

Councilmember Rashi Kesarwani

REVISED AGENDA MATERIAL

for Supplemental Packet 2

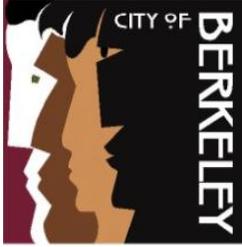
Meeting Date: July 29, 2025

Item Number: 28

Item Description: Amendments to Title 21 (Subdivisions) to Allow Separate Sale of ADUs, and Amendments to Title 23 (Zoning) to Comply with State Law and Encourage ADU Development

Submitted by: Councilmembers Rashi Kesarwani and Terry Taplin

The item proposes three clarifying amendments for the ADU Ordinance.



Councilmember Rashi Kesarwani

July 29, 2025

To: Honorable Mayor and Members of the City Council

From: Councilmember Rashi Kesarwani (Author) and Councilmember Terry Taplin (Co-Sponsor)

Subject: Three Amendments for Accessory Dwelling Units (ADUs) Item #28 - Amendments to Title 21 (Subdivisions) to Allow Separate Sale of ADUs, and Amendments to Title 23 (Zoning) to Comply with State Law and Encourage ADU Development

RECOMMENDATION

This supplemental report proposes three clarifications for the Accessory Dwelling Unit (ADU) item for Council consideration.

Recommendation #1: Clarify that notice intended for tenants of “covered ADUs” would only be received by those tenants, rather than tenants of “exempt ADUs.” "Exempt ADU" refers to an ADU on a parcel with a single-family dwelling—with either unit owner occupied. Per existing policy, both units on the parcel are exempt from the rent control ordinance, including being exempt from tenant protections. Whereas, "covered ADUs" refers to ADUs on a parcel with a multifamily building that are not owner-occupied. In the context of the proposed ADU ordinance, covered ADUs are subject to tenant protections, including "Indefinite Tenancy" and the "Exclusive Right to Purchase" while exempt ADUs are not.

Currently, as proposed, the noticing requirement states that all owners must notify their tenants of the two rights related to Indefinite Tenancy and an Exclusive Right to Purchase, even though they only apply to tenants of "covered ADUs." The recommended amendment is simply to clarify that the notice is only required of owners of "covered ADUs" but not owners of "exempt ADUs" where tenants do not have these rights:

21.29.050.E. Tenant Protections Notice (for “Covered ADUs”). Proof of service of a Notice of Tenants’ Rights Regarding ADU Condominium Conversion, on a form required by the City, shall be submitted for each tenant household occupying the subject ADUs, no earlier than 60 days prior to the date of the application.

Recommendation #2: For covered ADUs, shorten the period of time for the tenant to exercise their “exclusive right to purchase” from one year to 90 days to align with a typical decision-making timeline for real estate.

The proposed ordinance requires “covered ADUs” to provide the tenant an “exclusive right to purchase (ERP)” the ADU condo, which lasts for one year from the date of the notice, which begins after the City has approved the map for the property. A one-year timeframe presents policy tradeoffs, including denying the property owner the ability to sell the unit more quickly for unforeseen financial needs, such as medical, family, or educational expenses. According to various real estate sources, a typical timeline for selling a home in Berkeley ranges from 16 days to 36 days. Therefore, a timeline of 90 days for the tenant to decide to make a purchase seems to be more reasonable than one year for our housing market, as this would allow adequate time for the tenant to consider financing options while avoiding an extended delay for the property owner. The following amendment is recommended:

21.29.010.C.1 Covered Rental ADUs. If the ADU is a covered rental unit under BMC Chapter 13.76 (Rent Stabilization Ordinance), the tenant protections of Chapter 21.28 shall apply in full, including:

- a. A tenant in an ADU shall have a continued right to occupy the ADU after a conversion, pursuant to Section 21.28.090(C)(4).
- b. A tenant in an ADU shall have an exclusive right to purchase the unit, pursuant to Section 21.28.030(C) and 21.28.090(C)(2), except that the exclusive right to purchase period shall not exceed 90 days from the date of the notice.

Recommendation #3: Clarify the meaning of “new construction.”

The state ADU law is unclear about whether ADUs on multi-family parcels may be either detached or attached. Staff has recommended that the ordinance simply refer to “new construction ADUs.” We recommend amending Table 23.306-1 by including a footnote to the phrase “new construction” clarifying that it includes both attached and detached ADUs:

Table 23.306-1Footnote: New construction ADUs may be either attached or detached from the primary structure(s) and/or other accessory dwelling unit(s) in any configuration.

CONTACT PERSON

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