



Office of the City Manager

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** October 28, 2025

**Item Number:** 32

**Item Description:** Amendments to Title 21 (Subdivisions) to Allow Separate Sale of ADUs

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

The attached ordinance includes a revised definition of “Covered Rental ADU” to clarify that it includes “any rented ADU that is not a Fully-exempt unit” under the Rent Stabilization Ordinance. See Ordinance Section 1 (proposed BMC Section 21.29.010(C)(1)); newly revised text is highlighted.

ORDINANCE NO. -N.S.

AMENDMENTS TO TITLE 21 (SUBDIVISIONS) TO ALLOW SEPARATE SALE OF  
ACCESSORY DWELLING UNITS (ADU), AND A CONFORMING AMENDMENT TO  
TITLE 23 (ZONING) RELATED TO ADUS

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). Covered Rental ADU means any rented ADU that is not a Fully-exempt unit under BMC 13.76.050(C). Tenant protections of Chapter 21.28 shall apply in full for Covered Rental ADUs, 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 for Covered Rental ADUs. Proof of service of a Notice of Tenants' Rights Regarding ADU Condominium Conversion, on a form required by the City, shall be submitted for each tenant household occupying the subject Covered Rental ADU, 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 Municipal Code Section 23.306.040(C)(2) is amended to read as follows:

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

Section 3. 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.