission held a public hearing and considered all public comments received, the presentation by City staff, the staff report, the HCD ordinance review letter, and all other pertinent documents concerning the proposed amendments; and

**WHEREAS**, all documents constituting the record of this proceeding are and shall be retained by the City of Berkeley Planning and Development Department, Land Use Planning Division, at 1947 Center Street, Berkeley, California; and

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**WHEREAS**, the proposed ordinance amendments are statutorily exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15282(h) because they implement state ADU and JADU law.

**NOW, THEREFORE, IT BE RESOLVED** that the Planning Commission does hereby recommend to the City Council of the City of Berkeley to amend Title 23, as shown in Exhibit A; and

Pursuant to Berkeley Municipal Code Section 23.412.060, the Planning Commission makes the following findings to support its recommendation for the zoning ordinance amendments:

- (1) **The proposed amendment is consistent with the General Plan and any applicable specific plan or area plan.**

**Evidence:** Per California Government Code § 66319, an ADU shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot.

- (2) **The proposed amendment is consistent with state law.**

**Evidence:** The amendments address HCD's June 16, 2026 ordinance review findings and incorporate current requirements of State ADU and JADU law, Government Code Chapter 13, sections 66310 through 66342.

- (3) **The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare.**

**Evidence:** The Zoning Ordinance amendments serve the public interest by facilitating additional housing capacity and production to better meet housing demand.

- (4) **The proposed amendment is internally consistent with other applicable provisions of the Zoning Ordinance.**

**Evidence:** The amendments are limited to the ADU and JADU regulations and related measurement provisions and do not conflict with other applicable provisions of the Zoning Ordinance.

**I HEREBY CERTIFY** the foregoing resolution was passed and adopted by the Planning Commission of the City of Berkeley, at a regular meeting thereof, held on the 7th day of October 2026, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**JUSTIN HORNER, SECRETARY TO THE PLANNING COMMISSION**

Internal

**EXHIBIT A**  
**DRAFT**  
**ADU ORDINANCE AMENDMENTS**

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

Section 1. That BMC Section 23.106.045 is added to Chapter 23.106 Rules of Measurement to read as follows:

23.106.045 Livable Space, Interior.

Interior Livable Space. A space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation. Interior Livable Space includes bedrooms, bathrooms, kitchens, laundry rooms, closets, and interior stairs.

Section 2. That BMC Section 23.306.010(A), is amended to read as follows:

A. Implement California Government Code Chapter 13, Code Sections 66310 through 66342. ~~Government Code Sections 66314 through 66339.~~

Section 3. That BMC Section 23.306.020(D) is added to BMC Section 23.306.020 to read as follows:

D. For purposes of this Chapter, "Interior Livable Space" has the meaning set forth in Section 23.106.045.

Section 4. That Table 23.306-1, ADU and Junior ADU Maximum Number of Units per Lot, in BMC Section 23.306.020 is amended to read as follows:

**Table 23.306-1. ADU AND JUNIOR ADU MAXIMUM NUMBER OF UNITS PER LOT**

| USE, PRIMARY                                      | ADU AND JADU, MAXIMUM PER LOT                                                                                                                                                                        |
|---------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Single Family Dwelling, one unit on lot           | <u>Up to 3 ADUs and one Junior ADU total, consisting of 4</u> <del>Conversion</del> <u> or interior ADU and 1</u> <del>New Construction ADUs<sup>1</sup>, and 1 Junior ADU.</del> All are permitted. |
| Single Family Dwelling, more than one unit on lot | <u>Up to 2 ADUs and 1 Junior ADU per lot, consisting of Conversion or Interior ADUs and New Construction ADUs. All are</u>                                                                           |

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| USE, PRIMARY                  | ADU AND JADU, MAXIMUM PER LOT                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                               | <del>permitted. 4 ADU</del>                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Existing Multifamily Dwelling |                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Outside Hillside Overlay      | <del>1 additional Conversion, Interior or New Construction ADU;</del> Up to 8 New Construction ADUs <sup>1</sup> , provided that the number of ADUs does not exceed the number of existing units, and at least one interior ADU up to 25% of the total number of existing dwelling units on the lot.<br><br><del>And</del><br><br><del>1 additional Conversion, Interior or New Construction ADU;</del><br><br><del>All are permitted in combination.</del> |
| Within Hillside Overlay       | <del>1 additional Conversion, interior or New Construction ADU;</del> Up to 8 Detached ADUs, provided that the number of ADUs does not exceed the number of existing units, and at least one interior ADU up to 25% of the total number of existing dwelling units on the lot.<br><br><del>And</del><br><br><del>1 additional Conversion, Interior or New Construction Detached ADU;</del><br><br><del>All are permitted in combination.</del>              |
| Proposed Multifamily Dwelling |                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Outside Hillside Overlay      | <del>Up to 32</del> New Construction ADUs <sup>1</sup> .                                                                                                                                                                                                                                                                                                                                                                                                    |

Commented [JH2]: Please confirm: there is now no difference between Inside and Outside the Hillside Overlay. If so, rework table and remove distinction.

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| USE, PRIMARY                                                                                                                  | ADU AND JADU, MAXIMUM PER LOT  |
|-------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| Within Hillside Overlay                                                                                                       | <u>Up to 32</u> Detached ADUs. |
| Group Living Accommodation                                                                                                    | 1 ADU                          |
| 1 New Construction ADUs may be either attached or detached from the main building(s) and/or other ADUs, in any configuration. |                                |

Section 5. That the line "Gross Floor Area" in Table 23.206-2 ADU Development Standards in BMC Section 23.306.030 is amended to read as follows:

|                                                                         |                                                                                                          |
|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| <del>Interior Livable Space</del> <del>Gross Floor Area</del> , Maximum | <a href="#">23.306.030(A)(1)</a><br><a href="#">23.306.030(A)(2)</a><br><a href="#">23.306.030(A)(3)</a> |
|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|

Section 6. That BMC Section 23.306.030(A)(1) is amended to read as follows:

1. *Existing Building or Accessory Conversion.* An ADU created entirely through conversion with no modifications to the existing building or accessory structure envelope that exceeds the development standards for maximum ~~interior livable space gross floor area~~ in Table 23.306-2, ADU Development Standards, is allowed a physical addition of no more than 150 square feet. The addition must comply with maximum height and setback requirements.

Section 7. That BMC Section 23.306.030(B) is amended to read as follows:

B. *Junior ADUs.*

1. *Basic Standards.* A Junior ADU shall be contained entirely within an existing or proposed single family dwelling (including basements, attics, storage rooms, boiler rooms, and passageways) or its attached garage and have no more than 500 square feet in ~~floor area~~ interior livable space.
2. *Shared Sanitation Facility.* If a Junior ADU shares a sanitary facility with a single-family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.

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3. Junior ADU Interior Livable Space Floor Area. The Junior ADU interior livable space gross floor area calculation excludes any shared sanitation facility with the single-family dwelling.

Section 6. That Section 23.306.040(A) is amended to read as follows:

A. *Zoning Certificate*. An application to create or serve for an ADU or Junior ADU shall be allowed with a Zoning Certificate. ~~The review must be completed, and the application approved or denied, within 60 days of receipt of a completed application. A completed application must include evidence of compliance with this Chapter, including development standards.~~

~~4. If an application to create an ADU or Junior ADU 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 Junior ADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired. See 23.404.060(A) Post-Decision Provisions (Effective Dates).~~

1. Completeness.

a. The City shall determine whether an application to create or serve an ADU or Junior ADU is complete and provide written notice of this determination to the applicant not later than 15 business days after the permitting agency received the application.

b. If the application is incomplete, the notice shall list the incomplete items and describe how the application may be made complete.

c. The applicant may cure and address the identified incomplete items.

d. Within 15 business days after receiving a resubmittal, the City shall determine in writing whether it remedies all previously identified incomplete items. The City shall not require an item that was not included in the original notice.

e. If the City does not make a timely determination, the application or resubmitted application shall be deemed complete.

2. Application Submitted on Lot with Existing Dwelling Unit(s). The City shall approve or deny an application within 60 days after receiving a complete application if an existing Single Family or Multifamily Dwelling is located on the lot. If the City does not approve or deny the application within 60 days, the application shall be deemed approved. If the applicant requests a delay, the 60-day period shall be tolled for the period of the requested delay.

**Commented [BT3]:** If an application to create an ADU or Junior ADU 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 Junior ADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired. See 23.404.060(A) Post-Decision Provisions (Effective Dates).

Internal

3. **Application Submitted with New Primary Dwelling.** If an application to create or serve an ADU or Junior ADU is submitted with an application to create a new Single Family or Multifamily Dwelling on the lot, the City may delay approving or denying the ADU or Junior ADU application until the City approves or denies the application for the new primary dwelling. If a primary dwelling requires a discretionary permit, see 23.404.060(A) Post-Decision Provisions (Effective Dates). The ADU or Junior ADU application shall remain subject to ministerial review without a hearing.

24. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or Junior ADU that complies with the requirements of Government Code Section 66323.

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

46. **Denial.** If the ~~Zoning Officer~~ City denies an application, the applicant shall be provided, within the same 60-day period, a written notice identifying all deficiencies in the application and a description of how the application may be corrected, and notice of the applicant's right to appeal the denial.

7. **Appeal.** An applicant may appeal in writing a determination that an application is incomplete or a denial of an application by submitting the appeal to the City Clerk. The Zoning Adjustments Board shall review the appeal ministerially, affirm or reverse the determination, and provide the applicant with a final written determination no later than 60 business days after receipt of the written appeal.

Section 7. That Section 23.306.040(C) is amended to read as follows:

C. **Junior ADU Deed Restriction.** The property owner of a lot containing a Junior ADU shall file a deed restriction with the Alameda County Recorder which states:

1. The Junior ADU shall not be sold separately from the main building;

~~2. The size of the Junior ADU shall conform to the requirements of this Chapter and State Junior ADU Law;~~

~~2. The ADU shall not be sold separately from the main building unless the conditions of BMC 23.306.040(D), ADUs Developed by a Qualified Nonprofit Developer are met;~~

3. The ~~ADU and/or~~ Junior ADU shall not be rented for a term ~~that is shorter than~~ of 30 days or less; and

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4. If the property includes a Junior ADU, the Junior ADU or the Single Family Dwelling in which the Junior ADU is located shall be owner-occupied. Owner-occupancy shall not be required if the JADU and the Single Family Dwelling do not share sanitation facilities, or if the owner is another governmental agency, land trust, or housing organization.

Section 8. That BMC Section 23.306.040(E) is added at the end of BMC Section 23.306.040 as follows:

E. ADU Sale and Rental. An ADU shall not be sold separately from the main building unless authorized under Chapter 21.29, subsection D of this Section, or otherwise permitted by State law. An ADU shall not be rented for a term shorter than 30 days.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

651 Bannan Street, 10<sup>th</sup> Floor, Suite 400  
Sacramento, CA 95811  
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[www.hcd.ca.gov](http://www.hcd.ca.gov)



June 16, 2026

Jordan Klein, Principal Planner  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

Dear Jordan Klein:

**RE: Review City of Berkeley's Accessory Dwelling Unit (ADU) Governance under State ADU Law (Gov. Code, §§ 66310–66342)**

On May 11, 2026, HCD sent the City of Berkeley a request to repeal the most recent adopted Accessory Dwelling Unit (ADU) ordinance that HCD had in its archive, which was adopted in 2023. City staff responded to note that the City updated its ADU ordinance in 2025. As no official copy was provided, HCD has reviewed the City's ADU Governance as it appears in the currently available Municipal Code and submits these written findings pursuant to Government Code section 66326, subdivision (a). HCD finds that the Ordinance fails to comply with State ADU Laws in the manner noted below. Pursuant to Government Code section 66326, subdivision (b)(1), the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than July 16, 2026, with a plan to either amend the current ordinance or adopt a resolution with findings.<sup>1</sup> Responses should be submitted formally on agency letterhead.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law as follows:

1. Table 23.306-1. – *Single Family Unit Allowance* – The Municipal Code allows, on lots with one single family primary dwelling, "1 Conversion ADU, 1 New Construction ADU, and 1 Junior ADU." However, this impermissibly restricts units created subject to Government Code section 66314. Section 66317 states that a permitting agency "shall either approve or deny the application to create or serve" an application subject to section 66314. Subdivision (d)(3) of section 66314 states an ADU may be "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

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<sup>1</sup> Gov. Code, § 66326, subd. (b)(2)(B).

dwelling, including detached garages.” Since section 66317 mandates that a local agency “shall approve or deny” an application under section 66314, while also requiring that “...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” under section 66323, the City must amend its Municipal Code to allow the full allotment of units described under section 66323 and at least one unit described under section 66314.

2. Table 23.306-1. – *Unit Allowance (Nonconformities)* – The Municipal Code allows, on lots with more than one single-family dwelling, “1 ADU.” However, multiple single-family dwellings on a single lot are considered a zoning nonconformity for the purposes of State ADU Law. Government Code section 66322, section (b) states, “The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.” Section 66323 describes categories of state-mandated units as being created with either “single-family primary dwellings” or “multifamily primary dwellings.” Therefore, a lot with multiple single-family dwellings would be eligible for one converted ADU, one new construction detached ADU up to 800 square feet, and one junior accessory dwelling unit (JADU) per lot. The City must amend the Municipal Code to remove this restriction.
3. Table 23.306-1. – *Unit Allowance (Multifamily Primaries)* – The Municipal Code provides only the allowances for multifamily primary dwellings that are described in Government Code section 66323. However, Government Code section 66314, subdivision (d) provides for at least one “accessory dwelling unit [that] 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, including detached garages.” This section does not differentiate between single-family primary dwellings and multifamily primary dwellings; thus, a multifamily primary dwelling must be allowed at least one unit subject to section 66314. The City must amend the Municipal Code to provide for this allowance.
4. Section 23.306.040 A. – *Completeness* – The Municipal Code omits reference to items required by Government Code section 66317, subdivision (a)(2) that govern completeness. The City should review current State ADU Law and must provide compliant governance regarding application completeness.
5. Section 23.306.040 C. – *Deed Restrictions* – The Municipal Code states, “Deed Restriction. The property owner shall file a deed restriction with the Alameda County Recorder which states: The ADU shall not be sold separately from the main building, unless authorized under BMC 21.29 (ADU Condominium Ordinance) or under BMC 23.306.040(D)--ADUs Developed by a Qualified Nonprofit Developer, or as otherwise permitted by state law...[and] The ADU

shall not be rented for a term that is shorter than 30 days...” However, a deed restriction cannot be imposed on an ADU. Government Code section 66315 states, “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.” Although deed restrictions are required for JADUs, they are prohibited for ADUs. The City must amend the Municipal Code to remove the deed restriction requirement for an ADU.

6. Table 23.306-2 – *Interior Livable Space* – The Ordinance determines size maximums in terms of square feet. However, current State ADU Law measures all size maximums in terms of “square feet of interior livable space”.<sup>2</sup> The City must amend the Municipal Code to include “interior livable space” when measuring size maximums.

The City has two options in response to this letter.<sup>3</sup> The City can either 1) amend the Ordinance to comply with State ADU Law<sup>4</sup> or 2) adopt the Ordinance without changes and include findings in its resolution accompanying the Ordinance that explain the reasons the City believes that the Ordinance complies with State ADU Law despite HCD’s findings.<sup>5</sup> If the City fails to take either course of action, or if HCD finds that the newly adopted Ordinance remains out of compliance with State ADU Law despite the City’s findings and explanations, HCD must notify the City and may notify the California Office of the Attorney General that the City is in violation of State ADU Law.<sup>6</sup>

HCD appreciates the City’s efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Mike Van Gorder at [Mike.VanGorder@hcd.ca.gov](mailto:Mike.VanGorder@hcd.ca.gov) if you have any questions or wish to discuss any of HCD’s findings.

Sincerely,



Jamie Candelaria  
Section Chief, ADU Policy  
Housing Accountability Unit

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<sup>2</sup> Gov. Code, § 66321, subds. (b)(1), (b)(3).

<sup>3</sup> Gov. Code, § 66326, subd. (c)(1).

<sup>4</sup> Gov. Code, § 66326, subd. (b)(2)(A).

<sup>5</sup> Gov. Code, § 66326, subd. (b)(2)(B).

<sup>6</sup> Gov. Code, § 66326, subd. (c)(1).

# Attachment 3: ADU Allowances Within the Hillside Overlay

The table compares the current Hillside allowance, the minimum required by state law and HCD, and Berkeley's proposed allowance. The proposal meets the required unit counts and configurations while retaining Berkeley's more permissive standards, including larger local size limits where applicable.

**STATE STANDARDS ADU** — unit category protected by Gov. Code Section 66323 (800sf max for detached ADUs) **LOCAL STANDARDS ADU** — ADU allowed under Berkeley standards pursuant to Gov. Code Section 66314 (850/1000sf) **JADU** — junior accessory dwelling unit (500sf)

| Primary dwelling           | Currently allowed in the Hillside Overlay                                                                                                                                                                                                                                                        | Minimum required by State law and HCD<br>(NEW AS OF SEPT 2026)                                                                                                                                                                                                                                                                                                                                                                  | LUP<br>Proposed DRAFT Amendments                                                                                                                                                                                                                                                                                                                                                                                            | To Preserve CC Policy<br>Intent to Match Regs with<br>State Requirements |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| One SFR                    | <b>THREE TOTAL (2 ADUs + JADU)</b><br><br><b>LOCAL STANDARDS (850 sf/1000 sf for New Construction ADU)</b> <ul style="list-style-type: none"> <li>1 Conversion ADU</li> <li>1 New Construction ADU.</li> </ul><br><b>JADU (500 sf)</b> <ul style="list-style-type: none"> <li>1 JADU.</li> </ul> | <b>FOUR TOTAL (3 ADUs + JADU)</b><br><br><b>STATE STANDARDS (800 sf)</b> <ul style="list-style-type: none"> <li>1 conversion ADU</li> <li>1 detached New Construction ADU.</li> </ul><br><b>LOCAL STANDARDS (850 sf/1000 sf)</b> <ul style="list-style-type: none"> <li>1 additional Conversion, Interior, or New Construction ADU.</li> </ul><br><b>JADU (500 sf)</b> <ul style="list-style-type: none"> <li>1 JADU</li> </ul> | <b>FOUR TOTAL (3 ADUs + JADU)</b><br><br><b>LOCAL STANDARDS (850 sf/1000 sf for detached ADU):</b> <ul style="list-style-type: none"> <li>1 conversion ADU</li> <li>1 detached New Construction ADU.</li> </ul><br><b>LOCAL STANDARDS (850 sf/1000 sf for detached ADU)</b> <ul style="list-style-type: none"> <li>1 additional Conversion, Interior, or New Construction ADU.</li> </ul><br><b>JADU (500 sf)</b><br>1 JADU | Reduce 1 ADU from 850/1000 sf to 800 sf                                  |
| More than one detached SFR | <b>ONE ADU</b><br><br><b>LOCAL STANDARDS (850 sf/1000 sf for detached ADU)</b> <ul style="list-style-type: none"> <li>1 ADU; no separate JADU allowance is stated.</li> </ul>                                                                                                                    | <b>THREE TOTAL (2 ADUs + JADU)</b><br><br><b>STATE STANDARDS (800 sf)</b> <ul style="list-style-type: none"> <li>1 conversion or interior ADU</li> <li>1 detached New Construction ADU.</li> </ul><br><b>JADU (500 sf)</b> <ul style="list-style-type: none"> <li>1 JADU</li> </ul>                                                                                                                                             | <b>THREE TOTAL (2 ADUs + JADU)</b><br><br><b>LOCAL STANDARDS (850 sf/1000 sf for detached ADU)</b> <ul style="list-style-type: none"> <li>1 conversion or interior ADU</li> <li>1 detached New Construction ADU.</li> </ul><br><b>JADU (500 sf)</b> <ul style="list-style-type: none"> <li>1 JADU</li> </ul>                                                                                                                | Reduce 1 ADU from 850/1000 sf to 800 sf                                  |

| Primary dwelling              | Currently allowed in the Hillside Overlay                                                                                                                                                                                                                                                                                           | Minimum required by State law and HCD (NEW AS OF SEPT 2026)                                                                                                                                                                                                                                                                                                                                                                                                                    | LUP Proposed DRAFT Amendments                                                                                                                                                                                                                                                                                                                                                                                                                                | To Preserve CC Policy Intent to Match Regs with State Requirements |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| Existing multifamily dwelling | <p><b>UP TO 8 DETACHED + AT LEAST 1 INTERIOR ADU</b></p> <p><b>LOCAL STANDARDS (850 sf/1000 sf for detached ADU)</b></p> <ul style="list-style-type: none"> <li>Up to 8 detached ADUs, not exceeding the number of existing dwelling units;</li> <li>Interior ADUs up to 25% of existing units, with at least 1 allowed.</li> </ul> | <p><b>UP TO 8 DETACHED + AT LEAST 1 INTERIOR ADU + 1 ADU</b></p> <p><b>STATE STANDARDS (800 sf)</b></p> <ul style="list-style-type: none"> <li>Up to 8 Detached ADUs, not exceeding the number of existing dwelling units;</li> <li>Interior ADUs up to 25% of existing units, with at least 1 allowed.</li> </ul> <p><b>LOCAL STANDARDS (850 sf/1000 sf)</b></p> <ul style="list-style-type: none"> <li>1 Conversion, Interior, or New Construction (detached) ADU</li> </ul> | <p><b>UP TO 8 DETACHED + AT LEAST 1 INTERIOR ADU + 1 ADU</b></p> <p><b>LOCAL STANDARDS (850 sf/1000 sf for detached ADU)</b></p> <ul style="list-style-type: none"> <li>Up to 8 Detached ADUs, not exceeding the number of existing dwelling units;</li> <li>Interior ADUs up to 25% of existing units, with at least 1 allowed.</li> </ul> <p><b>LOCAL STANDARDS (850 sf/1000 sf)</b></p> <p>1 Conversion, Interior, or New Construction (detached) ADU</p> | Reduce 8 ADUs from 850/1000 sf to 800 sf                           |
| Proposed multifamily dwelling | <p><b>2 ADUs</b></p> <p><b>LOCAL STANDARDS (850 sf/1000 sf for detached ADU)</b></p> <ul style="list-style-type: none"> <li>2 detached ADUs.</li> </ul>                                                                                                                                                                             | <p><b>3 ADUs</b></p> <p><b>STATE STANDARDS (800 sf)</b></p> <ul style="list-style-type: none"> <li>2 detached ADUs.</li> </ul> <p><b>LOCAL STANDARDS (850 sf/1000 sf for detached ADU)</b></p> <ul style="list-style-type: none"> <li>1 Conversion, Interior, or New Construction (detached) ADU</li> </ul>                                                                                                                                                                    | <p><b>3 ADUs</b></p> <p><b>LOCAL STANDARDS (850 sf/1000 sf for detached ADU)</b></p> <ul style="list-style-type: none"> <li>2 detached ADUs.</li> </ul> <p><b>LOCAL STANDARDS (850 sf/1000 sf)</b></p> <ul style="list-style-type: none"> <li>1 Conversion, Interior, or New Construction (detached) ADU</li> </ul>                                                                                                                                          | 1 ADU reduced from 800/1000sf to 800sf                             |

The current and proposed Berkeley allowances are Local Standards ADUs. The blue entries identify the State Standards categories that the total local allowance must cover; they are not a second, additive inventory. Berkeley may use larger or otherwise more permissive local standards so long as every unit type and combination protected by 66323 remains available.



# PLANNING COMMISSION

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## Notice of Public Hearing

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### Wednesday, October 7, 2026

### **Zoning Ordinance Amendments Updating Requirements for Accessory Dwelling Units**

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, on **Wednesday, October 7, 2026 at 6:30 p.m.** at the **North Berkeley Senior Center**, 1901 Hearst Ave, Berkeley (wheelchair accessible). Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.

The agenda will be posted on the Planning Commission website (<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>) no later than 5:00 p.m. on Wednesday, September 30, 2026.

#### **PROJECT DESCRIPTION**

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Amend the Berkeley Municipal Code (BMC) to update the City's Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) regulations in response to comments from the California Department of Housing and Community Development and recent changes to State law. The amendments pertain to the number and types of units allowed, application completeness and appeal procedures, deed restrictions, development standards, and measurement of unit size. Non-substantive technical edits are also included. These changes clarify the structure and language of the ADU ordinance and ensure consistency with current State law.

The proposed amendments include revisions to BMC Chapter 23.106 (Rules of Measurement) and BMC Chapter 23.306 (Accessory Dwelling Units).

**LOCATION:** Citywide.

#### **ENVIRONMENTAL REVIEW STATUS**

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The proposed ordinance amendments are statutorily exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15282(h) because they implement state ADU and JADU law.

#### **PUBLIC COMMENT & FURTHER INFORMATION**

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All persons are welcome to attend the hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. Written comments must be directed to:

Joshua Muller  
Planning Commission Clerk  
Email: [PlanningPC@berkeleyca.gov](mailto:PlanningPC@berkeleyca.gov)

City of Berkeley, Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Correspondence received by **12pm on Tuesday, September 29, 2026**, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12pm on Monday, October 5, 2026** will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication one day before the public hearing.
- Correspondence received by **5pm on Tuesday, October 6, 2026** will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication by 5pm on the day of the public hearing.
- Correspondence received **after** 5pm on Tuesday, October 6, 2026 will be saved as part of the public record.

Members of the public may submit written comments just before or at the beginning of the meeting by providing 15 printed copies of the correspondence to the Planning Commission Secretary.

### **COMMUNICATION ACCESS**

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To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. All materials will be made available via the Planning Commission agenda page online at <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.

### **FURTHER INFORMATION**

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Questions should be directed to Branka Tatarevic, at (510) 981-7472 or [btatarevic@berkeleyca.gov](mailto:btatarevic@berkeleyca.gov). Current and past agendas are available on the City of Berkeley website at: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.