

## REVISED AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** July 29, 2025

**Item Number:** 28

**Item Description:** Accessory Dwelling Units (ADUs): 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:** Councilmember Lunaparra (author), Councilmember Tregub (co-sponsor), Councilmember Bartlett (co-sponsor)

The ADU Condo Conversion Ordinance's goal of providing opportunities for more affordable home-ownership is critical to Berkeley's ability to address the housing crisis. Additionally, it is vital that tenants in affected ADUs are provided with protections at least equal to those of tenants in other units proposed for condominium conversion. Based on feedback from tenant advocates, housing experts, and legal counsel, this supplemental material proposes adding the following tenant protections to this ordinance:

- **Condition of Approval Language** - Adding the condition of approval language from BMC Section 21.28.090.B as part of the eligibility requirements for ADU conversion. This language would disincentivize owners from displacing tenants to convert to condominiums by preventing approval of any ADU conversion for properties where there have been recent no-fault evictions.
- **First Right of Refusal for All ADU Tenants** - Granting any tenants in ADUs the first right of refusal to purchase their ADU after conversion.
- **Owner Move-in Evictions** - Prohibiting owner move-in evictions for any tenants in a converted ADU, equal to the requirements of BMC Section 21.28.090(C)(4).
- **Affordable Housing Mitigation Fee** - Maintaining the affordable housing mitigation fee requirement for converting tenant-occupied ADU units, but waiving this fee if the owner converting the ADU has agreed as part of their application to allow for rent control on the unit if it is rented as allowed under CA Code Section 1954.52(b), to limit future rent increases for the life of the property for any resident tenants at the time of conversion to no more than 65% of the increase in the Consumer Price Index for all Bay Area Consumers.
- **More precise language defining what ADUs are eligible for conversion** - Clarifying whether ADUs created under previous code sections can also convert to condominiums would help clear a potential source of confusion for property owners. Additionally, limiting conversion to those ADUs created after 2003 would prevent the loss of rent-controlled housing.

**The requirements regarding vacancies and owner move-ins were taken directly from Berkeley's existing Condominium Conversion Ordinance (BMC Chapter 21.28):**

- The 10-year requirement parallels the language of BMC 21.28.090(B)(1).
- The 3 other requirements regarding vacancies created due to a termination of a tenancy mirror the requirements of BMC 21.28.090(B)(3)(c), BMC 21.28.090(B)(3)(d), and BMC 21.28.090(B)(3)(e). The language in this supplemental item has been modified slightly for clarity, but they have the same substance and effect as the existing requirements in BMC Chapter 21.28.

All of these changes protect tenants and further the ordinance's goal of encouraging ADU Development and providing opportunities for affordable home-ownership.

ORDINANCE NO. -N.S.

AMENDMENTS TO TITLE 21 (SUBDIVISIONS) TO ALLOW SEPARATE SALE OF ACCESSORY DWELLING UNITS (ADU), AND AMENDMENTS TO TITLE 23 (ZONING) RELATED TO ADUS TO COMPLY WITH STATE LAW

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

Section 1. That Berkeley Municipal Code Chapter 21.29 is added to Title 21 (Subdivisions) to read as follows:

**21.29. Accessory Dwelling Unit Condominium Subdivision**

*21.29.010. -- Purpose and Applicability.*

- A. This Chapter establishes regulations and procedures for the subdivision of property to allow separate ownership of Accessory Dwelling Units (ADUs) from other buildings on the same lot in the City of Berkeley. It implements California Government Code Section 66342, which authorizes local ordinances permitting ADUs to be conveyed as condominiums.
- B. This Chapter applies to all lots that contain (or will contain) one or more ADUs constructed after calendar year 2002, in compliance with BMC Chapter 23.306 (Accessory Dwelling Units) or its precursor, BMC Chapter 23C.24.
- C. Notwithstanding any other provision of the Berkeley Municipal Code, an ADU condominium subdivision that conforms to this Chapter and state law may be approved and recorded as provided herein. An ADU condominium subdivision shall not be subject to the provisions of Chapter 21.28, except that:
  - 1) An application to convert an ADU to condominium subdivision shall be denied if:
    - i. Within the immediately preceding 10 years:
      - 1. Any owner of the building has filed with the City of Berkeley a statement of intent to go out of the rental business; or
      - 2. Any owner has initiated proceedings to recover possession of any unit at the property pursuant to the Owner Move in just cause for eviction articulated in Section 13.76.130.A.8 (or Section 13.76.130A.9. of this Code prior to the adoption of Measure BB at the November 5, 2024 general election);  
or

- ii. Within the immediately preceding 5 years a vacancy has been created by a termination of tenancy under any of the following circumstances:
    1. The vacancy occurred within one year after the service by the owner of a termination of tenancy notice pursuant to either Civil Code Section 1946 or Civil Code Section 1946.1; or
    2. The vacancy occurred within one year after a change in the terms of the tenancy noticed pursuant to Civil Code Section 827, including the owner's termination or nonrenewal of a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant; or
    3. The vacancy occurred due to the tenant being constructively evicted because the unit had been cited in an inspection report as containing serious health, safety, fire, or building code violations that were not caused by the tenant and one or more of the violations had not been abated by the date of the termination; or
    4. The tenant household vacated the property and subsequently brought an action for constructive or wrongful eviction that is pending at the time the application to convert is filed, or that resulted in a judgment for the tenants; or
    5. The vacancy occurred as the result of a rent increase greater than 10% of the prior rent in effect but for which the tenant would not have vacated the unit, unless that rent increase was approved by the Rent Stabilization Board.
- 2) *Covered Rental or Tenant Occupied ADUs.* If the ADU is tenant occupied or 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);  
and

- 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); and
  - c. An agreement signed by the owner that, at the time of sale of each unit, an affordable housing mitigation fee, pursuant to BMC 21.28.070, will be paid to the City of Berkeley, unless the application meets the affordable housing mitigation fee waiver requirement.
- 3) The affordable housing mitigation fee payment for ADU condominium subdivisions, pursuant to BMC 21.28.070 shall be waived for owner(s) that agree, as part of their ADU condominium subdivision application, to allow for rent or price controls on the converted units when rented, as allowed under California Civil Code Section 1954.52(b), to limit future rent increases to no more than 65% of the increase in the Consumer Price Index for all Bay Area Consumers. The City or, at the request of the City Manager, the Rent Board, shall enforce any violations of this section and shall have the authority to adjust tenants' rents when they are being overcharged.
- 4) All other requirements of Chapter 21.28, including application procedures and rent-ceiling limitations, shall not apply to an ADU condominium subdivision processed under this Chapter unless expressly referenced above.
- D. This Chapter is intended to provide a streamlined, ministerial process for qualifying ADU condominium subdivisions and shall remain operative only so long as state law authorizes such subdivisions (Government Code §66342).

21.29.030. -- *Permit required.*

The Planning Director shall review, on a ministerial basis and without a hearing, an application for a parcel map or a tentative and final map for an ADU Condominium subdivision, and shall approve the application if the criteria in Government Code Section 66342 and this section are satisfied.

Units other than ADUs that are part of an ADU Condominium Subdivision may be subject to the provisions of Chapter 21.28, or any other applicable regulations.

21.29.040 -- *Eligibility.*

- A. A property is eligible for an ADU Condominium subdivision under this Chapter only if all the following criteria are met:
  - 1) Existing Units. The lot contains at least one legally established primary dwelling unit and at least one legally established ADU, or there is a valid building permit for construction of a new ADU on the lot. The ADU must be

constructed after calendar year 2002, in compliance with BMC Chapter 23.306 or its precursor BMC Chapter 23C.24.

- 2) Number of Condominium Units. In no event shall an ADU condominium subdivision result in more than ten (10) total condominium units on the lot inclusive of all residential, commercial, and accessory dwelling units.

B. Junior ADUs. Junior ADUs shall not be eligible for conversion to condominiums.

#### 21.29.050 -- *Application Requirements.*

In addition to the information required by Section 21.24.020 (Parcel Maps, Form and Content) and Section 21.16.020 (Tentative Maps, Form and Content), an application for an ADU condominium subdivision shall include all of the following information:

- A. The condominium shall be created pursuant to the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code).
- B. Subdivision Map Act Compliance. The condominium shall be created in conformance with all applicable objective requirements of the Subdivision Map Act (Division 2, commencing with Section 66410) and all other objective requirements of this Part.
- C. Safety Inspection. Prior to the recordation of the condominium plan, a safety inspection of the ADU shall be conducted as evidenced either through a certificate of occupancy or housing quality standards report from a building inspector certified by the United States Department of Housing and Urban Development.
- D. Lienholder Consent.
  - 1) Neither a subdivision map nor a condominium plan shall be recorded with the county recorder without obtaining the written consent of each lienholder. A lienholder may refuse to give consent. A lienholder may also consent provided that any terms and conditions required by the lienholder are satisfied. Prior to recordation of the initial or any subsequent modifications to the condominium plan, written evidence of the lienholder's consent shall be provided to the Assessor-Recorder along with a signed statement from each lienholder that states as follows:

"(Name of lienholder) hereby consents to the recording of this condominium plan in its sole and absolute discretion, and the borrower

has or will satisfy any additional terms and conditions the lienholder may have."

- 2) Required Information. The lienholder's consent, whether included directly on the condominium plan or attached thereto, must include the following information:
  - a. The lienholder's signature.
  - b. The name of the record owner or ground lessee.
  - c. The legal description of the real property.
  - d. The identities of all parties with an interest in the real property as reflected in the public records.
  - e. A statement that the lienholder's consent shall be recorded in the Office of the County Recorder.
- E. Tenant Protections Notice. 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. The Notice shall include, but not be limited to:
  - 1) The tenant's continued right to occupy the unit pursuant to Section 21.28.090(C)(4), which prohibits eviction for the purpose of occupancy by the owner or the owner's relatives so long as the unit remains the tenant's principal place of residence.
  - 2) Information concerning any agreement by the owner to limit rents under Section [21.29.010\(C\)\(2\)\(c\)](#).
  - 3) The tenant's exclusive right to purchase the unit under 21.28.090(C)(2).
- F. Notice to providers of utilities. If an ADU is established as a condominium, the owner shall notify providers of utilities, including water, sewer, gas, and electricity, of the condominium creation and separate conveyance.
- G. The owner of a property or a separate interest within an existing planned development that has an existing association, as defined in Section 4080 of the Civil Code, shall not record a condominium plan to create a common interest

development under Section 4100 of the Civil Code without the express written authorization by the existing association.

For purposes of this subdivision, written authorization by the existing association means approval by the board at a duly noticed board meeting, as defined in Section 4090 of the Civil Code, and if needed pursuant to the existing association's governing documents, membership approval of the existing association.

*21.29.060 -- Required Notice to Consumers.*

The City shall include the following notice to consumers on any Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling Unit (JADU) submittal checklist or public information describing requirements and permitting for ADUs, and as a standard condition of any building permit or condominium plan approval:

“NOTICE: If you are considering establishing your primary dwelling unit and accessory dwelling unit as a condominium, please ensure that your building permitting agency allows this practice. If you decide to establish your primary dwelling unit and accessory dwelling unit as a condominium, your condominium plan or any future modifications to the condominium plan must be recorded with the County Recorder. Prior to recordation or modification of your subdivision map and condominium plan, any lienholder with a lien on your title must provide a form of written consent either on the condominium plan, or on the lienholder's consent form attached to the condominium plan, with text that clearly states that the lender approves recordation of the condominium plan and that you have satisfied their terms and conditions, if any.

In order to secure lender consent, you may be required to follow additional lender requirements, which may include, but are not limited to, one or more of the following:

(a) Paying off your current lender.

You may pay off your mortgage and any liens through a refinance or a new loan. Be aware that refinancing or using a new loan may result in changes to your interest rate or tax basis. Also, be aware that any subsequent modification to your subdivision map or condominium plan must also be consented to by your lender, which consent may be denied.

(b) Securing your lender's approval of a modification to their loan collateral due to the change of your current property legal description into one or more condominium parcels.

(c) Securing your lender's consent to the details of any construction loan or ground lease.

Internal

This may include a copy of the improvement contract entered in good faith with a licensed contractor, evidence that the record owner or ground lessee has the funds to complete the work, and a signed statement made by the record owner or ground lessor that the information in the consent above is true and correct.”