

CITY OF BERKELEY LAND USE PLANNING ADU FAQ SHEET

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Planning and Development
1947 Center St, 2nd Floor
Berkeley, CA 94704

GENERAL INFORMATION

An Accessory Dwelling Unit (ADU) is an attached or detached secondary dwelling unit that contains permanent places for living, sleeping, and cooking. The minimum size of an ADU is 150 square feet.

A Junior Accessory Dwelling Unit (JADU) is a secondary unit that is contained within the habitable floor area of a single-family dwelling. It may share a bathroom with the primary dwelling unit.

ADU and JADU applications are allowed with an approved building permit, and are not subject to discretionary review. They must meet all applicable codes, including the objective standards in the zoning code.

This handout offers general guidelines effective January 1, 2023, and is not intended to be comprehensive.

MORE INFORMATION

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CALIFORNIA GOVERNMENT CODE

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This resource provides guidance about Berkeley's local Accessory Dwelling Unit (ADU) Ordinance ([BMC Chapter 23.306](#)), through questions that are commonly asked by community members to Land Use Planning staff.

The California Department of Housing and Community Development's [Accessory Dwelling Unit Handbook](#) provides additional information about ADU's and Junior Accessory Dwelling Units (JADU's), including Frequently Asked Questions (FAQ's) regarding the State laws, a checklist of standards, and summary of recent changes to ADU laws. Questions related to the California Building Code, Fire Prevention, Permit Processing, Public Works Engineering, and Traffic Engineering may be directed to the appropriate staff at the [Permit](#)

GENERAL INFORMATION

1. What is an ADU?

An attached or detached secondary dwelling unit that contains permanent places for living, sleeping, and cooking. The minimum size of an ADU is 150 square feet.

2. What is a JADU?

A secondary unit that is contained within the habitable floor area of a single-family residence. It may share a bathroom with the main dwelling unit.

3. Which zoning district standards apply to my lot?

The [Community GIS Portal](#) is an interactive map with several different views. The property and planning view contains zoning information.

4. Are ADUs subject to lot size requirements, coverage, and or density limitations?

No. Any lot that is zoned to allow residential use and has an existing or proposed dwelling unit is eligible for an ADU.

5. Are ADUs subject to the Creeks Ordinance ([BMC Chapter 17.08](#))?

Yes. The [Community GIS Portal](#) is an interactive map with several different views. The environment view contains creek information. If construction of the ADU would take place over or near either an open or culverted creek, please review the [Creek Protection Instructions](#) for more information

about applicable regulations and permit requirements.

6. Are ADU's subject to the City's Natural Gas Prohibition Ordinance ([BMC Chapter 12.80](#)) and the Electrification Reach Code ([BMC Chapter 19.36](#))?

Yes, only for new construction.

PERMITTING PROCESS AND FEES

1. Which type of permit is required?

All ADUs and JADUs require a [building permit](#). A zoning permit, such as an Administrative Use Permit (AUP) or Use Permit (UP), is not required, except in certain circumstances, such as if the existing building is non-conforming, or in the case of additions over 14 feet. Compliance with the ADU zoning and development standards is reviewed as part of the building permit process. Submit applications either via an in-person appointment to the [Permit Service Center](#) or through Permits Online.

2. How much are the permit and impact fees?

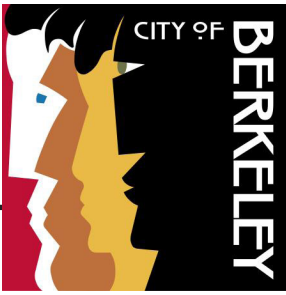
There is a \$460 zoning plan check fee, as well as a \$460 neighbor noticing fee, both assessed at the time of building permit submittal. Land Use Planning does not assess impact fees. Building permit fees are based on the valuation of the project, which can be estimated using the [fee estimator tool](#).

3. What are the neighbor notification requirements?

When a building permit application is submitted, City staff mail out a notice of the application to owners and tenants of the subject, adjacent, confronting, and abutting properties within 10 working days of application submittal. A fee of \$460 is collected with the building permit application to cover the notice. If you received a notice of an ADU application in the mail, you can check the permit status on Permits Online. If you have questions about the design and construction of an ADU, please reach out to the applicant listed on the postcard.

4. Do I need to obtain a separate address for the JADU or ADU?

A JADU does not need to have a separate address,



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but an ADU does need a separate address. An address will be assigned to the ADU as part of the building permit process. To help expedite the process, please submit the [Address Assignment Request](#) with the building permit application.

5. How do I record a deed restriction?

A deed restriction must be filed with the Alameda County Recorder for all **ADUs** and **JADUs**. The deed restriction prohibits the use of the ADU or JADU as a short-term rental, and limits the separate sale of accessory dwellings from the primary unit. The deed restriction must be recorded prior to issuance of the building permit. Please contact the [Clerk Recorder's Office of Alameda County](#) for more information on how to record a deed restriction, including recording instructions and fees.

6. Is financial assistance available?

The City is partnering with the California Housing Finance Agency (CalHFA)'s [ADU Grant Program](#) to connect qualifying owners with up to \$40,000 to fund ADU predevelopment and closing costs. Find out if you are eligible and how to apply for a grant.

7. How can I legalize an existing unpermitted ADU?

Unpermitted ADUs are reviewed and considered as a new construction for zoning purposes and are subject to the current ADU development standards.

8. How is maximum height measured?

Maximum height is measured from finished grade to the highest point of the roof or parapet walls, as described in the Maximum Height Instructions (see [BMC Section 23.106.090\(B\)](#)).

ARCHITECTURAL DESIGN CONSIDERATIONS

1. Can I build a front porch as part of the ADU?

Yes. The porch is not considered gross floor area; however, it cannot project into any required setback.

2. Can the main dwelling unit be connected to either an attached ADU or a JADU?

Yes, an internal connection is allowed, provided that the connection is fire rated and is secure.

3. Can I build a roof deck on an ADU?

It depends on which zoning district the lot is located within.

- Lots within the R-1H, R-2H, R-2AH, and ES-R districts: Decks and balconies may not be located on a roof ([BMC Section 23.306.070](#)). Further, roofs may not be designed, converted or used as usable open space.
- Lots in all other residential districts: Roof decks and other similar structures may be built on a roof as long as the height is lower than the maximum allowed by-right for residential additions. The maximum average height limit may be exceeded with an AUP ([BMC Section 23.304.050](#)).

4. Does the 'bedroom ordinance' apply to construction of a JADU or ADU?

No. JADUs and ADUs are not subject to the requirements of the "Bedroom Ordinance" ([BMC Section 23.202.030\(B\)](#)).

JADU DESIGN CONSIDERATIONS

1. Where can I build a JADU?

A JADU may be located within the walls of an existing or proposed single family dwelling, which includes attached garages. If a JADU is constructed within an attached garage, replacement parking is not required.

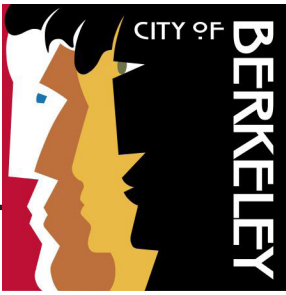
2. Are there any design requirements that apply if a JADU does not contain a bathroom (i.e. the bathroom is shared with the main dwelling)?

Yes. A separate exterior entrance must be provided to the JADU. If the JADU shares sanitation facilities with the main dwelling, an interior entry to the living area of the main dwelling is required.

CONVERSIONS OF EXISTING STRUCTURES

1. Can I convert an existing, legally non-conforming Accessory Building or Accessory Structure to an ADU?

Yes. The non-conforming accessory building or structure must have been legally established at least 3 years prior to submission of a building



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permit application to convert it into an ADU. The non-conforming conditions may be maintained at the same dimensions as existing, provided that that existing side and rear setbacks are sufficient for fire and safety as set forth in California Building Standards Code adopted in [BMC Title 19](#). Any physical additions to the existing building or structure must comply with the ADU development standards.

2. Can I convert existing space into an ADU if that space exceeds the maximum allowable size?

Yes. An ADU created entirely through conversion of existing space with no modifications to the existing building envelope that exceeds the maximum allowable size is allowed. A physical addition of up to 150 square feet may also be constructed as part of the conversion, as long as the addition complies with ADU standards for maximum height and setbacks.

3. Can I convert existing space into an ADU if it requires excavating within a required setback?

Yes. The first step is to obtain an Administrative Use Permit (AUP) to allow an extension or alteration of a building within a non-conforming setback ([BMC Section 23.324.050\(D\)\(2\)](#)). After the AUP is approved and effective, apply for a building permit. See the [Berkeley ADU website](#) for more information about the permit process when there are lawful non-conforming conditions.

4. Can I convert non-habitable space within a multifamily building that contains amenities (e.g., garage, laundry room, storage space) into an ADU?

Yes, provided that the conversion of these spaces does not conflict with existing lease agreements and that the amenity space is associated with the residential units.

5. Can I convert an existing commercial space within a mixed- use structure into an ADU?

No, ADUs are only allowed on a lot in a zoning district where residential uses are permitted with a proposed or existing single-family dwelling, duplex, multi-family dwelling or group living accommodation that is not a fraternity, sorority or dormitory. Conversion of existing space is only allowed if that space is associated with a residential use.

PARKING

1. Is parking required?

Parking is not required for JADUs and ADUs located outside of the Hillside Overlay District (HOD), or for any accessory dwelling located within a 0.5 mile of a major transit stop or high-quality transit corridor.

Within the HOD (R1-H, R2-H, R-2AH, or ES-R), parking is required per [BMC 23.306.040](#).

2. When parking is not required, can I provide replacement parking?

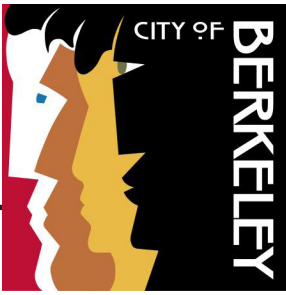
In cases where parking is not required, replacement parking is allowed when a garage, carport, covered parking structure or designated uncovered parking space is physically replaced by an ADU. An uncovered replacement parking space is allowed by-right and does not need to comply with the Parking Maximums ([BMC Section 23.322.070](#)) nor Parking Layout and Design ([BMC Section 23.322.080](#)).

If the parcel is located in the HO, then the uncovered parking space may be located in any configuration, including within the front setback. A replacement parking space that would require construction of a new accessory structure is subject to the requirements of [BMC Section 23.304.060](#). If parking is provided that does not meet the characteristics of a replacement space, then it is subject to the parking maximum and parking layout and design regulations.

2. How can I determine whether my lot is within 0.5 mile of a major transit stop or high-quality transit corridor?

Per [California Public Resources Code Section 21155](#), a major transit stop is defined to be any of the following:

- An existing rail or bus rapid transit station,
- A ferry terminal served by either a bus or rail transit service,
- The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods, or
- Major transit stops that are included in the applicable regional transportation plan.



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A high-quality transit corridor is defined as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

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RENTAL AND OWNERSHIP

1. Can I rent the primary dwelling unit(s) and the ADU to different parties?

Yes, the primary dwelling unit and the ADU may be rented to different parties.

2. Does the property owner have to live onsite?

If the property contains an ADU, the owner does not have to live onsite; however, if the property contains a JADU, the owner must live in either the primary dwelling unit or the JADU.

3. Can an ADU or JADU be rented on a short-term basis?

No, except for ADUs established before April 1, 2017 that meet certain criteria (please see [BMC Section 23.314.040\(D\)](#)).

4. Can an ADU be sold separately from the primary dwelling unit?

No, except as provided in [Government Code Section 65852.26](#).

5. Is it possible to rescind and replace a notice of limitation regarding owner-occupancy?

Berkeley's prior local ADU ordinance required owner-occupancy of either the ADU or the main dwelling. Recent changes in State law and the local ADU ordinance removed the requirement for owner occupancy to increase flexibility and the availability of different housing types. Owners may opt to rescind and replace the original ADU Notice of Limitation (NOL), in compliance with the current codes that exist at the time of the change, to remove the owner-occupancy requirement, which requires the written consent of the Zoning Officer. Complete and submit the [Application to Remove Deed Restriction](#). Land Use Planning staff will review the submittal and prepare the Notice of Rescission of Prior Restriction and new NOL. Then, the owner must sign, notarize and record the documents with the Alameda County Recorder and provide copies to the Land Use Division.