



Office of the City Manager

PUBLIC HEARING

July 29, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: 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

RECOMMENDATION

Conduct a public hearing, and upon conclusion, adopt the first reading of an Ordinance to 1) amend Title 21 (Subdivisions Ordinance) to implement Assembly Bill (AB) 1033 by establishing local regulations for the separate sale of ADUs as condominiums; and 2) amend Title 23 (Zoning) to bring the City's ADU regulations into compliance with recent changes to State law, to incorporate feedback from the California Department of Housing and Community Development (HCD), and encourage ADU development.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS*Amendments to Title 21 (Subdivisions) for ADU Condominiums*

The Berkeley Municipal Code (BMC) does not currently provide for the separate sale of ADUs. Assembly Bill (AB) 1033, a state law passed in 2024, permits municipalities to create regulations to permit the separate sale of ADUs. On May 14, 2024, the City Council adopted a referral (**Attachment 2**) to prepare an ordinance to permit the separate sales of ADUs in Berkeley as allowed under AB1033. The referral highlighted the potential of ADU condominiums to expand homeownership opportunities for moderate-income households, help existing homeowners build equity, and increase the supply of naturally affordable housing in the city. The proposed amendments to BMC Title 21 would provide for such separate sales.

Currently, condominium conversions are regulated in BMC Chapter 21.28 (Condominiums and Other Common Interest Subdivisions). The Planning Commission's recommendation would treat ADU condominiums differently than typical condominiums. These differences include:

- **Condominium Conversion Mitigation Fee:** The proposed ordinance does not apply the Condominium Conversion Mitigation Fee to ADU condominiums. The Planning Commission felt the fee was unnecessary given the small scale of likely ADU condominium projects, and expressed concern that the amount of the Fee would discourage the creation of affordable homeownership opportunities from ADU condominiums.
- **Tenant Protections:** The Commission affirmed the importance of maintaining tenant protections consistent with existing Chapter 21.28 requirements, including notice provisions and the right to remain in a unit after conversion.

Under the Berkeley Rent Stabilization Ordinance (BMC 13.76), ADUs fall into two rent-ordinance categories, which in turn determine which tenant protections apply upon conversion:

Rent-Ordinance Status	Description	Tenant Protections
Covered Rental ADU	An ADU on a parcel with a multifamily building, once the initial rent is established.	<ul style="list-style-type: none"> • Right of first refusal (1 year); • Right to remain after conversion.
Exempt ADU	A parcel with a single-family dwelling plus a single ADU is treated as a “single-family” property, so both units are exempt.	<ul style="list-style-type: none"> • None.

For purposes of the ADU Condominium ordinance, any Covered Rental ADU remains subject to the tenant-protection provisions of BMC Chapter 21.28, specifically the tenant’s right to remain in the unit after conversion (BMC 21.28.090(C)(4)), and a tenant’s exclusive right to purchase the unit.

Amendments to Title 23 (Zoning)

The City's current ADU regulations are not consistent with state law. Certain recent changes in State law have not yet been reflected in the Berkeley Municipal Code. In addition, feedback from the California Department of Housing and Community Development (HCD) (**Attachment 4**) states that the City's existing provisions are not consistent with State law. The proposed amendments to BMC Title 23 would address HCD’s comments, and make the City’s ADU regulations consistent with recent changes to State law.

The Planning Commission also made three policy changes to promote the construction of ADUs that were not a result of a need to comply with state law. The proposed amendments are summarized below in *Table 1*.

Table 1 Summary of ADU Ordinance Changes

Ord Section	BMC Section	Section Title	Summary of Change	Rationale
2	23.306.010	Purpose	Updates code references from former Gov. Code sections to new Gov. Code § 66314–66339.	Technical edit: update reference.
3	23.306.020(C)	Density Exemption and Growth Limits	Revises BMC to explicitly state that ADUs do not count toward density, are consistent with GP/zoning, and are exempt from growth controls (per Gov. Code § 66319).	State law requirement.
4	Table 23.306-1	Number of Units Allowed	Clarifies that one conversion ADU, one new construction ADU, and one JADU are permitted on lots with single-family dwellings. For lots with multifamily dwellings, allows up to 8 detached ADUs (not exceeding number of units) and interior ADUs up to 25% of the total units.	State law requirement.
5	Table 23.306-2	ADU Development Standards	Increases the size of permitted ADUs to 1,200 sq. ft. and removes size requirements based on the number of bedrooms.	Planning Commission direction to encourage ADUs.
			Removes front setback and building separation standards.	State law requirement.
			Revises height requirements to allow 25 ft. for both detached and attached ADUs	Planning Commission direction to encourage ADUs.
6	23.306.030(A)(2)	Duplex or Multi-Family Dwelling Conversion	Updates BMC to reflect State law by replacing “main building” with “multifamily building structures” and refining examples of non-living space. Removes the term “Duplex” for consistency with related changes throughout the BMC.	Technical edits.
	23.306.030(A)(3)	Accessory Building or Accessory Structure Conversion	Removes “legally established” requirement	State law requirement.

	23.306.030(A)(4)	Front Setback, New Construction	Removes section for consistency with revisions to Table 23.306-2, Development Standards.	Technical edit: consistency.
	23.306.030(A)(7)	Building Separation for Attached ADU	Removes section for consistency with revisions to Table 23.306-2, Development Standards.	Technical edit: consistency.
7	23.306.030(B)(1)	JADU Basic Standards	Clarifies spaces considered “within” an existing dwelling or structure.	State law requirement.
8	23.306.030(D)	Rooftop Decks	Allows rooftop decks for all ADUs with additional height provisions.	Planning Commission direction to encourage ADUs.
9	23.306.040(A)	Zoning Certificate Review	Clarifies that review of ADUs is ministerial, and applications must be approved or denied within 60 days. Adds denial notice requirement per Gov. Code § 66317(b).	State law requirement.
10	23.306.040(C)	Deed Restriction	Updates section to refer to BMC Chapter 21.29 and state law for separate sale; clarifies JADU rental/sale terms per Gov. Code § 66333, 66340–66341.	Technical edit; consistency
11	23.306.040(D)	Qualified Nonprofit Developer Sales	Updates state law reference to Gov. Code § 66341; clarifies required TIC agreement provisions.	State law requirement.
12	23.322.030	Parking Requirements	Removes existing off-street parking requirements within the Hillside Overlay.	State law requirement.

The Planning Commission recommended three additional policy changes that, while not required by State law, are intended to incentivize the construction of ADUs:

- **Maximum Gross Floor Area** (Ordinance Section 5): Currently, the maximum gross floor area for ADUs is determined by the number of bedrooms included in a proposed ADU. ADUs that are studios or one bedrooms are limited to 850 square feet, while ADUs with two or more bedrooms are limited to 1,000 square feet.

The Planning Commission recommended increasing the maximum gross floor area to 1,200 square feet, regardless of the number of bedrooms. The Planning Commission held that 1,200 square feet was a more typical size for a smaller dwelling unit, and that the number of bedrooms included in an ADU should not determine its permitted size.

- **Height** (Ordinance Section 5): Currently, the maximum height for a detached new construction ADU is 20 feet and the maximum height for an attached ADU is 25 feet.

The Planning Commission recommended eliminating the distinction between attached and detached ADUs and limiting any ADU to a 25 foot height.

- **Rooftop Decks** (Ordinance Section 8): Currently, rooftop decks are not permitted for ADUs within the Hillside Overlay zone.

The Planning Commission recommended permitting rooftop decks for ADUs citywide, and provided additional height allowances for rooftop access and protective railings.

BACKGROUND

Amendments to Title 21 (Subdivisions) for ADU Condominiums

At its March 5, 2025 meeting, the Planning Commission received an informational report regarding AB 1033 implementation (**Attachment 3**) and requested that staff prepare an ordinance to permit the separate sale of ADUs as condominiums. At its May 7, 2025 meeting, the Planning Commission received staff's recommended BMC amendments (the creation of Title 21, Section 21.29: Accessory Dwelling Unit Condominium Subdivision) and recommended the proposed amendments included in **Attachment 1**.

Amendments to Title 23 (Zoning)

At its March 5, 2025 meeting, the Planning Commission received an informational report covering policy issues raised by the May 3, 2024 letter from HCD (**Attachment 4**), as well as recent changes to State law pertaining to ADUs. The Commission provided input to staff to prepare amendments to Berkeley's ADU ordinance to bring it into compliance with State Law and to incorporate HCD's other recommended changes.

At its June 4, 2025 and July 17, 2025 meetings, the Planning Commission considered specific amendments to bring Berkeley's ADU ordinance into compliance with State law.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed ordinance amendments to Title 21 (Subdivisions) do not include any allowances for additional development capacity or other new physical changes to the environment that are not already permitted and previously evaluated under CEQA. Adoption of the proposed amendments would in no way have a significant effect on the environment, and therefore is not subject to CEQA (CEQA Guidelines Section 15061(b)(3), Common Sense Exemption).

The proposed ordinance amendments to Title 23 (Zoning) are statutorily exempt from the California Environmental Quality Act, per Guidelines Section 15282 "Other Statutory Exemptions" (h) which states:

(h) The adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

RATIONALE FOR RECOMMENDATION

The proposed ordinance amendments to Title 21 (Subdivisions) fulfill the City Council's 2024 referral to adopt provisions to permit the separate sale of ADUs.

The proposed ordinance amendment to Title 23 (Zoning) would bring the City's ADU regulations into conformance with recent changes to State law, and address comments on the ordinance made by HCD. Specific additional provisions related to size, height and roof decks would encourage the development of ADUs.

ALTERNATIVE ACTIONS CONSIDERED

Amendments to Title 21 (Subdivisions)

As noted above, the Rent Stabilization Ordinance extends certain rights to sitting tenants in units covered by the Rent Ordinance that are proposed to be converted to condominiums. The Planning Commission had considered extending these protections to tenants of Exempt ADUs, who had occupied their units for at least 12 months. Ultimately, the Planning Commission's recommendation did not include extending these provisions to Exempt ADUs, due to a concern that such requirements could discourage the construction of new ADUs.

Amendments to Title 23 (Zoning)

At its June 4, 2025 meeting, the Planning Commission recommended further revisions to Title 23 beyond those proposed by staff. Staff's original recommendation did not include the new provisions related to increasing the maximum gross floor area or heights for all ADUs (Ordinance Section 5) or permitting roof decks on ADUs within the Hillside Overlay (Ordinance Section 8).

CONTACT PERSON

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

Attachments:

1: Ordinance

2: City Council Referral to implement AB 1033, May 14, 2024.

3: Planning Commission Staff Report, March 5, 2025

4: Letter from California HCD, *Review of Berkeley's ADU Ordinance under State ADU Law*, May 3, 2024.

5: Public Hearing Notice

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 in compliance with BMC Chapter 23.306 (Accessory Dwelling Units).
- 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) 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).
 - 2) 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 in compliance with BMC Chapter 23.306.
- 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 21.28.080(B).
- 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.

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."

Section 2. That Berkeley Municipal Code Section 23.306.010(A) is amended to read as follows:

A. Implement California Government Code Sections 65852.1, 65852.2, and 65852.2266314 through 66339.

Section 3. That Berkeley Municipal Code Section 23.306.020(C) is amended to read as follows:

C. *Density Exemption and Growth Limits.* ADUs are considered an accessory use consistent with the parcel's General Plan and zoning designation, shall not count toward the allowable density, and shall not be subject to any local ordinance, policy, or program that limits residential growth. ADUs and Junior ADUs are not included in the minimum or maximum density established by the underlying zoning district.

Section 4. That Table 23.306-1 (ADU and Junior ADU Maximum Number of Units per Lot) within Berkeley Municipal Code 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	1 <u>Conversion</u> ADU, <u>1 New Construction ADU</u> , and 1 Junior ADU; both <u>All</u> are permitted.
Single Family Dwelling, more than one unit on lot	1 ADU
Duplex or Existing Multifamily Dwelling	2 detached <u>8 new construction</u> ADUs, and <u>at least one interior ADU</u> provided that <u>the number of ADUs does not exceed the number of existing units, and at least one interior ADU</u> up to 25% of the total number of existing duplex or multi-family dwelling units on the lot.
<u>Proposed Multifamily Dwelling</u>	<u>2 New Construction ADUs</u>
Group Living Accommodation	1 ADU

Section 5. That Table 23.306-2 (ADU Development Standards) within Berkeley Municipal Code Section 23.306.030 is amended to read as follows:

Table 23.306-2 ADU DEVELOPMENT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Gross Floor Area, Maximum	<u>1,200 sf</u>	23.306.030(A)(1) 23.306.030(A)(2)
Studio or 1 bedroom	<u>850 sq. ft.</u>	23.306.030(A)(3)

2+ bedrooms	1,000 sq. ft.	
Building Height, Maximum		
Conversion	Same as existing structure	23.306.030(A)(1) 23.306.030(A)(3)
Detached, New Construction	20 ft.	
Detached or Attached, New Construction	25 ft.	23.306.030(A)(5) 23.306.030(A)(8)
Lot Line Setbacks, Minimum		
Front of Interior Lot	Same as underlying district	23.306.030(A)(3) 23.306.030(A)(4)
Front of Through Lot	Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer.	23.306.030(A)(6)
Rear	4 ft.	
Interior Side	4 ft.	
Street Side	4 ft.	
Building Separation for Detached ADU, Minimum		
Outside of Hillside Overlay	5 ft.	
Within Hillside Overlay	8 ft.	

<p>Required Off-Street Parking Spaces</p>	<p>See 23.322.030 – Required Parking Spaces</p>
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Section 6. That Municipal Code Section 23.306.030(A)(2) through (8) is amended to read as follows:

2. ~~*Duplex or Multif-Family Dwelling Conversion.*~~ Interior ADU(s) must be created entirely through non-habitable residential portions of the existing ~~main building~~multifamily dwelling structures that are not within the living space of a dwelling unit (e.g. basements, attics, garages, storage rooms, boiler rooms, passageways).

3. *Accessory Building or Accessory Structure Conversion.* An ADU converted from an legally established accessory building or accessory structure is allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure, provided that the ADU meets fire and safety standards set forth in the California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing accessory building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.

~~4. *Front Setback, New Construction.* An ADU shall not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet. Should an ADU require area within the front setback, the ADU shall maintain a minimum 10-foot setback from the front lot line, unless such setback would preclude an ADU of 800 square feet. If a 10-foot setback would preclude an ADU of 800 square feet, the ADU shall maintain a 5-foot setback from the front lot line. If a 5-foot setback would preclude an ADU of 800 square feet, the ADU may be sited up to the front lot line.~~

~~54.~~ *Attached ADU.* An ADU shall be considered attached if sharing a common wall with a primary dwelling.

~~65.~~ *Detached ADU Setback Exceptions.* If there is a lesser setback allowed in 23.304.060 -- Accessory Buildings and Enclosed Accessory Structures for a comparable accessory building or accessory structure in the underlying zoning district, that setback shall apply.

~~7. *Building Separation for Detached ADU.* A minimum 8-foot separation is required within the Hillside Overlay, except where such separation would preclude an ADU of 800 square feet, in which case the minimum building separation shall be reduced to 5 feet.~~

~~86. *Attached ADU, New Construction Height.* Attached ADUs with height up to 25 ft. allowed with a Zoning Certificate.~~

Section 7. That Municipal Code Section 23.306.030(B) (1) is amended to read as follows:

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.

Section 8. That Municipal Code Section 23.306.030(D) is amended to read as follows:

D. *Rooftop Decks* ~~within the Hillside Overlay.~~ Roofs on ADUs ~~within the Hillside Overlay~~ may ~~not~~ be designed, converted, or used as usable open space with a maximum additional height allowance of nine feet (beyond the height maximum allowed by development standards) only to enable rooftop access and protective railings.

Section 9. That Municipal Code Section 23.306.040(A) is amended to read as follows:

A. *Zoning Certificate.* An application for an ADU or Junior ADU shall be allowed with a Zoning Certificate. The rReview must be completed, and the application approved or denied, within 60 days of ~~submission receipt~~ of a completed application. A completed application must include evidence of compliance with this Chapter, including development standards, ~~deed restrictions, and neighborhood noticing.~~

1. 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).

2. 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 ~~65852.2(e)(1)~~66323.

3. 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.

4. If the Zoning Officer 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.

Section 10. That Municipal Code Section 23.306.040(C)(2) and (3) are amended to read as follows:

2. The ADU shall not be sold separately from the main building, unless authorized under BMC Chapter 21.29 (ADU Condominium Ordinance) or unless the conditions of under BMC 23.306.040(D) -- ADUs Developed by a Qualified Nonprofit Developer, or as otherwise permitted by state law. are met;

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

Section 11. That Municipal Code Section 23.306.040(D) is amended to read as follows:

D. *ADUs Developed by a Qualified Nonprofit Developer.* An ADU built or developed by a "qualified nonprofit corporation" may be sold or conveyed separately from the main building to a "qualified buyer," as such terms are defined in subdivision (b) of Section ~~65852.26~~66340 of the California Government Code. The ADU must be held pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:

1. Delineation of all areas of the property that are for the exclusive use of a cotenant;
2. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;
3. Procedures for dispute resolution among cotenants before resorting to legal action;

4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;
6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence; and
7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility.

Section 12. That the row "Accessory Dwelling Units" in Table 23.322-1 (Required Offstreet Parking in Residential Districts) within Berkeley Municipal Code Section 23.322.030 is amended to read as follows:

Accessory Dwelling Units	<u>Junior ADU:</u> None required <u>ADU outside of Hillside Overlay:</u> None required <u>ADU within Hillside Overlay: 1 per ADU unless the parcel satisfies the criteria in subdivision (d) of Government Code Section 65852.2, using the definition of public transit as established in subdivision (j)(11) of Government Code 65852.2.</u>
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Section 13. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Rashi Kesarwani
Councilmember, District 1

CONSENT CALENDAR

May 14, 2024

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Increasing Entry Level Homeownership Opportunities:
Implementation of AB 1033 to Allow Accessory Dwelling Units (ADUs)
To Be Sold Separately

RECOMMENDATION

Refer to City Manager to implement AB 1033, which would allow Accessory Dwelling Units (ADUs) to be sold separately from a primary unit.

This referral would necessitate elimination of any mention of sales restrictions as they pertain to ADUs within the Berkeley Municipal Code and adoption of an ordinance allowing ADU sales separate from a primary unit(s).

CURRENT SITUATION AND ITS EFFECTS

AB 1033 Allows ADUs to be Sold Separately from a Primary Residence, Increasing Entry Level Homeownership Opportunities. State law AB 1033, effective January 1, 2024, eliminates the prior state law prohibiting the mapping and selling of a single-family home and its ADU as condominium units. While this prohibition on condominium conversion has been lifted, local agencies must opt-in and amend their codes to permit these entry-level homeownership opportunities. Congruent with the condominium homeownership model, property owners wishing to sell an ADU will need to notify their utility provider and establish a homeowners' association responsible for overseeing property maintenance. ADUs tend to be more affordable than a typical single-family home. By permitting the independent sale of ADUs, the City of Berkeley can increase the available stock of entry-level homeownership opportunities. Further, ADU condominium conversion purchases are eligible for federally guaranteed mortgages, easing financing opportunities for homebuyers.¹ AB1033 not only helps households seeking entry-level homeownership opportunities, it can also help existing homeowners to age in place by providing lump-sum resources from an ADU sale.

¹ Casita Coalition and Reuben, Junius & Rose LLP: AB 1033 - How to Implement New State ADU Condominium Laws, p. 1

<https://static1.squarespace.com/static/5f2c2d67c58236227115e0de/t/65397c083ac9fc75cf8701fd/1698266121029/AB-1033-Casita-Coalition-RJR-ADU-Condos-memo.pdf>

BACKGROUND

California, particularly the Bay Area, faces an ongoing housing crisis, with affordability and accessibility becoming increasingly challenging for residents. As the state grapples with this issue, nearly 20 percent of housing units constructed in California today are ADUs, reflecting the significant contribution that ADUs are making in reducing the housing shortage.² According to the California Association of Realtors Housing Affordability Index, only 17 percent of households in the state can afford a single-family home, a figure that falls significantly below the national average.³

The California Legislative Analyst's Office, a nonpartisan entity, examined the state's exorbitant housing costs and delineated various factors contributing to it, notably a pronounced housing shortage, particularly in coastal California.⁴ Since 1980, housing construction in California has lagged significantly behind both national and historical averages. Despite a national housing boom in the mid-2000s, California's housing production remained relatively sluggish. Moreover, merely 10 percent of Berkeley's housing units were constructed after 1980.⁵ As construction slowed over time, California's housing costs escalated, surpassing the national average. Presently, home prices in Berkeley stand at \$1.4 million compared to the national average of \$354,000.⁶

In their report, "Closing California's Housing Gap," the McKinsey Global Institute proposed specific measures to alleviate housing insecurity in the state. They recommend tackling housing scarcity by identifying potential "hot spots" for housing creation, such as areas within a half-mile radius of transit hubs, underutilized urban lots, and the addition of extra units to single-family homes.⁷

While the impact of high housing costs disproportionately affects certain racial and socioeconomic groups, there is also a noticeable generational divide. The scarcity of affordable housing near employment opportunities, coupled with mounting student debt, has resulted in a net worth for young households that is 20 percent lower than that of baby boomers in 1989 and 40 percent lower than that of Generation X families in 2001. Additionally, homeownership is increasingly unattainable for younger generations, with millennials being 8 percent less likely to own homes compared to baby boomers and Gen Xers.⁸ Nearly half of households aged 18-34 are considered rent-burdened. The Urban

² Casita Coalition and Reuben, Junius & Rose LLP: AB1033 – How to Implement New State ADU Condominium Law, p.1

<https://static1.squarespace.com/static/5f2c2d67c58236227115e0de/t/65397c083ac9fc75cf8701fd/1698266121029/AB-1033-Casita-Coalition-RJR-ADU-Condos-memo.pdf>

³ Casita Coalition and Reuben, Junius & Rose LLP: AB1033 – How to Implement New State ADU Condominium Law, p.1

<https://static1.squarespace.com/static/5f2c2d67c58236227115e0de/t/65397c083ac9fc75cf8701fd/1698266121029/AB-1033-Casita-Coalition-RJR-ADU-Condos-memo.pdf>

⁴ California's High Housing Costs, Causes and Consequences (2015) Legislative Analyst's Office. <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>

⁵ 2015-2023 Berkeley Housing Element (2014). City of Berkeley.

<https://cityofberkeley.app.box.com/s/x7cfk49voo9hr56iw3exsqogx0w7e6y3>

⁶ Home Values (2024) <https://www.zillow.com/home-values/>

⁷ Woetzel, J., Mischke, J., Peloquin, S., and Weisfield, D. (2016, October). A Toolkit to Close California's Housing Gap: 3.5 Million Homes by 2025. McKinsey Global Institute:

<https://www.mckinsey.com/~media/mckinsey/industries/public%20and%20social%20sector/our%20in%20sights/closing%20californias%20housing%20gap/closing-californias-housing-gap-full-report.pdf>

⁸ Grabar, Henry. (2019). I Got Mine. Slate Magazine.

Institute conducted an extensive study on the barriers to millennial homeownership and recommended a series of policy changes, with a key recommendation being the alteration of land use and zoning restrictions, particularly in areas with rigid housing supply.⁹

Furthermore, moderate-income earners often find themselves unable to access Below Market Rate (BMR) housing, exacerbating the issue. Naturally affordable housing options, such as ADUs, often offer a pathway to more affordable living. An analysis by the Turner Center revealed that 58 percent of ADU owners rented their units at below-market-rate rent. Due to their smaller size and/or cost-effective construction, ADUs frequently provide more affordable options for both owners and renters compared to single-family homes.¹⁰

FISCAL IMPACT

Staff time to amend the Berkeley Municipal Code to eliminate mention of sales restrictions as they pertain to ADUs and to prepare an ordinance allowing ADU sales separate from the main unit(s).

ENVIRONMENTAL SUSTAINABILITY

The recommendation to promote ADUs has significant implications for environmental sustainability, particularly through the concept of infill housing, especially near transit hubs. By encouraging the construction of ADUs, cities can capitalize on existing infrastructure and minimize urban sprawl by using underutilized parcels within established neighborhoods. This approach to infill housing not only optimizes land use but also reduces the need for further development on undeveloped land, preserving natural habitats and open spaces.¹¹ Moreover, siting ADUs near transit promotes alternative modes of transportation, such as walking, biking, or public transit, thus reducing reliance on cars and lowering greenhouse gas emissions associated with commuting. Overall, the strategic implementation of ADUs as infill housing near transit contributes to a more sustainable urban environment, aligning with efforts to combat climate change and promote eco-friendly living practices.

Expanding housing options plays a crucial role in addressing environmental concerns, aligning with the City of Berkeley's Climate Action Plan. Researchers from the University of California have developed a climate policy tool for local governments to evaluate policies'

<https://slate.com/business/2019/05/californiahousing-crisis-boomer-gerontocracy.html>

⁹ Choi, J., Zhu, J., Goodman, L., Ganesh, B., and Strohach, S. (July 2018). Millennial Homeownership. The Urban Institute.

https://www.urban.org/sites/default/files/publication/98729/millennial_homeownership.pdf

¹⁰ Garcia, D. (2017). ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes. Turner Center for Housing Innovation. <https://turnercenter.berkeley.edu/research-and-policy/adu-update-early-lessons-and-impacts-of-californias-state-and-local-policy-changes/>

¹¹ The Environmental Center September 24, 2020 Blog Post: Accessory Dwelling Units: A Sustainable Housing Solution: <https://envirocenter.org/accessory-dwelling-units-a-sustainable-housing-solution/#:~:text=Since%20these%20units%20tend%20to,more%20sustainable%20and%20livable%20community.>

effectiveness in reducing carbon footprints. Their study of 700 cities revealed that infill housing has the most significant impact.¹²

CONTACT PERSON

Councilmember Rashi Kesarwani, District 1

(510) 981-7110

Attachments:

Casita Coalition and Reuben, Junius & Rose LLP: AB 1033 - How to Implement New State ADU Condominium Law. Pages 3-5 include required text in ADU condominium ordinances – Cal. Govt. Code Section 65852.2(a)(10)

¹² Jones, C, Wheeler, S, and Kammen, D. (2018) California Local Government Climate Policy Tool. Cool Climate Network. <https://coolclimate.berkeley.edu/ca-scenarios/index.html>



AB1033 – HOW TO IMPLEMENT NEW STATE ADU CONDOMINIUM LAW

Today, nearly 20% of housing units built in California are accessory dwelling units (“ADUs”). According to the California Association of Realtors Housing Affordability Index, only 17% of households can afford a single-family home, less than half of the national average. In many States across the country, ADU condo conversion projects are re-enabling a generation of home buyers to live in the communities of their choice near work and family. The State of Washington recently required all local agencies to allow conversions of a primary unit and ADU to condominiums for sale. Consequently, in Seattle and Portland 40% to 50% of ADUs constructed are sold as condominiums to new homebuyers, where they are bought for approximately half the value of a stand-alone single-family home. Such ADU condo conversion purchases are eligible for federally guaranteed mortgages, making them easy to finance for ordinary homebuyers.

The California State Legislature recently adopted a new law, AB1033, that creates affordable options for homeownership by allowing ADU’s to be sold separately from a primary unit. AB1033 removes the previous State law prohibition against mapping and selling a single-family home and its ADU as condominiums. Even though this prohibition on condo conversion has been eliminated, it is up to Local Agencies to amend their codes to allow these entry-level home ownership opportunities.

WHAT NEEDS TO BE DONE TO ALLOW SALE OF ADUS?

Respecting local control, the Legislature left it up to Local Agencies to amend their municipal code(s) to allow these entry-level home ownership opportunities through the sale of ADUs. The Casita Coalition and Reuben, Junius, and Rose, LLP have developed this guidance to encourage your Local Agency to make the following changes to your code(s), procedures and policies to re-enable Californians priced out of many of our communities to once again have a dream of buying a home by enabling more naturally-affordable condominiums for sale.

RECOMMENDED STEPS TO IMPLEMENT SALE OF ADUS

1. **Eliminate Sale Restrictions.** Remove all provisions in your municipal code that prohibits the sale or other conveyance of an ADU. These restrictions are typically included in local Condominium Codes and Zoning Codes.



2. **Adopt Legislation Expressly Allowing ADU Sales.** To align local rules with State law, adopt changes to the municipal code that allow conversion of a home and its ADU into condominiums subject to the requirements of the Davis-Stirling Common Interest Development Act (Cal. Civ. Code Sec. 4400-6150.) Appropriate amendment text will differ depending on the existing municipal code, but AB1033 requires a list of express provisions be included in such local ordinance, attached at the end of this document.
3. **Publish ADU Checklists.** Provide a comprehensive checklist for any ADU building permit and for ADU condominium/subdivision projects, indicating Subdivision Map Act compliance and lender subordination information.
4. **First Right of Offer to Owner Occupants.** To further encourage new homeownership, consider including a condition of approval for establishing condominiums of a primary unit and ADU giving a first right of offer for a period of 45 days on publicly accessible databases, e.g., MLS, to buyers indicating an intent to live in the property (either themselves or their immediate family). To avoid issues with lenders, however, do not require owner occupancy.
5. **Create “Grow Homeownership” Program.** Establish a program with dedicated staff that expedites ADU condominium processing with first comments to be issued within 45 days of submission of a complete application.
 - Consider waiving or reducing application and impact fees otherwise applied to condominiums.
 - The Grow Homeownership Program could be paired with other funding programs your jurisdiction may have, e.g., through SB2 (2017) funds.

If you have any questions or would like to discuss any of the above, please do not hesitate to reach out to Justin A. Zucker from Reuben, Junius & Rose, LLP at 415.656.6489 or jzucker@reubenlaw.com.

AB1033 – Required Text in ADU Condominium Ordinances – Cal. Govt. Code Sec. 65852.2(a)(10)

(A) The condominiums 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) The condominiums shall be created in conformance with all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)) and all objective requirements of a local subdivision ordinance.

(C) Before recordation of the condominium plan, a safety inspection of the accessory dwelling unit shall be conducted as evidenced either through a certificate of occupancy from the local agency or a housing quality standards report from a building inspector certified by the United States Department of Housing and Urban Development.

(D) (i) Neither a subdivision map nor a condominium plan shall be recorded with the county recorder in the county where the real property is located without each lienholder's consent. The following shall apply to the consent of a lienholder:

(I) A lienholder may refuse to give consent.

(II) A lienholder may consent provided that any terms and conditions required by the lienholder are satisfied.

(ii) 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 county 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 their sole and absolute discretion and the borrower has or will satisfy any additional terms and conditions the lienholder may have."

(iii) The lienholder's consent shall be included on the condominium plan or a separate form attached to the condominium plan that includes the following information:

(I) The lienholder's signature.

(II) The name of the record owner or ground lessee.

(III) The legal description of the real property.

(IV) The identities of all parties with an interest in the real property as reflected in the real property records.

(iv) The lienholder's consent shall be recorded in the office of the county recorder of the county in which the real property is located.

(E) The local agency shall include the following notice to consumers on any accessory dwelling or junior accessory dwelling unit submittal checklist or public information issued describing requirements and permitting for accessory dwelling units, including as standard condition of any accessory dwelling unit 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.

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."

(F) If an accessory dwelling unit is established as a condominium, the local government shall require the homeowner to notify providers of utilities, including water, sewer, gas, and electricity, of the condominium creation and separate conveyance.

(G) (i) 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.

(ii) For purposes of this subparagraph, 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.

(H) An accessory dwelling unit shall be sold or otherwise conveyed separate from the primary residence only under the conditions outlined in this paragraph or pursuant to Section 65852.26.



Development Department
Division

STAFF REPORT
March 5, 2025

TO: Members of the Planning Commission

FROM: Branka Tatarevic, Associate Planner

SUBJECT: Accessory Dwelling Unit (ADU) Ordinance Amendments

RECOMMENDATION

Staff recommends that the Planning Commission review the staff report, receive the staff presentation, consider public comments, and provide feedback to staff on potential amendments to the ADU Ordinance.

BACKGROUND

The consideration of updates to the ADU ordinance has been prompted by a number of factors including a City Council referral for implementation of Assembly Bill (AB) 1033, the California Department of Housing and Community Development's (HCD) review of Berkeley's ADU Ordinance, and changes to state law pertaining to ADUs.

Assembly Bill 1033 (ADU Condominiums)

AB 1033 (Gov. Code § 66340 – 66342), which took effect on January 1, 2024, allows ADUs to be sold separately from the primary residence as condominiums, creating new opportunities for entry-level homeownership. Prior to AB 1033, California law prohibited the separate conveyance of ADUs, requiring them to remain under the same ownership as the primary dwelling unit. AB 1033 lifts this restriction, but local jurisdictions must opt-in by adopting an ordinance to enable separate ADU sales.

On May 14, 2024, the Berkeley City Council approved a referral (***Attachment 1***) directing the City Manager to implement AB 1033 by amending the Berkeley Municipal Code to eliminate restrictions on the sale of ADUs and adopt an ordinance allowing their separate sale. The referral emphasizes the potential of ADU condominiums to increase homeownership opportunities for moderate-income households, help existing homeowners generate equity, and expand naturally affordable housing options in the city.

As of today, the City of San José remains the only jurisdiction in California to have adopted an ADU condominium ordinance (***Attachment 4***). Staff have met with the San José team to discuss their approach to AB 1033 implementation, as well as their processing procedures. San José's ADU Condominium Ordinance is separate from its existing ADU, subdivision or other land use regulations and applies only to the creation of ADU condominiums. The ordinance limits ADU condo projects to a maximum of four

units, as subdivisions with four or fewer units can be processed ministerially as Parcel Maps, rather than through the discretionary process required for Tentative Tract Maps. Unlike Berkeley, San José does not have its own policies to disincentivize condo conversions or mitigate the impacts of condo conversions on the affordability of the rental housing market.

ADU Letter from California Housing and Community Development Department

As part of its oversight of local ADU regulations, HCD issued a letter to the City of Berkeley on May 3, 2024 (***Attachment 2***), reviewing the Berkeley Municipal Code Chapter 23.306 (Accessory Dwelling Units)¹, which was adopted on October 10, 2023. In the letter, HCD asserted that several provisions of BMC Chapter 23.206 do not align with state ADU law and must be amended.

The City responded to HCD's letter on June 3, 2024 (***Attachment 3***). The City's letter determined that:

- a number of the HCD's suggested changes were minor. These minor changes were included in the State Law and Technical Edits package the Planning Commission recommended in June 2024;
- a select number of findings did not require any changes; and
- an additional set of findings required policy consultation with the City Council. These are the findings included in this report for policy recommendations from the Planning Commission.

California Government Code Section 66323 includes types of ADUs that the City must approve ministerially. Generally speaking, these are ADUs that are 800 square feet or less, meet specified height requirements, and comply with specified rear and side setback requirements. While the City can adopt development standards and regulations for larger ADUs, cities are limited in the regulation of these "Section 66323 ADUs"

Senate Bill 1211

Senate Bill 1211 (SB 1211) was signed into law in on September 19, 2024. SB 1211 contains two provisions which could require amendments to the BMC.

Previously, state law allowed only two detached ADUs on a multifamily lot. SB 1211 now permits up to eight detached ADUs on a multifamily lot, or a number equal to the existing units on the lot, whichever is less. BMC Chapter 23.206 is proposed to be amended to comply with SB 1211 as part of the annual State Law and Technical Edits (STLE) package which the Planning Commission will review in the spring.

Additionally, SB 1211 includes a provision which prohibits the City from imposing objective development or design standards on Section 66323 ADUs beyond what is authorized in state law.

DISCUSSION

¹ <https://berkeley.municipal.codes/BMC/23.306>

Assembly Bill 1033 and ADU Condominiums

AB 1033 Local Ordinance Requirements

AB 1033 allows a city to adopt a local ordinance permitting separate sale of the primary dwelling and one or more ADUs as condominiums. To do so, the local ordinance **must** include the following components:

- Compliance with:
 - the Subdivision Map Act;
 - the Davis-Stirling Act (the state law that regulates condominiums); and
 - the City's Subdivision Ordinance (Title 21).
- A procedure to obtain lienholders' consent (i.e., the property owner must get the mortgage lender's sign-off before a separate sale would be permitted).
- A process to conduct and verify a safety inspection. Obtaining a Certificate of Occupancy from the city, or obtaining an inspection report from a HUD-certified inspector are two of the most common approaches to meeting this requirement.
- Mandatory consumer disclosures regarding lender requirements.

If an ADU is tenant-occupied and the property owner seeks to sell the ADU as a separate condominium under an AB 1033 ADU Condominium Ordinance (once the city adopts it), the city may require that a tenant receive a right of first refusal. If the city were interested in implementing an ordinance with a right of first refusal requirement, an AB 1033 ADU Condominium Ordinance could treat ADU condos the same as typical condos under the city's own Condo Conversion Ordinance (BMC Chapter 21.28)², or it could include different requirements for the conversion of ADUs to condos.

Existing City Regulations Governing Condominiums

Existing Subdivision Ordinance (BMC Title 21 (Subdivisions))³

BMC Title 21 (Subdivisions) was enacted for the purpose of adopting regulations to implement and supplement the State's Subdivision Map Act. Title 21 includes:

- A ministerial process for the creating a Parcel Map for four or fewer parcels or condo units;
- A discretionary process for Tentative Maps for creating five or more parcels or condo units;
- Condo conversion regulations; and
- Design requirements, procedures for lot line adjustments and subdivision improvement requirements.

Existing Condominium Conversion Ordinance (BMC Chapter 21.28)⁴

² <https://berkeley.municipal.codes/BMC/21.28>

³ <https://berkeley.municipal.codes/BMC/21>

⁴ <https://berkeley.municipal.codes/BMC/21.28>

Berkeley's Condominium Conversion Ordinance lays out the procedures, fees, and required tenant protections for applicants proposing to convert existing dwelling units into condominiums. It also includes the city's annual limit on allowable condo conversions.

Generally, BMC Chapter 21.28 requires:

- Payment of a Condo Conversion Mitigation Fee;
- Tenant protections, including notice, relocation assistance, and right of first refusal.

Since 1992, the City of Berkeley has imposed a Condo Conversion Housing Mitigation Fee. Revenues from the fee accrue to the Berkeley Housing Trust Fund to help finance construction and rehabilitation of permanently affordable housing in Berkeley.

The fee is calculated by dividing the difference between the costs of owning the unit as a condominium less the rental costs by the current fixed mortgage rate. The following is an example of a fee calculation from the city's *Residential Condominium Conversion Packet*.⁵

- Rental Costs = \$1,500 per month x 12 months/year = \$18,000 annually
- Ownership Cost (including principal, interest, taxes, insurance, and homeowners' association dues) = \$2,700 per month x 12 = \$32,400
- Assume a mortgage rate of 6.5 percent.
- Increased housing cost due to ownership conversion of the unit = \$32,400 - \$18,000 = \$14,400
- Mitigation Fee = \$14,400/0.065 = \$221,538

In addition, Berkeley's Condo Conversion Housing Mitigation Fee is designed to encourage property owners to extend protections to their tenants. Owners providing additional tenant protections specified in the Condo Conversion Ordinance receive a decrease in the amount of the fee, which is capped at 8% of the total sales price, or 4% of the total sales prices for 2-unit properties.

*Berkeley Rent Ordinance (BMC Chapter 13.76)*⁶

Under Berkeley's Rent Stabilization Ordinance, units with a Certificate of Occupancy issued after June 30, 1980, are generally exempt from rent ceiling controls. Most ADUs

⁵ City of Berkeley, *Residential Condominium Conversion Packet*, Updated: July 1, 2022.

https://berkeleyca.gov/sites/default/files/documents/Condo%20Packet%2007-01-2022_Posted%20Online.pdf

⁶ <https://berkeley.municipal.codes/BMC/13.76>

fall into this “new construction” exemption, though they still must follow just-cause eviction rules (BMC § 13.76.130).

Policy Questions for Planning Commission Discussion

1) *Regulation of ADU Condos.*

Should ADU condos be treated as any other condominium under Chapter 21.28—including payment of the Condominium Conversion Mitigation Fee, tenant protections, and discretionary approval for five or more units—or should the city create a streamlined path for ADU condominiums (as San Jose does)?

2) *Right of First Refusal.*

Should an AB 1033 ordinance require a right of first refusal for any tenant occupying an ADU that is being sold as a separate condominium? If so, should the right be the same as the current Condo Conversion Ordinance (i.e., one year to respond) or should it include a different timeline for ADU condominiums?

ADU Letter from California Housing and Community Development Department

On May 3, 2024, HCD sent a letter regarding the ADU Ordinance (**Attachment 2**), and the city responded on June 3, 2024 (**Attachment 3**). The letter included a set of findings which called for policy consultation with the Planning Commission, which are included below.

Number of ADUs Permitted

In its letter of May 3, 2024, HCD found that BMC Chapter 23.306 did not permit as many Section 66323 ADUs as required under state law. Currently, Table 23.306-1 (Unit Allowance) permits one ADU and one Junior ADU on a parcel with an existing single-family dwelling. HCD asserted that Government Code Section 66323 permits a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU, for a total of three Section 66323 ADUs.

This is consistent with the latest *HCD ADU Handbook (January 2025)*⁷, which explains that on single-family lots specifically, local agencies must allow Category (a)(1) (converted ADU) and Category (a)(2) (detached ADU) together, plus one JADU (also described in Gov. Code § 66323(a)(1)).

Originally, BMC Section 23.306.020(B) was drafted based on HCD’s *December 2020 ADU Handbook*, which stated that the two new ADU/JADU categories under former

⁷ California Housing and Community Development Department, *Accessory Dwelling Unit Handbook*, January 2025. <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/adu-handbook-update.pdf>

subdivision (e) “are not required to be combined.” At that time, it appeared an applicant seeking to build both an ADU and a JADU would have to choose between a single-family ADU+JADU “conversion configuration” or “detached configuration,” rather than do both. However, in July 2022, HCD updated its guidance to clarify that the four statutory categories of ADUs “may be combined”—meaning a local government “must allow (A) and (B) together or (C) and (D) together.”

Question for the Planning Commission: Should the Berkeley Municipal Code (BMC) be amended to clearly allow up to three units on a single-family property: one interior/converted ADU, one detached new-construction ADU, and one JADU?

Conversion of Accessory Structures

In its letter of May 3, 2024, HCD found that the city must amend the BMC to remove the words “legally established” from BMC Section 23.306.030(A)(3), related to the conversion of accessory structures.

BMC Section 23.306.030(A)(3) states “An ADU converted from a legally established accessory building or accessory structure is allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure....”

Question for the Planning Commission: Should the Berkeley Municipal Code (BMC) be amended to remove the requirement that an accessory building or structure be “legally established” to be eligible for conversion to an ADU?

JADUs and Enclosed Uses

BMC Section 23.306.030(B) allows JADUs “within an existing or proposed single family dwelling or its attached garage....” It is later defined in Section 23.502.020(A)(4)(a) as, “A unit that is contained entirely within the walls of an existing or proposed single family dwelling, or a single-family dwelling unit’s attached garage.”

In its letter of May 3, 2024, HCD found that Government Code Section 66333 provides a broader allowance, stating “For purposes of this subdivision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence,” and that the BMC must allow JADUs in other enclosed uses not limited to the single-family residence and an attached garage.

City staff interprets the existing BMC language to already include other enclosed areas of the single-family dwelling. Specifically, the BMC definition of “accessory uses” (BMC Section 23.502.020(B)(2)(a)) is broad and extends beyond just the attached garage (e.g., storage rooms, basements). There is no instance staff could envision where an enclosed space would be excluded from conversion under the current definition.

Question for the Planning Commission: Should the Berkeley Municipal Code (BMC) be amended to explicitly expand eligibility to all “enclosed uses”?

Deed Restriction

BMC Section 23.306.040 states that “A completed [ADU] application must include evidence of compliance with this Chapter, including development standards, deed restrictions, and neighborhood noticing.”

In its letter of May 3, 2024, HCD found Government Code section 66317, states, “No local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this section,” and therefore the city may not condition approval of an ADU application on the recordation of a deed restriction.

Under the ADU Ordinance, the requirement that a deed restriction be recorded is not a condition of approval; it is a requirement for a completed application. City staff does not interpret this provision as allowing the city to delay or deny a permit solely for lack of a recorded deed restriction.

Question for the Planning Commission: Should the Berkeley Municipal Code (BMC) be amended to remove the deed restriction requirements for a completed application?

JADU Rental Term

BMC Section 23.306.040(C)(3) states that a JADU cannot be rented for a term that is shorter than 30 days. In its letter of May 3, 2024, HCD found that while Government Code section 66333 allows the city to adopt an ordinance to provide for the creation of JADUs, and includes the provisions that can be included in the ordinance, the provisions do not include requiring a minimum rental term of 30 days. Therefore, HCD states that the 30-day rental term minimum for JADUs must be removed. The current 30-day minimum rental term for ADUs complies with state law.

Question for the Planning Commission: Should the Berkeley Municipal Code (BMC) be amended to remove the 30 days minimum rental term for JADUs?

Senate Bill 1211

SB 1211 (signed on September 19, 2024) allows up to eight detached ADUs on a lot with an existing multifamily dwelling (subject to certain limits). Staff intends to incorporate this statutory update into the upcoming State Law and Technical Edits (SLTE) Zoning Amendments package that will come before the Planning Commission for public hearing this Spring.

SB 1211 also includes a provision which prohibits the City from imposing objective development or design standards on Section 66323 ADUs beyond what is authorized in state law. There are two provisions in the BMC which may conflict with this provision.

1) *ADUs in the Front Setback:* BMC Chapter 23.306.030(A)(4) prohibits the placement of ADUs in the front setback unless the only location on a lot that can accommodate an

800 square foot ADU is within the front setback. The section also includes specific front setback requirements that apply only to ADUs that qualify to be located within the front setback. State law currently permits only the establishment of side and rear setbacks for Section 66323 ADUs, not front setbacks. SB 1211 could be interpreted to limit the city's ability to prohibit Section 66323 ADUs in the front setback even if an ADU could be located elsewhere on a lot.

2) *ADU Building Separation*: BMC Chapter 23.306.030(A) includes basic development standards for ADUs, which include building separation standards. State law currently only permits the establishment of side and rear setbacks for Section 66323 ADUs. There is no provision for the establishment of building separation standards, nor is there any explicit prohibition. The building separation requirement was adopted by the City Council to address concerns about fire safety and firefighter access to buildings on a property. State law provides the establishment of side and rear setbacks "for fire safety," but does not specifically mention building separation requirements for Section 66323 ADUs.

Question for the Planning Commission: Should BMC Chapter 23.306.030 be amended to remove the front setback and building separation provisions for Section 66323 ADUs, or should those provisions be removed for all ADUs?

ENVIRONMENTAL REVIEW

There are no identifiable environmental effects or opportunities associated with this informational report.

NEXT STEPS

Staff is currently reviewing HCD's comments and exploring policy options to meet state requirements, particularly regarding separate ADU conveyance and other statutory changes. With Planning Commission's input, we will incorporate them into draft amendments, solicit public feedback, and move forward with the required steps for final adoption of any Zoning Ordinance amendments.

CONTACT PERSON

Branka Tatarevic, Planning and Development Department, 510-981-7472

ATTACHMENTS

1. Referral to Implement AB 1033
2. HCD ADU Ordinance Review Letter
3. City's Response to HCD's Letter
4. San Jose ADU Condominium Ordinance

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



May 3, 2024

Jordan Klein, Director,
Department of Planning and Development
City of Berkeley
1947 Center St, 2nd Floor
Berkeley, CA 94704

Dear Jordan Klein:

RE: Review of Berkeley's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66313 - 66342)

Please Note: As of March 25, 2024, with the Chaptering of Senate Bill (SB) 477 (Chapter 7, Statutes of 2024), the sections of Government Code relevant to State ADU and Junior Accessory Dwelling Unit (JADU) Law have been re-numbered (Enclosure 1).

Thank you for submitting the City of Berkeley (City) accessory dwelling unit (ADU) Ordinance No. 7,888-N.S. (Ordinance), adopted October 10, 2023, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 66326, subdivision (a). HCD finds that the Ordinance does not comply with State ADU and JADU Laws in the manner noted below. Under 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 June 3, 2024.

HCD notes that HCD's previous ADU Ordinance review letter, dated October 17, 2022, raised the issue of the Ordinance's restrictions on ADUs in the Very High Fire Hazard Severity Zone. Upon review of the City's Ordinance 7,888-N.S. and supporting evidence, HCD has determined that the City addressed HCD's findings.

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

1. Table 23.306-1 – *Unit Allowance* – The Ordinance states a single-family dwelling is permitted, at maximum, "1 ADU and 1 Junior ADU." However, Government Code section 66323, subdivision (a) states, "Notwithstanding Sections 66314 to 66322, inclusive, 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: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling... (A) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single family dwelling or existing space of a single-family dwelling or accessory structure.” Subdivision (a)(2) permits, “[o]ne detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term “any” followed by an enumeration of by-right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single family dwellings.

This permits a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. Therefore, the City must amend the Ordinance to permit all by-right combinations required by State ADU Law.

2. 23.306.030 A.1 – *150 Sq. ft. Expansion* – The Ordinance states “ADU Development Standards is allowed a physical addition of no more than 150 square feet.” However, Government Code section 66323, subdivision (a)(1)(A) allows, an “expansion of not more than 150 square feet beyond the same physical dimensions as the **existing accessory structure**. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.” The statute intends for this expansion only with the conversion of an existing accessory structure. Therefore, the Ordinance allowing expansion for all building conversions is inconsistent with State ADU Law. The City must amend the Ordinance to limit the expansion only in conjunction with the conversion of existing accessory structures.
3. 23.306.030 A.2 – *“Main Building” and Conversion* – The Ordinance states that for a duplex or multifamily building, “Interior ADU(s) must be created entirely through non-habitable residential portions of the existing main building that are not within the living space of a dwelling unit (e.g. basement, attic, garages, storage room).” The term “main building” is problematic as Government Code section 66323, subdivision (a)(3)(1), allows “Multiple accessory dwelling units within the portions of **existing multifamily dwelling structures** that are not used as livable space....” The term “the existing main building” refers to a single building, whereas State ADU Law refers to “existing multifamily dwelling structures.” As worded, the Ordinance could lead to confusion as many multifamily projects could have multiple building with units within them.

Additionally, the adjective “main” is not objective, especially in situations wherein multiple dwelling structures occupy a single lot. Government Code

section 66314, subdivision (b)(1) requires the use of “objective standards” for ADUs, which are defined in Government Code section 66313, subdivision (h) as “standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” The use of such a subjective term is inconsistent with State ADU Law.

In summary, the City must amend the Ordinance to comply with State ADU Law.

4. 23.306.030 A.3. – *Accessory Conversion* – The Ordinance states “An ADU converted from a legally established accessory building or accessory structure is allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure....” However, Government Code section 66323, subdivision (a)(1)(A) allows, an “expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.” Therefore, the City must amend the Ordinance to allow for the expansion of an accessory structure for ingress and egress.
5. 23.306.030 A.8, 23.306.040 A, 23.324.060 (C) – *Zoning Certificate* – The Ordinance states that, generally, “An application for an ADU or Junior ADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application.” It also provides more specific conditions that engage with a zoning certificate, stating “Attached ADUs with height up to 25 ft. allowed with a Zoning Certificate,” allowing specific “...alterations of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate,” and allowing new windows or doors with “...a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU... with a Zoning Certificate.”

The Ordinance states that the “review” will be completed within 60 days. The Ordinance does not specify that the review will end with an approval or denial within the 60-day period. The term “Zoning Certificate” is not defined or explained in Section 23.502.020, and it is unclear whether the review process is ministerial or discretionary. Government Code section 66317, subdivision (a) requires, that a “A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review. The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application.” Subdivision (b) further states that “If a permitting agency denies an application for an accessory dwelling unit or junior accessory

dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.”

Therefore, the City must amend the Ordinance to specify ministerial approval or denial within 60 days and add provisions for a denial process according to State ADU Law.

6. 23.306.030 B – JADU Entry – The Ordinance states “A Junior ADU shall be contained entirely within an existing or proposed single family dwelling or its attached garage and have no more than 500 square feet in floor area.” However, Government Code section 66333, subdivision (e) states, that local JADU ordinances must “Require a permitted junior accessory dwelling unit to include a separate entrance from the main entrance to the proposed or existing single-family residence.” Therefore, the City must amend the Ordinance to require a separate entrance to the JADU.
7. 23.306.030 B, 23.502.020 A.4.a – *JADUs and Enclosed Uses* – The Ordinance allows JADUs “within an existing or proposed single family dwelling or its attached garage...” It is later defined in Section 23.502.020 (A)(4)(a) as, “A unit that is contained entirely within the walls of an existing or proposed single family dwelling, or a single-family dwelling unit's attached garage.” However, Government Code section 66333, subdivision (d), provides a broader allowance, stating “For purposes of this subdivision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” The City must therefore allow JADUs in other enclosed uses not limited to an attached garage. The City must amend the Ordinance accordingly.
8. 23.306.040 A and C – *Deed Restriction* – Ordinance section 23.306.040 A states “A completed application must include evidence of compliance with this Chapter, including development standards, deed restrictions, and neighborhood noticing.” Section 23.306.040 C states, “The property owner shall file a deed restriction with the Alameda County Recorder which states... 2. The ADU shall not be sold separately from the main building unless the conditions of BMC 23.306.040(0) ADUs Developed by a Qualified Nonprofit Developer are met; 3. The ADU... shall not be rented for a term that is shorter than 30 days.”

However, Government Code section 66317, subdivision (c) states, “No local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this section,” and section 66315 states “Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed....” Section 66314 does not require a deed restriction for a building permit; therefore, this section

of the Ordinance is not consistent with State ADU Law. The City may not give condition approval of an ADU application on the recordation of a deed restriction. Although the City may have other authority by which to require a deed restriction, this requirement may not be the basis of delay or deny an ADU application and the issuance of a building permit. Therefore, the City must amend the Ordinance accordingly.

Pursuant to Government Code section 66333, subdivision (c) the City shall, “[r]equire the recordation of a deed restriction, which shall run with the land...” The deed restriction is limited to the provisions of subdivision (c)(1) and (c)(2). The deed restriction for JADUs do not include a minimum 30-day rental term. Therefore, the City must amend the Ordinance accordingly.

9. 23.306.040 B – *Neighbor Noticing* – The Ordinance states “Notice of an ADU application shall be mailed to tenants of the subject property, and owners and tenants of the adjacent, confronting, and abutting properties, within ten working days of submission of the building permit application to the City... Notice shall provide the address of the project, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.”

However, Government Code section 66317, subdivision (c) states, “No local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this section,” and section 66315 states “Section 66314, establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in Section 66314, shall be used or imposed....” Section 66314 does not require neighbor noticing for an ADU building permit. Therefore, the City must remove this section.

10. 23.306.040 C.2 – *Separate Sale* – The Ordinance states “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....” Please note that Government Code section 66342 states “a local agency may also adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and accessory dwelling unit or units as condominiums...” which are then subject to the standards listed in that section.
11. 23.306.040 C.3 – *JADU Terms* – The Ordinance states “The ADU and/or Junior ADU shall not be rented for a term that is shorter than 30 days....” However, Government Code section 66333 provides, “Notwithstanding Article 2 (commencing with Section 66314), a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit and shall do all of the following:” The section then

Jordan Klein, Director, Department of Planning and Development
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lists the provisions that are required to be in the JADU ordinance. The provisions do not require a minimum rental term of 30 days. Therefore, the City must amend the Ordinance accordingly.

12.23.306.040 C.4 – *JADU Owner Occupancy* – The Ordinance requires that the “Junior ADU or the Single Family Dwelling in which the Junior ADU is located shall be owner-occupied.” However, Government Code section 66333, subdivision (b) states, “Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.” Therefore, the City must note the exception.

In response to the findings in this letter, and pursuant to Government Code section 66326, subdivisions (b)(2)(A) and (b)(2)(B), the City must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the City’s response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 66326, subdivision (c)(1), if the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

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 contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov if you have any questions or would like HCD’s technical assistance in these matters.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Unit Manager
Housing Policy Development Division

Enclosure

State ADU/JADU Law Statutory Conversion Table

New Government Code Sections	Previous Government Code Sections
Article 1. General Provisions	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
Article 2. Accessory Dwelling Unit Approvals	
66314	65852.2(a)(1)(A), (D)(i)-(xii), (a)(4)-(5)
66315	65852.2 (a)(8)
66316	65852.2 (a)(6)
66317	65852.2 (a)(3), (a)(7)
66318	65852.2 (a)(9), 65852.2 (a)(2)
66319	65852.2 (a)(10)
66320	65852.2 (b)
66321	65852.2 (c)
66322	65852.2 (d)
66323	65852.2 (e)
66324	65852.2 (f)
66325	65852.2 (g)
66326	65852.2 (h)
66327	65852.2 (i)
66328	65852.2 (k)
66329	65852.2 (l)
66330	65852.2 (m)
66331	65852.2 (n)
66332	65852.23.
Article 3. Junior Accessory Dwelling Units	
66333	65852.22 (a)
66334	65852.22 (b)
66335	65852.22 (c)
66336	65852.22 (d)
66337	65852.22 (e)
66338	65852.22 (f)-(g)
66339	65852.22 (h)
Article 4. Accessory Dwelling Unit Sales	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)

ATTACHMENT 5

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**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**

The public may participate in this hearing by remote video or in-person.

The Department of Planning and Development is proposing an Ordinance to 1) adopt proposed amendments to Title 21 (Subdivisions Ordinance) to implement Assembly Bill (AB) 1033 by establishing local regulations for the separate sale of ADUs as condominiums; and 2) adopt proposed amendments to Title 23 (Zoning) to bring the City's Accessory Dwelling Unit (ADU) regulations into compliance with recent changes to State law, to incorporate feedback from the California Department of Housing and Community Development (HCD), and encourage ADU development.

The hearing will be held on, July 29, 2025 at 6:00 pm in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of July 17, 2025. **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.**

For further information, please contact Branka Tatarevic, Associate Planner at 510-981-7472.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at (510) 981-6900 or clerk@berkeleyca.gov for further information.

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BMC 23.412.050 and Govt Code 65853; notice provided according to Govt Code 65090 and BMC 23.404.040.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on July 17, 2025.

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Mark Numainville, City Clerk

