



Office of the City Manager

November 7, 2025

To: Honorable Mayor and Members of the City Council
From:  Paul Buddenhagen, City Manager
Re: Referral Response: Process Improvements and Resources for Customers Considering ADU Projects

SUMMARY

The City of Berkeley and the California state legislature have taken numerous actions in recent years to promote the development of Accessory Dwelling Units (ADUs) to increase housing supply in urban areas. ADUs can provide greater housing density in a largely built-out environment, in a way which is relatively easy and affordable for homeowners. This Off-Agenda Memo discusses three previous referrals adopted by the City Council, and the steps the Planning and Development Department has taken to fulfill the goals of each.

ADU PROCESS IMPROVEMENTS REFERRAL (December 14, 2021)

This referral, authored by Councilmember Kesarwani and recommended by the Land Use, Housing, and Economic Development Policy Committee, suggested a list of improvements to public information and process for ADU applications. Its recommendations included a “Universal Checklist” of construction requirements across all City departments, an improved webpage to inform customers about the process and expected timelines, “pre-approved” ADU designs which customers could select to make their projects easier, and a designated staff person to be an “ADU Ally” for prospective applicants. See **Attachment 1** to this memo for the complete original referral.

Since the adoption of this referral, the Planning and Development Department has made numerous changes to accomplish these goals, including:

- Public information: Frequent updates to the webpage for Residential Additions and Accessory Dwelling Units, found at: <https://berkeleyca.gov/construction-development/permits-design-parameters/permit-process/residential-additions-and>. As the Council is aware, there have been multiple legislative updates to

ADU regulations, both at the behest of the State of California and by City Council action, since the adoption of this referral. Staff have endeavored to keep these materials current through all changes, and specifically have kept up the ADU Development Standards document and FAQ at [https://berkeleyca.gov/sites/default/files/documents/2023-11-07 Berkeley Forms ADUs Info and FAQs.pdf](https://berkeleyca.gov/sites/default/files/documents/2023-11-07_Berkeley_Forms_ADUs_Info_and_FAQs.pdf).

- Checklist and sample applications: In compliance with state law AB 2234, the City created a webpage with samples of complete applications for various development types, including ADUs. See that webpage at <https://berkeleyca.gov/construction-development/permits-design-parameters/permit-process/building-permit-application>. This page includes a sample complete application for an ADU project, as well as other project types, and a checklist of the kind envisioned by the referral, covering all kinds of applications. That checklist can be found at https://berkeleyca.gov/sites/default/files/documents/Application%20Submittal%20Checklist_1.pdf.
- Pre-Approved ADU designs: The City has created a process whereby designers of ADUs can get their designs pre-approved by the City. Once done, those designs are hosted in a gallery of City-approved ADU designs. If a homeowner chooses one of these designs and contracts with the designer to use it, they can submit those for City approval and get a 50% discount on their building plan check fees. The process for both designers and homeowners, along with a link to the gallery, can be found at <https://berkeleyca.gov/construction-development/permits-design-parameters/permit-process/pre-approved-designs-accessory>.
- Staff expertise: For a number of reasons, including regular staff turnover and a preference for developing universal expertise among all planners, the Land Use Division has opted not to designate one single staff person as an “ADU Ally.” Rather, consistent staff training including updates after each legislative change has built a standard among all planners who staff the Zoning Counter to ensure that they always have the requisite knowledge to field ADU-related inquiries, which are frequent.

ADU RENT LEVEL SURVEY REFERRAL (October 10, 2023)

During the discussion of revisions to ADU regulations at this meeting, the Council motion to adopt the item included numerous additional steps, specifically including a referral to “...conduct a resident survey or to use publicly available data on ADU rent levels to anticipate affordability, as described in the HCD ADU Handbook on pg. 26, contingent on available funding...” See **Attachment 2** for the complete motion from the annotated agenda for the October 20, 2023 Council meeting.

Berkeley staff have participated in an effort by the Association of Bay Area Governments (ABAG) to gather information on rent levels in ADUs. ABAG's survey is ongoing. More recently, in September 2025 Berkeley staff began a City-specific survey of rent rates in ADUs, reaching out to all applicants for ADU projects. Berkeley's survey seeks to incentivize participation by offering a drawing for people who complete the survey to win gift certificates to local businesses. Since state law prohibits making permit approvals contingent on providing such information, both surveys can at best only provide data which is voluntarily offered, and not subject to confirmation, making the results less than ideal data sources.

ABAG issued a report in 2022¹ suggesting that ADUs will tend to provide more affordable opportunities than the rental market at large, but this report is an academic analysis, not based on empirical rental rates.

ALLOW SEPARATE SALES OF ADUs REFERRAL (May 14, 2024)

This referral, also authored by Councilmember Kesarwani, asked that the City take steps to enact state law AB 1033, which gave municipalities the authority to allow ADUs to be sold separately from the main dwelling unit on a parcel, upon adoption of appropriate local legislation. See **Attachment 3** for the original referral.

On July 29, 2025, staff brought legislation to the City Council, as recommended by the Planning Commission, to amend Title 21 (Subdivisions) and Title 23 (Zoning ordinance) of the Berkeley Municipal Code, to enable separate sales of ADUs, among other changes. At that meeting, Council took action to adopt changes to the Zoning Ordinance, but did not discuss Subdivisions. Further consideration was on the agenda of the October 28, 2025 Council meeting, but was also postponed to a future date. The legislative options provided to Council should provide everything needed to fulfill the original referral, at such time that Council takes action.

CONCLUSION

The legislative landscape around housing development policies generally, and ADUs specifically, has seen multiple, fast-moving initiatives in the nearly four years since the adoption of the first referral referenced in this memo. Staff have endeavored to update public information, and staff training and application review procedures, at each such change. The work to keep the public well-informed about development regulations will always require updates and revisions to keep pace with new policies adopted locally in Berkeley, and in statewide Sacramento.

¹ https://abag.ca.gov/sites/default/files/documents/2025-04/ADU_Affordability_Report_June_13_2022.pdf

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November 7, 2025

Re: Referral Responses: Process Improvements and Resources for Customers Considering ADU Projects

Attachments:

1. ADU Process Improvements referral (City Council December 14, 2021)
2. ADU rent level survey referral (from annotated agenda of City Council meeting October 10, 2023)
3. Allow separate sales of ADUs referral (City Council May 14, 2024)

cc: Jordan Klein, Director of Planning and Development
David White, Deputy City Manager
Jenny Wong, City Auditor
Farimah Brown, City Attorney
Mark Numainville, City Clerk
Matthai Chakko, Assistant to the City Manager



Rashi Kesarwani
Councilmember District 1

CONSENT CALENDAR
December 14, 2021

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author) and Councilmembers Susan Wengraf, Lori Droste, and Ben Bartlett (Co-Sponsors)

SUBJECT: Referral to the City Manager to Streamline Accessory Dwelling Unit (ADU) Permit Review and Approval

RECOMMENDATION

Refer to the City Manager to streamline the Accessory Dwelling Unit (ADU) permitting process in order to reduce staff time spent on review and enhance customer service. Further, assess effectiveness of process improvements specified below by reviewing over time: the number of ADUs permitted, average amount of staff time spent on ADU permit review, and permit fee levels.

Recommend that the City Manager develop for Planning staff use an ADU Universal Checklist and accompanying user-friendly webpage:

- **ADU Universal Checklist.** A clear set of universal guidelines and construction requirements should be developed among staff from Planning (both Land Use and Building and Safety Divisions), Fire, and Public Works Departments that is easy to follow in order to eliminate (or significantly reduce) the need for multiple departments to review ADU permit applications and for multiple rounds of review by the same department. The Universal Checklist should be a single document utilized by (1) all City staff to review ADU permit applications and (2) by customers to understand code requirements and development standards. The Universal Checklist should enable all City staff and customers to have the same clear understanding of all of the requirements that, if adhered to, would expedite the permitting process and lead to lower permit fees over time.

Progress To Date: Recently, the City of Berkeley's Planning Department has added both a [Single-Family ADU/JADU Checklist](#) and a [Multi-Family ADU Checklist](#) which clearly delineate development standards as adopted by the State of California, effective January 1, 2020. An ADU Universal Checklist would take these checklists one step farther by including current amendments

to Berkeley's local ADU ordinance (once adopted) as well as the full list of fire and safety code requirements.

- **Accompanying User-Friendly Webpage.** As a companion to the ADU Universal Checklist, the City should also create a user-friendly webpage for customers (and prospective customers) with up-to-date information that provides clarity and greater certainty about the process and expected timeline for the creation of an ADU or Junior ADU, which is within a main dwelling unit. At a minimum, the webpage should include:
 - A list of relevant fees and expected payment amounts for permits, inspections, and other requirements;
 - Plan requirements, worksheets, and projected timelines for each step of the process; and
 - Consolidated up-to-date state and local regulations that are easy to understand.

Progress To Date: The City now has a [dedicated webpage](#) that contains:

- [A Graphic Summary Table of our local ADU ordinance](#)
- An [ADU flow-chart](#) detailing allowable development standards
- A [Single-Family ADU/JADU Checklist](#)
- A [Multi-Family ADU Checklist](#)
- [Deed Restrictions Forms](#)
- A list of [Impact Fees](#)

Additional information that could prove useful to prospective residents, builders and architects includes:

- Links to fire safety and emergency access requirements;
- A list of site conditions that do *not* warrant easy installation of an ADU;
- A list of Frequently Asked Questions;
- Additional frequently requested Planning and Development forms, such as our [Tree Protection Instructions](#) and [Creek Protection Instructions](#) forms, and our Public Works Engineering forms pertaining to [Curbs, Gutters, Sidewalks and Driveway Approaches](#) listed elsewhere on the City of Berkeley website;
- Information about financing options; and
- Links to additional resources, such as [The Casita Coalition](#), an organization that disseminates information on policies and programs, best practices, and resources throughout the state.

Recommend that the City Manager consider adoption of the following two best practices:

- **Pre-Approved ADU Design Plans.** Consider development of (1) free ADU designs available to download--of varying sizes and styles--that already conform to all City and state requirements and safety codes; and/or (2) a list of

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vendors with architectural designs, construction drawings, or pre-fabricated units that have already been approved by the City.

- **ADU Ally.** Consider creation of a single point of contact e-mail address dedicated to serving those interested in ADU construction, along the lines of an “ADU Ally.” The ADU Ally would be a customer-facing staff person(s) who is an expert on all current state and local ADU regulations and acts as an ally to customers through the planning and building process. Currently, our Planning Department does have a team of planners with an expertise in ADU laws and requirements, although the public lacks an easy and efficient way to access this team.

POLICY COMMITTEE RECOMMENDATION

On November 4, 2021 the Land Use, Housing and Economic Development policy committee took the following action: M/S/C (Droste/Robinson) Qualified positive recommendation with direction for the item to be updated to include progress already made in this area as described by the Planning Director.

CURRENT SITUATION AND ITS EFFECTS

The City’s Process for Reviewing ADU Plans Is Not Efficient. Getting approval to construct an ADU remains one of the biggest challenges in their development. A survey of 752 new ADU builders in California found that 50 percent thought it was difficult to obtain the necessary permits to build their ADU, and they struggled with the length and complexity of the process.¹ Today, builders and homeowners report that building an ADU in Berkeley is costly, cumbersome, and frustrating. ADU plans submitted by applicants to the City’s Permit Service Center are routed to multiple departments for review--a time-consuming process that requires review from multiple plan examiners and complicates the ADU process, as homeowners, and even architects, are often unaware of the rules of these other departments and have trouble navigating through the different requirements.² Further, the ADU plans are put in the same queue as other larger building projects, creating substantial wait times for approval. While the City recently created a webpage for ADUs, more work is needed to alert customers about the process, fees, and requirements for obtaining an ADU permit, enabling prospective customers to understand whether they are eligible to create an ADU and how to embark on the process. In fact, a number of jurisdictions have found that lack of awareness around ADUs and their permitting

¹ See Chapple, et. al., *Implementing the Backyard Revolution: Perspectives of California’s ADU Owners, 2021*, Center for Community Innovation, Univ. of California, Berkeley: <https://www.aducalifornia.org/wp-content/uploads/2021/04/Implementing-the-Backyard-Revolution.pdf>

² See Chapple, et. al., *ADUs in CA: A Revolution in Progress, 2020*, Center for Community Innovation, Univ. of California, Berkeley: <https://www.aducalifornia.org/wp-content/uploads/2021/05/ADU-Progress-in-California-Report-October-Version.pdf>

requirements remains a critical barrier to their development. Homeowners often show up at the permitting counter unaware of certain building and engineering requirements, connection fees, and other local requirements that are not explicitly outlined in the code or in publicly accessible formats.³ Enhancing the City's webpage could alert residents that the state has eliminated minimum lot size requirements for ADUs, for example, which could encourage more homeowners to consider building an ADU.

Inefficiency Leads to High Permit Fees. Currently, the City of Berkeley permitting fees are estimated at a flat rate (3-5 percent) of the job valuation.⁴ Spending less staff time on permit reviews will result in lower fees over time. Construction costs in California are high and building an average-sized detached ADU typically runs upwards of \$150,000. By creating greater certainty and a more streamlined process, customers will be better able to plan for financing their ADU.

Recent State Law Changes Have Made It Easier to Create ADUs. Recent changes to state law have made it easier for more homeowners to pursue ADU development, such as:

- ADUs are now required to be approved and permitted ministerially (AB 68, 2019)
- Elimination of minimum lot sizes for ADU development (AB 68, 2019)
- Exemption of ADU parking requirements under certain circumstances (SB 13, 2019)⁵

Best Practices From Other Local Jurisdictions Can Help to Increase ADU Production in Berkeley. Cities throughout the state are meeting an increasing demand among homeowners for ADUs by: revising their local ADU ordinance and simplifying zoning requirements, offering customer-friendly services, and streamlining the permit approval process, and Berkeley, too, has started down this path. Taken together, these actions have shortened processing time, increased consistency, and reduced homeowner expenses. In Berkeley, interest in creating an ADU is growing: a total of 119 permits were approved for the construction of ADUs in 2020, a number that has steadily grown over the last five years, as shown in Exhibit 1. However, to date, the City of Berkeley has not implemented ADU best practices related to customer-friendly services and streamlining the permit approval process, meaning that more

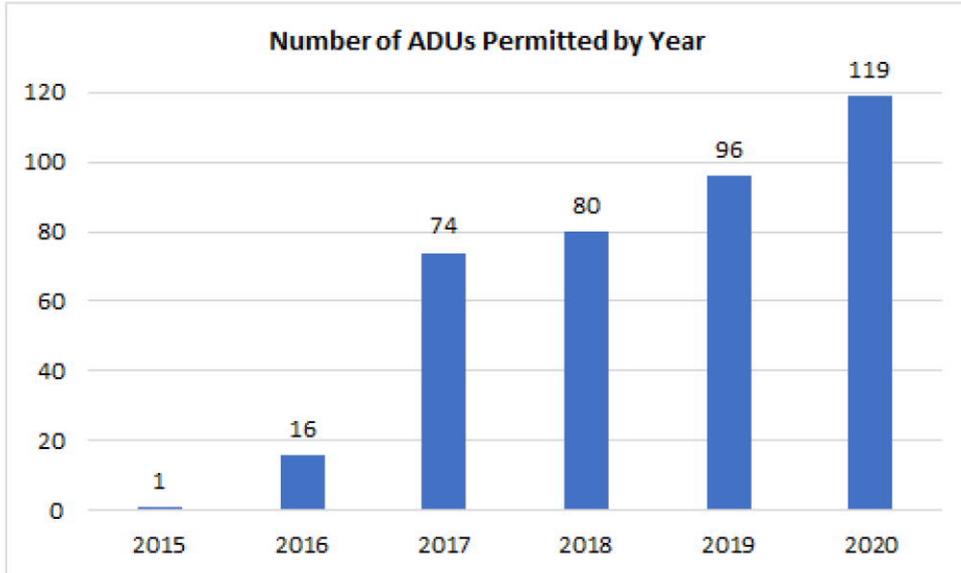
³ See Chapple, et. al., ADUs in CA: A Revolution in Progress, 2020, Center for Community Innovation, Univ. of California, Berkeley: <https://www.aducalifornia.org/wp-content/uploads/2021/05/ADU-Progress-in-California-Report-October-Version.pdf>

⁴ See the City of Berkeley's Department of Planning and Development's Building Permit Fee estimator: <https://www.cityofberkeley.info/PermitFeeEstimator.aspx>

⁵ For a complete discussion of statutory changes to California's ADU codes see the Department of Housing and Community Development's ADU Handbook, p. 23: https://www.hcd.ca.gov/policy-research/docs/adu_december_2020_handbook.pdf

could be done to increase the number of ADU permits issued annually. We note that Berkeley is currently in the process of amending its ADU ordinance to comply with new state law changes.⁶

Exhibit 1: Number of ADUs Permitted in the City of Berkeley Has Steadily Grown



Source: “Response to Short Term Referral for Amendments to the Accessory Dwelling Units (ADU) Ordinance and Related Definitions to Address Public Safety Concerns,” Planning Commission Agenda Packet, April 7, 2020,

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-04-07%20PC_Item%209.pdf.

Three Best Practices From Other Jurisdictions Recommended for Berkeley

- **ADU Universal Checklist and Accompanying User-Friendly Webpage.**

The City of San Jose has become well known for its adoption of an ADU Universal Checklist (see attached) that reduces the amount of time that City staff spend reviewing ADU permits and answering customer questions. Prior to the creation of San Jose’s Universal Checklist two years ago, ADU customers were required to work with four different departments (Building Development, Planning, Fire, and Public Works) to know the requirements and get their ADU permits approved--similar to the situation in Berkeley today. The Universal Checklist now provides a one-stop shop that lists all the requirements across all four City departments. This tool gives homeowners and builders clear guidance on what is required and simplifies the plan check

⁶ See “Response to Short Term Referral for Amendments to the Accessory Dwelling Units (ADU) Ordinance and Related Definitions to Address Public Safety Concerns,” Planning Commission Agenda Packet, April 7, 2021, https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-04-07%20PC_Item%209.pdf

process. The initial effort to establish the Universal Checklist took three to four months of weekly meetings among staff from the four relevant departments, according to the San Jose Public Information Manager for the Department of Planning, Building and Code Enforcement Division. However, now that the Universal Checklist is in place, those same staff have more available time to devote to other projects, according to the Public Information Manager. San Jose began utilizing the Universal Checklist in early 2019 shortly before some changes to state ADU laws (such as AB 68) went into effect; that year saw a notable jump in annual applications to build ADUs--from 376 permit applications in 2018 to nearly double in 2019 at 688 permit applications, which the Public Information Manager attributes to changes in state law, streamlined permitting, and marketing both of these changes.⁷

The marketing and advertising of these changes were facilitated by a user-friendly webpage that includes links to additional webpages with full descriptions of:

- The ADU Universal Checklist
- ADU plan review and permit process
- Pre-approved ADUs and lists of vendors
- Fees for ADUs
- ADU fire requirements
- Parking requirements and exemptions
- State and local ADU ordinances and updates⁸

The ADU Universal Checklist and accompanying user-friendly webpage are simple tools that could help all parties to be clear about the requirements for receiving an ADU permit. Websites have been found to be effective in educating homeowners and increasing knowledge of local zoning and permitting processes.⁹ There is also precedent for using customer-friendly checklists, as the City of Berkeley already has many examples listed on its website, in addition to the recently added Single-Family and Multi-Family ADU/JADU checklists, as shown in Exhibit 2.

Exhibit 2: Building Checklists Currently Available from Online Service Center

⁷ E-mail communication with Cheryl Wessling, San Jose's Public Information Manager, Department of Planning, Building and Code Enforcement Division, April 14, 2021.

⁸ See City of San Jose's Department of Planning, Building and Code Enforcement ADU webpage: <https://www.sanjoseca.gov/business/development-services-permit-center/accessory-dwelling-units-adus>

⁹ See Chapple, et. al., ADUs in CA: A Revolution in Progress, 2020, Center for Community Innovation, Univ. of California, Berkeley: <https://www.aducalifornia.org/wp-content/uploads/2021/05/ADU-Progress-in-California-Report-October-Version.pdf>

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Type of Checklist	Use
Code Compliance Checklists	Kitchens; Building Permits Submittals; Bathroom and Laundry; Decks, Porches, Stairs; Electric Vehicle Charging; Reach code low-rise residential; Reach code non-residential high rise and hotel/motel; Residential floor plan; Solar Photovoltaic; Windows and Doors
Energy Conservation Checklists	CalGreen residential; CalGreen non-residential
Stormwater Requirements Checklists	C.3 and C.6 projects; C.3.i projects
Land Use Planning Checklist	Landmark Alterations Submittal Checklists

Source: Online Service Center webpage, City of Berkeley website,
https://www.cityofberkeley.info/Online_Service_Center/Home/Forms.aspx.

- Pre-Approved ADU Design Plans.** Typically, homeowners interested in building ADUs must start their design from scratch, which creates lengthy and variable permitting processes. In fact, over 25 percent of new ADU builders in California found design constraints to be their top challenge.¹⁰ To address this, numerous jurisdictions, including several in the Bay Area, have developed publicly accessible ADU design plans that are pre-approved by the jurisdiction's Planning and Building Departments, ranging from conceptual drawings to full sets of building plans, which greatly reduces the amount of staff time required to approve planning and building permits. This approach streamlines the process for issuing a permit, which reduces design costs for the customer, reduces staff time for City Departments, and increases consistency among all the approved permits. San Diego County¹¹ and the City of Encinitas¹², for example, both offer a set number of optional pre-approved ADU designs (free and available for download) of varying sizes and styles that can eliminate fees for hiring an architect and streamline some of the permitting processes. San Jose utilizes a slightly different model, in which it offers a list of vendors with pre-approved full sets of construction drawings that homeowners may use for a small fee to the architect. The primary benefit of pre-approved ADU design plans is that they reduce homeowner uncertainty and City staff only need to evaluate the site-specific elements to approve the

¹⁰ See Chapple, et. al., Implementing the Backyard Revolution: Perspectives of California's ADU Owners, 2021, Center for Community Innovation, Univ. of California, Berkeley:
<https://www.aducalifornia.org/wp-content/uploads/2021/04/Implementing-the-Backyard-Revolution.pdf>

¹¹ See San Diego County's Accessory Dwelling Units webpage:
<https://www.sandiegocounty.gov/content/sdc/pds/bldg/adu.html.html>

¹² See City of Encinitas' Permit Ready ADU (PRADU) webpage: <https://encinitasca.gov/pradu>
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building permit, leading to a more efficient review and lower permit fees for the customer.¹³

- **ADU Ally.** The cities of Encinitas and San Jose both have dedicated staff whose sole responsibilities concern ADU development, providing staff responses to permitting requests and knowledgeable assistance steeped in state and local regulations.

BACKGROUND

As Home Prices Climb, ADUs are a Form of “Naturally Occurring” More Affordable Housing. Home prices continue to climb across the Bay Area, and Berkeley now ranks as the third most expensive large Bay Area city, with an average home price of \$1.45 million, as shown in Exhibit 3. The state of California has the third highest median home price in the country, after Hawaii and Washington, D.C.¹⁴ ADUs and Junior ADUs (within the main dwelling) are currently the only avenues available to increase the number of units in many residential zones. ADUs, also known as backyard cottages, have been found to be a form of “naturally occurring” more affordable housing when compared to the monthly cost to rent or own a single-family home.¹⁵

Exhibit 3: Berkeley Home Prices are Third Highest Among Large Bay Area Cities

¹³ See City of San Jose’s Pre-approved ADU webpage:

<https://www.sanjoseca.gov/business/development-services-permit-center/accessory-dwelling-units-adus/adu-permit-plan-review-process/adu-single-family-master-plan-program>. It should be noted that residents need to seek out the vendors and the designs are not free. San Jose also offers a process through which vendors can get their designs approved by the City and thus be added to the binder of pre-approved vendor designs.

¹⁴ Experian, *Median Home Values by State*, Nov. 19, 2019, <https://www.experian.com/blogs/ask-experian/research/median-home-values-by-state/>.

¹⁵ See both San Mateo County – April Report, *Affordability of Secondary Dwelling Units — 21 Elements*, April 9, 2014 (Used data from 2010- 2013): <https://norcalapa.org/wp-content/uploads/2018/07/Affordability-of-Second-Units-April-2014.pdf>; and Chapple, et. al., *Yes in My Backyard: Mobilizing the Market for Secondary Units*, 2012, Center for Community Innovation, Univ. of California, Berkeley, Page 10:

https://communityinnovation.berkeley.edu/sites/default/files/yes_in_my_backyard_mobilizing_the_market_for_secondary_units.pdf?width=1200&height=800&iframe=true

City	% change from Feb. 2020 to Feb. 2021	Average value in Feb. 2021
Sunnyvale	11.1%	\$1.8M
San Mateo	1.6%	\$1.5M
Berkeley	6.9%	\$1.5M
San Francisco	-3.2%	\$1.4M
Santa Clara	12.2%	\$1.4M
Fremont	7.7%	\$1.2M
San Jose	14.0%	\$1.2M
Daly City	3.2%	\$1.1M
Livermore	10.4%	\$900K
Oakland	8.9%	\$870K

Source: Zillow, as reported by Neilson, Susie, Sumida, Nami, "Every major Bay Area city has seen home values go up in the pandemic. Except for one," *The San Francisco Chronicle*, April 10, 2021, <https://www.sfchronicle.com/local/article/Mapped-Real-estate-prices-soared-in-the-Bay-Area-16091650.php>.

RATIONALE FOR RECOMMENDATION

The proposed recommendations for streamlining the review of ADU permit applications are intended to ensure that staff time is used efficiently, customers receive their permits in a timely manner at a competitive price, and that ultimately, these process improvements encourage more homeowners to create ADUs--a form of naturally-occurring more affordable housing that is greatly needed across the Bay Area and state.

It should be noted that senior staff in both City of Berkeley's Planning and Fire Departments were consulted in advance of submitting this council referral. On April 14, 2021, the District 1 office met with then Fire Chief David Brannigan and Fire Marshall Steven Riggs who both expressed support for providing better information to the public via our city website and commented that an ADU checklist with city-wide approved codes would indeed streamline the permitting process. Planning Director Jordan Klein was consulted the following day, on April 15th. He, too, expressed support for this referral, noting that he had wanted to initiate such process improvements himself, though often lacked the time to do so. Adding this referral to the department work plan will help ensure these improvements get put into practice.

FISCAL IMPACT

Time-limited staff time from relevant departments (Planning, Fire, and Public Works) to develop standardized sets of requirements to satisfy all building codes and safety regulations. Additional staff time from the Planning Department would be required to implement related ADU streamlining recommendations. We note that over time the initial outlay of staff time would lead to more efficient processing of ADU permit applications.

ENVIRONMENTAL SUSTAINABILITY

Encouraging the creation of ADUs and Junior ADUs enables the City to make more efficient use of residential land that is generally located in close proximity to public transit. Studies show that infill development is an effective strategy for reducing greenhouse gas emissions by reducing vehicle miles traveled when compared to homes created in outlying undeveloped areas.

CONTACT PERSON

Councilmember Rashi Kesarwani, District 1

(510) 981-7110

Attachment:

City of San Jose ADU Universal Checklist

ADU Universal Checklist

Are you thinking about building an Accessory Dwelling Unit (ADU)? This checklist will help ensure that your lot qualifies for an ADU and that your concept conforms to zoning codes and fire safety requirements. Homeowners, designers, and construction professionals should all review this checklist before investing in building plans.

Instructions. You'll need to identify your property designations, which you can find at www.SJPermits.org. Tap "Permits & Property Information"; enter your address; and on the next screen, click on your property and select "Property Information." A list of designations will appear.

Let's get started with the checklist. You can get feedback from a City Planner by sending a completed ADU checklist and a rough ADU site plan to ZoningQuestions@sanjoseca.gov. If you need further help, contact the ADU Ally (see page 4).

QUESTION	YES	NO						
PART 1. PROPERTIES THAT QUALIFY								
<p>1. Do you have a San Jose address? This worksheet is only for properties in the City of San José jurisdiction. If you're not sure, you can confirm that a property is in San José at SJPermits.org (see above instructions).</p> <p>2. Zoning. Is the property in a residential zone that begins with R-1, R-2, R-M, or PD? Or, regardless of zoning, is the property in one of the following General Plan designations (find out at SJPermits.org):</p> <ul style="list-style-type: none"> - Residential Neighborhood or Mixed-Use Neighborhood or Mixed-Use Commercial - Urban Residential or Transit Residential or Rural Residential - Downtown or Urban Village <p>If you have questions about a PD zone, speak with a Planner at 408-535-3555 during these service hours.</p> <p>> Outcome: If no, an ADU is not allowed. If yes, see the table below:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Property Type</th> <th style="text-align: left;">Qualifying Units</th> </tr> </thead> <tbody> <tr> <td>Single-family</td> <td>Subject to standards, one ADU and one JADU may be allowed — see definitions, pages 2-4.</td> </tr> <tr> <td>Duplex or Multifamily</td> <td>Subject to standards (pages 2-4), two detached ADUs may be allowed. For a duplex, one attached ADU may also be allowed. For multifamily lots, a number of attached ADUs equivalent to up to 25% of existing units may also be allowed (for example, a building with 12 units may qualify for 3 attached ADUs).</td> </tr> </tbody> </table>	Property Type	Qualifying Units	Single-family	Subject to standards, one ADU and one JADU may be allowed — see definitions, pages 2-4.	Duplex or Multifamily	Subject to standards (pages 2-4), two detached ADUs may be allowed. For a duplex, one attached ADU may also be allowed. For multifamily lots, a number of attached ADUs equivalent to up to 25% of existing units may also be allowed (for example, a building with 12 units may qualify for 3 attached ADUs).		
Property Type	Qualifying Units							
Single-family	Subject to standards, one ADU and one JADU may be allowed — see definitions, pages 2-4.							
Duplex or Multifamily	Subject to standards (pages 2-4), two detached ADUs may be allowed. For a duplex, one attached ADU may also be allowed. For multifamily lots, a number of attached ADUs equivalent to up to 25% of existing units may also be allowed (for example, a building with 12 units may qualify for 3 attached ADUs).							
PART 2. PROPERTY DESIGNATIONS								
<p>3. Flood Zones. Is the property in Flood Zones A, AE, AH, or AO? <i>Properties in D or X zones are excluded from these requirements.</i> Find designation at SJPermits.org. Questions: Call 408-535-7803 or email floodzoneinfo@sanjoseca.gov</p> <p>> Outcome: If yes, see flood zone design requirements in Bulletin #211-ADU Plan Requirements, found at www.sanjoseca.gov/home/showdocument?id=39040</p>								
<p>4. Geohazard Zone. Is the property in a designated "geohazard" or "landslide" zone? Find designations at SJPermits.org.</p> <p>> Outcome: If yes, obtain a Geologic Hazard Clearance. Call Public Works at 408-535-7802 or email pwwgeneralinfo@sanjoseca.gov</p>								
<p>5. Historic Designation. Is the property located in a Historic District identified on the California Register of Historic Resources? Find historic designations: www.sanjoseca.gov/HistoricResourcesInventory.</p> <p>> Outcome: If yes, simplified design standards will apply. Please speak with a Planner at 408-535-3555.</p>								
<p>6. Easements. Does the property have a dedicated easement? Easements are described in the title report that came with the purchase of your home, or contact a title company for a report copy. Tract and parcel maps at the County Surveyor Record Index tool at http://bit.ly/2ZhGjXc may show easements, but may be less accurate than a title report.</p> <p>> Outcome: If yes, you must comply with the requirements of the easements, which may include no construction allowed within the easement area.</p>								

continued >

PART 3. DEVELOPMENT STANDARDS - Per Municipal Code Section 20.30.150: <http://bit.ly/33Knz6c>

A great way to ensure your proposed ADU complies with the Zoning Code Development Standards is to meet with a City Planner. This free consultation can help you avoid designing plans that will NOT be approved. Come to the Permit Center and bring a completed Universal Checklist and a rough sketch of your property showing dimensions and the location of the main home and location of the proposed ADU. See full instructions for this consultation at www.sanjoseca.gov/ADUs.

QUESTION **YES** **NO**

7. Location. Is your proposed ADU located as follows?

Property Type	Location Requirements
Single-Family	<p>Attached ADU: Must share a wall with main residence OR share a roof structure with main residence and be separated by no more than 10 feet. For an attached ADU in the front yard, the front door cannot be on same street-facing façade as that of the primary residence, with some exceptions (learn more by speaking with a Planner at 408-535-3555).</p> <p>Detached ADU: Must be in the rear yard or 45 feet from the front property line. Must have a minimum 6-foot separation from the main dwelling unit. May be a converted detached garage or accessory building OR may be built attached to a detached garage or accessory building.</p> <p>Junior Accessory Dwelling Unit (JADU): Must locate entirely within the main home’s existing footprint. You may have a JADU and a detached ADU. Both a JADU and attached ADU are not allowed.</p>
Duplex or Multifamily	<p>Attached ADU: Location is limited to a conversion of existing non-livable space, such as converting an attic, basement, garage, storage room, boiler room, or passageway.</p> <p>Detached ADU: Must be in the rear yard or 45 feet from the front property line, with a minimum 6-foot separation from the main building. The ADU may be a conversion of a detached garage or accessory building, or attached to a detached garage or accessory building.</p> <p>JADU: Not allowed.</p>

> **Outcome:** If yes, your planned location for the ADU is in compliance. If no, your plans will not be approved.

8. Size. Is the size of the proposed ADU within the maximum limits as shown in the tables below AND does the proposed size account for the Rear Yard Coverage Limitation?

SINGLE-FAMILY LOTS	
Lot Size	Maximum Floor Area Allowed
Up to 9,000 sf	Detached ADU: 1,000 sf maximum
	Attached ADU: Size can be up to 800 sf OR up to 50% of the primary residence area without exceeding 1,000 sf. Example: For an 1,800 sf home, a 900 sf attached ADU is allowed.
9,000 sf and greater	Detached ADU: 1,200 sf maximum
	Attached ADU: Size can be up to 800 sf OR up to 50% of the primary residence area without exceeding 1,200 sf. Example: For an 2,400 sf home, a 1,200 sf attached ADU is allowed.
Any lot with a JADU	JADU: 500 sf maximum
	Detached ADU: 800 sf maximum
	Attached ADU: not allowed with a JADU

DUPLEX & MULTIFAMILY LOTS	
Lot Size	Maximum Floor Area Allowed
Any lot size	Detached ADU: 800 sf maximum
	Attached ADU: 800 sf maximum
	JADU: not allowed

How to calculate allowable square footage (sf):
The square footage of all living areas (existing or proposed) connected by a door or other opening counts toward the total allowable square footage of the ADU.

Rear Yard Coverage Limitation. The rear yard is the area that extends from the rear lot line to the rear of the main home across the full width of the lot. The cumulative coverage of the rear yard by structures — including coverage by the ADU, accessory buildings, sheds, gazebos, or other structures — may not exceed 40% of the rear yard or 800 sq.ft., whichever is greater. Does your project comply with this rule?

> **Outcome:** If yes, your ADU size is in compliance. If no, your plans will not be approved.

continued >

QUESTION	YES	NO												
<p>9. Setbacks. Does your proposed ADU comply with these rules for setbacks?</p> <table border="1" data-bbox="162 199 1412 745"> <thead> <tr> <th data-bbox="162 199 365 231"><i>Property Type</i></th> <th data-bbox="365 199 1412 231"><i>Location Requirements</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="162 231 365 409">Single-family</td> <td data-bbox="365 231 1412 409"> Attached ADU: Same setback requirements as apply to the main dwelling unit. Detached ADU: - Must be set back 45 feet minimum from front property line. - Rear/side setbacks less than 3 feet may be subject to fire mitigation measures, see p. 4. - A second story OR new ADU with greater than 40% rear yard coverage must be set back 4 feet from both rear and side property lines. </td> </tr> <tr> <td data-bbox="162 409 365 598">Duplex or Multifamily</td> <td data-bbox="365 409 1412 598"> Attached ADU: Setbacks not applicable as the attached ADU is limited to a conversion of existing non-livable space. Detached ADU: - Must be in the rear yard or 45 feet from the front property line. - Rear/side setbacks: Minimum 4 feet, allows for up to 1-foot projection for eaves - A second story is not allowed on a detached ADU for duplex/multifamily properties. </td> </tr> <tr> <td data-bbox="162 598 365 640">Corner lots</td> <td data-bbox="365 598 1412 640">A 10-foot setback is required on the street side.</td> </tr> <tr> <td data-bbox="162 640 795 682">Lots ½ acre or greater along riparian corridors</td> <td data-bbox="795 640 1412 682">Minimum 100-foot setback required.</td> </tr> <tr> <td data-bbox="162 682 795 745">Decks, unenclosed entry landings, and second-story balconies</td> <td data-bbox="795 682 1412 745">Minimum 15-foot rear/side setback required. May not locate along building walls nearest to rear and side property lines.</td> </tr> </tbody> </table> <p>> Outcome: If yes, the setbacks for your ADU are in compliance. If no, your plans will not be approved.</p>	<i>Property Type</i>	<i>Location Requirements</i>	Single-family	Attached ADU: Same setback requirements as apply to the main dwelling unit. Detached ADU: - Must be set back 45 feet minimum from front property line. - Rear/side setbacks less than 3 feet may be subject to fire mitigation measures, see p. 4. - A second story OR new ADU with greater than 40% rear yard coverage must be set back 4 feet from both rear and side property lines.	Duplex or Multifamily	Attached ADU: Setbacks not applicable as the attached ADU is limited to a conversion of existing non-livable space. Detached ADU: - Must be in the rear yard or 45 feet from the front property line. - Rear/side setbacks: Minimum 4 feet, allows for up to 1-foot projection for eaves - A second story is not allowed on a detached ADU for duplex/multifamily properties.	Corner lots	A 10-foot setback is required on the street side.	Lots ½ acre or greater along riparian corridors	Minimum 100-foot setback required.	Decks, unenclosed entry landings, and second-story balconies	Minimum 15-foot rear/side setback required. May not locate along building walls nearest to rear and side property lines.		
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<p>10. Height. Does your proposed ADU comply with these height limitations?</p> <table border="1" data-bbox="162 861 1412 1081"> <thead> <tr> <th data-bbox="162 861 365 892"><i>Property Type</i></th> <th data-bbox="365 861 1412 892"><i>Location Requirements</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="162 892 365 997">Single-family</td> <td data-bbox="365 892 1412 997"> Attached ADU: Same height limitations as apply to the main dwelling unit. Detached ADU: One story: 18 feet maximum. Two-story: 24 feet maximum If the property includes a JADU, height of a detached ADU is 16 feet maximum per state law. </td> </tr> <tr> <td data-bbox="162 997 365 1081">Duplex or Multifamily</td> <td data-bbox="365 997 1412 1081"> Attached ADU: Limited to a conversion of existing non-livable space and must maintain existing height. Detached ADU: 16 feet maximum per state law </td> </tr> </tbody> </table> <p>Outcome: If yes, the height of your ADU is in compliance. If no, your plans will not be approved.</p>	<i>Property Type</i>	<i>Location Requirements</i>	Single-family	Attached ADU: Same height limitations as apply to the main dwelling unit. Detached ADU: One story: 18 feet maximum. Two-story: 24 feet maximum If the property includes a JADU, height of a detached ADU is 16 feet maximum per state law.	Duplex or Multifamily	Attached ADU: Limited to a conversion of existing non-livable space and must maintain existing height. Detached ADU: 16 feet maximum per state law								
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Duplex or Multifamily	Attached ADU: Limited to a conversion of existing non-livable space and must maintain existing height. Detached ADU: 16 feet maximum per state law													
<p>11. Sleeping Area. Up to two bedrooms are allowed, and the maximum bedroom size is 400 sf. Does the sleeping area or bedroom/s planned for the ADU or JADU comply with these standards?</p> <p>> Outcome: If yes, your layout for the sleeping area is allowed. If no, your plans will not be approved</p>														
<p>12. Kitchen, Bathroom, Storage. Does your proposed ADU or JADU comply with these rules?</p> <p>Kitchen - ADUs must have a sink, food preparation counter, storage, cabinets, and permanent cooking facilities such as a range or cooktop and oven. JADUs may have the same OR a small efficiency kitchen with plug-in appliances.</p> <p>Bathroom/s - For ADUs, up to two bathrooms are allowed, requiring a sink, toilet, and shower and/or bath facilities. For JADUs, sharing the bathroom with the main residence is allowed or one bathroom or a half bathroom is allowed.</p> <p>Storage - A closet or other enclosed storage area cannot exceed 60 sq. ft.</p> <p>> Outcome: If yes, your design is in compliance. If no, your plans will not be approved.</p>														
<p>13. Second Story Window Sill Height. Sill height for any openings must be a minimum 5 feet from the floor for walls nearest to rear and side property lines. Does your project comply with this rule?</p> <p>> Outcome: If yes, this window design is allowed. If no, the plans will not be approved.</p>														
<p>14. Parking Requirements. Does your proposed ADU either provide a parking space OR qualify for an exemption?</p> <p>Exemptions: Many ADUs qualify for a parking exemption in accordance with state law. Please see the Parking Requirements page at www.sanjoseca.gov/ADUs for a list of the exemption criteria.</p> <p>Parking space location: If you are required to provide a parking space, it must be located on a surface free of mud or dust. It may be located within the front and side setbacks of the property, with a minimum driveway length of 18 feet.</p> <p>Parking requirements after a garage conversion: If you converted a garage to an ADU, replacement parking for the main home is no longer required.</p> <p>> Outcome: If yes, your proposed project is in compliance. If no, your plans will not be approved.</p>														

continued >

PART 4. FIRE SAFETY & EMERGENCY ACCESS		
<p>We will review your ADU project for compliance with the California Fire Code (CFC) so that projects are built for safety and ease of access during an emergency. For questions, call the Fire Prevention Bureau at 408-535-7750 or email SJFDPermitSpecialist@sanjoseca.gov</p>		
QUESTION	YES	NO
<p>15. Hydrant Water Flow. Is a minimum flow of 1,000 gpm at 20 psi available at the closest hydrant? Ask your Water Company for this information. Send an email with "ADU WATER FLOW REQUEST" in the subject line and present this information:</p> <ul style="list-style-type: none"> ▪ Your name ▪ Street name and address of the project ▪ Nearest cross street to that location <p>Submit the letter from the Water Company that contains this water flow data with your building permit application. DON'T WAIT! A top reason for permit issuance delays is not having this letter. Your water company will respond, so contact them today. Find Water Company contact information at the ADU Fire Requirements webpage: https://www.sanjoseca.gov/business/development-services-permit-center/accessory-dwelling-units-adus/adu-fire-requirements</p> <p>> Outcome: If the flow is other than 1,000 gpm at 20 psi, Fire staff will review flow data and will evaluate if additional fire safety measures are required.</p>		
<p>16. Hydrant Proximity. Are all exterior walls of the ADU within 600 feet of a fire hydrant?</p> <p>On the Site Plan Vicinity Map for plan submittal, mark one or more locations of fire hydrants closest to the project. Indicate the distance from the hydrant/s to the farthest exterior wall of the ADU, using the minimum 3-foot clear path of travel.</p> <p>> Outcome: If no, your project may require a Fire Variance that entails additional safety measures. Call 408-535-7750 for direction. Find the Variance application at: www.sanjoseca.gov/Home/ShowDocument?id=9343</p>		
<p>17. Fire sprinklers. Is the primary residence protected by fire sprinklers?</p> <p>> Outcome: If yes, the ADU must have a fire sprinkler system.</p>		
<p>18. Fire sprinklers and attached ADUs. Is the project an attached ADU greater than 500 square feet AND does the overall gross floor area with the main unit exceed 3,600 square feet?</p> <p>> Outcome: If yes, the entire house and ADU are required to be protected with a fire sprinkler system.</p>		
<p>19. ADU Address. Does the ADU have its own address and is the address visible and legible from the street?</p> <p>Premises Identification guidelines: www.sanjoseca.gov/Home/ShowDocument?id=9323.</p> <p>On the Site Plan for plan submittal, show the address location on the primary dwelling unit and on the ADU.</p> <p>> Outcome: If no, please complete Form #302, found at: www.sanjoseca.gov/home/showdocument?id=25943</p>		
<p>20. ADU Access. Is the distance from the street curb of the lot to all portions of the proposed ADU no greater than 200 feet as measured along a minimum 3-foot clear path to all sides of the ADU?</p> <p>On the Site Plan for plan submittal, show the distance along the minimum 3-foot clear path from the front property line to the ADU's farthest exterior side or projection (such as eaves), whichever is farthest.</p> <p>> Outcome: If no, your project may require a Fire Variance that entails additional safety measures. Call 408-535-7750 for direction. Find the Variance application at: www.sanjoseca.gov/Home/ShowDocument?id=9343</p>		
SECTION E. MISCELLANEOUS		
<p>21. Tree Removal. Will constructing an ADU require removal of an ordinance-size or heritage tree?</p> <p>> Outcome: If yes, please see the City's rules for removing trees: www.sanjoseca.gov/treepermit</p>		

ADU ALLY - HERE TO HELP YOU

Our ADU Ally is a staff member that will answer your questions; connect you to other staff who may be of assistance; and schedule your appointment for ADU plan submittal and review.

Email: adu.ally@sanjoseca.gov

Phone: 408-793-5302

Find more ADU information at www.sanjoseca.gov/ADUs

Action Calendar – Public Hearings

9. Ambulance Transport Fee Increase

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution adjusting the Ambulance User Fee to match Alameda County’s approved ambulance user fee schedule made effective July 1, 2023, for the Cities of Alameda, Albany, Berkeley, and Piedmont. The increase would be included as an updated addendum to the Ambulance Provider Agreement, and rescinding Resolution 70,726–N.S.

Financial Implications: See report

Contact: David Sprague, Fire, (510) 981-3473

Public Testimony: The Mayor opened the public hearing. 0 speakers.
M/S/C (Arreguin/Robinson) to close the public hearing.

Vote: All Ayes.

Action: M/S/C (Arreguin/Robinson) to adopt Resolution No. 71,063–N.S.

Vote: All Ayes.

10. Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) and Repeal of Chapter 12.99 to Conform to State Law and Respond to Guidance from the California Department of Housing and Community Development (Continued from September 19, 2023) (Item contains revised and supplemental material)

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of an ordinance amending Berkeley Municipal Code (BMC) Title 23, and repealing BMC Chapter 12.99, relating to Accessory Dwelling Units and Junior Accessory Dwelling Units.

Financial Implications: See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action: M/S/C (Arreguin/Kesarwani) to re-open the public hearing. 11 public speakers.

Vote: All Ayes.

Action: M/S/C (Arreguin/Taplin) to suspend the rules and extend the meeting to 11:15 p.m.

Vote: All Ayes.

Action: M/S/Carried (Wengraf/Hahn) on the severed portion of the substitute motion to accept Policy Alternative #1 regarding the front setback as proposed by Councilmember Wengraf in the Supplemental materials submitted for the October 3 meeting.

Vote: All Ayes.

Action Calendar – Public Hearings

Action: M/S/Failed (Wengraf/Hahn) on the severed portion of the substitute motion to accept Policy Alternative #2 regarding the time restrictions for conversions.

Vote: Ayes – Hahn, Wengraf; Noes – Kesarwani, Taplin, Bartlett, Harrison, Robinson, Humbert, Arreguin.

Action: M/S/Carried (Wengraf/Hahn) on the severed portion of the substitute motion to accept Policy Alternative #3 regarding neighbor noticing.

Vote: All Ayes.

Action: M/S/Failed (Wengraf/Hahn) to:

- 1) Adopt the Ordinance as proposed by the Planning and Development Department in Supplemental Communications Packet #2 for the October 3, 2023 meeting.
- 2) Adopt Policy Alternatives 1 and 3
- 3) Keep the height requirements as proposed by staff (not adopting 20-foot uniform height standard citywide).
- 4) Refer to the City Manager to consider changes to development standards with specific consideration for setbacks, height, and building separation, for accessory buildings and structures to promote fire safety citywide.
- 5) Request for an annual report on ADUs, JADUs, the rents of those units, and the utilization of those units in order to count ADUs for RHNA goals.

Vote: Ayes – Hahn, Wengraf; Noes – Kesarwani, Taplin, Bartlett, Harrison, Robinson, Humbert, Arreguin.

Action: M/S/Carried (Kesarwani/Humbert) on the severed portion of the main motion to include the 20-foot uniform height limit citywide.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Robinson, Humbert, Arreguin; Noes – Hahn, Wengraf.

Action: M/S/C (Kesarwani/Humbert) on the severed portion of the main motion to accept Policy Alternative #1 regarding the front setback as proposed by Councilmember Wengraf in the Supplemental materials submitted for the October 3 meeting.

Vote: All Ayes.

Action: M/S/C (Kesarwani/Humbert) on the severed portion of the main motion to reject Policy Alternative #2 regarding the time restrictions for conversions.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Robinson, Humbert, Arreguin; Noes – Hahn, Wengraf.

Action: M/S/C (Kesarwani/Humbert) on the severed portion of the main motion to accept Policy Alternative #3 regarding neighbor noticing.

Vote: All Ayes.

Action Calendar – Public Hearings

Action: M/S/C (Kesarwani/Humbert) on the severed portion of the main motion to use the definition of public transit in Government Code Section 65852.2(j)(11).

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Robinson, Humbert, Arreguin; Noes – Wengraf.

Action: M/S/C (Kesarwani/Humbert) on the severed portion of the main motion to refer to the City Manager to conduct a resident survey or to use publicly available data on ADU rent levels to anticipate affordability, as described in the HCD ADU Handbook on pg. 26, contingent on available funding.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Robinson, Humbert, Arreguin; Noes – Wengraf.

Action: M/S/C (Kesarwani/Humbert) on the severed portion of the main motion to refer to the City Manager to consider changes to development standards with specific consideration for setbacks, height, and building separation, for accessory buildings and structures to promote fire safety citywide.

Vote: All Ayes.

Action: M/S/C (Kesarwani/Humbert) on the severed portion of the main motion to refer to the City Manager to return to Council when the evacuation study is completed.

Vote: All Ayes.

Action: M/S/C (Kesarwani/Humbert) to:

- 1) Adopt first reading of Ordinance No. 7,888–N.S. as proposed by the Planning and Development Department in Supplemental Communications Packet #2 for the October 3, 2023 meeting. Second reading scheduled for October 10, 2023.
- 2) Modify the language in the ordinance on transit to use the definition of public transit in subdivision (j)(11) of Government Code Section 65852.2.
- 3) Accept Policy Alternative 1 as proposed by Councilmember Wengraf in the Supplemental materials submitted for the October 3 meeting.
- 4) Reject Policy Alternative 2 (3-year restriction on conversion of AB to ADU).
- 5) Accept Policy Alternative 3 (neighborhood notice).
- 6) Adopt a 20-foot uniform height Citywide as recommended in the Supplemental materials from Councilmember Kesarwani submitted for the October 3 meeting.
- 7) Refer to the City Manager to return to Council with the results of the evacuation study specific to ADUs for the Hillside Overlay District for the purpose of considering any modifications to the ADU Ordinance.
- 8) Refer to the City Manager to conduct a resident survey or to use publicly available data on ADU rent levels to anticipate affordability, as described in the HCD ADU Handbook on pg. 26, contingent on available funding.
- 9) Refer to the City Manager to consider changes to development standards with specific consideration for setbacks, height, and building separation, for accessory buildings and structures to promote fire safety citywide.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Robinson, Humbert, Arreguin; Noes – None; Abstain – Hahn, Wengraf.



Rashi Kesarwani
Councilmember, District 1

ACTION CALENDAR
May 14, 2024

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author), Councilmember Mark Humbert (Co-Sponsor), Councilmember Terry Taplin (Co-Sponsor)

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, situating 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 Strohak, 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

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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.

