

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: December 2, 2025

Item Number: 43

Item Description: Accessory Dwelling Units (ADUs): Amendments to Title 21 (Subdivisions) to Allow Separate Sale of ADUs

Submitted by: Councilmember Lunaparra (author), Councilmember Bartlett (co-sponsor)

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

- **Condition of Approval Language** - Adding the condition of approval language from BMC Section 21.28.090.B as part of the eligibility requirements for ADU conversion (except it shortens the cool-down period from ten years, like the Condo Conversion Ordinance, to five years). This language would disincentivize owners from displacing tenants to convert to condominiums by preventing approval of any ADU conversion for properties where there have been recent no-fault evictions for five years. This supplemental item also adds an Ellis Act savings clause to the proposed ordinance updates to ensure compliance with state law and reduce the City's legal liability.
- **First Right of Refusal for All ADU Tenants** - Granting any tenants in ADUs the first right of refusal to purchase their ADU after conversion. A previous supplemental item from other Councilmembers proposed reducing the Right of First Refusal time period from one year to three months. Out of a desire to reach a balanced solution, this supplemental item also mirrors that item's timeline of three months.
- **Owner Move-in Evictions** - Prohibiting owner move-in evictions for any existing tenants in a converted ADU at the time of conversion, equal to the requirements of BMC Section 21.28.090(C)(4). This would not apply to new tenants who begin leases after the ADU has been converted.
- **Affordable Housing Mitigation Fee (AHMF)** - Maintaining the affordable housing mitigation fee requirement for converting ADU units, but waiving the fee in its entirety if the owner converting the ADU has agreed as part of their application to allow for rent control on the unit. In other words, a property owner can opt to keep the newly converted ADU rent-controlled instead of paying the AHMF.

- **More precise language defining what ADUs are eligible for conversion -**
Clarifying whether ADUs created under previous code sections can also convert to condominiums would help clear a potential source of confusion for property owners. Additionally, limiting conversion to those ADUs created after 2003 would prevent the loss of rent-controlled housing.

When tenant protections for renters living in ADUs are proposed, concerns are often raised about the ability of property owners to “go out of business” for a relative to move into their ADU when it is already occupied by a tenant. This item’s proposed tenant protections would have no impact on those existing protections; they would only apply in the case that the property owner voluntarily opts to convert their ADU into a condo. This item does not propose any new restriction on ADU owners or new protections for ADU tenants beyond what currently exists under Berkeley law; rather, it ensures that the tenant protections already afforded to other tenants in Berkeley are similarly applied to ADU tenants, as we look to create more flexibility and options for ownership for ADUs.

A homeowner intending to build a new condo ADU will face no obstacles or fees from the tenant protections proposed by this supplemental item. All of these changes protect tenants and further the ordinance’s goal of encouraging ADU development, minimizing displacement, and providing opportunities for affordable home-ownership.

Attachments:

1. Amended Ordinance

ORDINANCE NO. -N.S.

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

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

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

21.29. Accessory Dwelling Unit Condominium Subdivision

21.29.010. -- Purpose and Applicability.

- A. This Chapter establishes regulations and procedures for the subdivision of property to allow separate ownership of Accessory Dwelling Units (ADUs) from other buildings on the same lot in the City of Berkeley. It implements California Government Code Section 66342, which authorizes local ordinances permitting ADUs to be conveyed as condominiums.
- B. This Chapter applies to all lots that contain (or will contain) one or more ADUs constructed after calendar year 2002, in compliance with BMC Chapter 23.306 (Accessory Dwelling Units) or its precursor, BMC Chapter 23C.24.
- C. Notwithstanding any other provision of the Berkeley Municipal Code, an ADU condominium subdivision that conforms to this Chapter and state law may be approved and recorded as provided herein. An ADU condominium subdivision shall not be subject to the provisions of Chapter 21.28, except that an application to convert an ADU to a condominium subdivision shall not be allowed if the ADU was removed from the rental market through a no-fault eviction during the preceding five years.
 - 1) ~~2) Covered Rental~~ or Tenant Occupied ADUs. If the ADU is tenant occupied or is a covered rental unit under BMC Chapter 13.76 (Rent Stabilization Ordinance), the tenant protections of Chapter 21.28 shall apply in full, including:
 - a. A tenant in an ADU shall have a continued right to occupy the ADU after a conversion, pursuant to Section 21.28.090(C)(4);
and
 - b. A tenant in an ADU shall have an exclusive right to purchase the unit, pursuant to Section 21.28.030(C) and 21.28.090(C)(2),

except that the period of the ERP shall last for 90 days rather than one year; and

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

D. This Chapter is intended to provide a streamlined, ministerial process for qualifying ADU condominium subdivisions and shall remain operative only so long as state law authorizes such subdivisions (Government Code §66342).

21.29.030. -- *Permit required.*

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

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

21.29.040 -- *Eligibility.*

- A. A property is eligible for an ADU Condominium subdivision under this Chapter only if all the following criteria are met:

- 1) Existing Units. The lot contains at least one legally established primary dwelling unit and at least one legally established ADU, or there is a valid building permit for construction of a new ADU on the lot. The ADU must be constructed after calendar year 2002, in compliance with BMC Chapter 23.306 or its precursor BMC Chapter 23C.24.
- 2) Number of Condominium Units. In no event shall an ADU condominium subdivision result in more than ten (10) total condominium units on the lot inclusive of all residential, commercial, and accessory dwelling units.

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

21.29.050 -- *Application Requirements.*

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

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

"(Name of lienholder) hereby consents to the recording of this condominium plan in its sole and absolute discretion, and the borrower has or will satisfy any additional terms and conditions the lienholder may have."

- 2) Required Information. The lienholder's consent, whether included directly on the condominium plan or attached thereto, must include the following information:
 - a. The lienholder's signature.
 - b. The name of the record owner or ground lessee.
 - c. The legal description of the real property.
 - d. The identities of all parties with an interest in the real property as reflected in the public records.
 - e. A statement that the lienholder's consent shall be recorded in the Office of the County Recorder.
- E. Tenant Protections Notice. Proof of service of a *Notice of Tenants' Rights Regarding ADU Condominium Conversion*, on a form required by the City, shall be submitted for each tenant household occupying the subject ADUs, no earlier than 60 days prior to the date of the application. The Notice shall include, but not be limited to:
 - 1) The tenant's continued right to occupy the unit pursuant to Section 21.28.090(C)(4), which prohibits eviction for the purpose of occupancy by the owner or the owner's relatives so long as the unit remains the tenant's principal place of residence.
 - 2) Information concerning any agreement by the owner to limit rents under Section [21.29.010\(C\)\(2\)\(c\)](#).
 - 3) The tenant's exclusive right to purchase the unit under 21.28.090(C)(2).
- F. Notice to providers of utilities. If an ADU is established as a condominium, the owner shall notify providers of utilities, including water, sewer, gas, and electricity, of the condominium creation and separate conveyance.

- G. The owner of a property or a separate interest within an existing planned development that has an existing association, as defined in Section 4080 of the Civil Code, shall not record a condominium plan to create a common interest development under Section 4100 of the Civil Code without the express written authorization by the existing association.

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

21.29.060 -- Required Notice to Consumers.

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

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

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

(a) Paying off your current lender.

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

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

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

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."

21.29.070 – Savings Clause

Ellis Act. This chapter shall be applied only to the extent permitted by state law as to dwelling units which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).



Office of the City Manager

PUBLIC HEARING

January 20, 2026

(Continued from December 2, 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: Amendments to Title 21 (Subdivisions) to Allow Separate Sale of ADUs

RECOMMENDATION

Conduct a public hearing, and upon conclusion, adopt the first reading of an Ordinance to amend Berkeley Municipal Code Title 21 (Subdivisions Ordinance) and Chapter 23.306 *Accessory Dwelling Units* to implement Assembly Bill (AB) 1033 by establishing local regulations for the separate sale of ADUs as condominiums.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

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, allows 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. 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 (***Attachment 1***) would provide for such separate sales.

Currently, condominium conversions are regulated in BMC Chapter 21.28 (Condominiums and Other Common Interest Subdivisions). The purposes of Berkeley's Condominium Conversion regulations are to preserve the rental housing stock, protect existing renters, mitigate the loss of rental units through condominium conversion, and to create a transparent process for the conversion of rental units to condominiums.

Most ADUs are “naturally affordable” and exempt from rent control. In a study published in 2022, the Association of Bay Area Governments (ABAG) found that 20 percent of

ADUs are offered rent-free, 16 percent are rented at discounted rates (presumably to friends and family), and that most market-rate ADUs are affordable to low or moderate-income households in most markets.¹

Recognizing the generally affordable nature of ADUs, the Planning Commission's recommendation treats ADU condominiums differently than typical condominiums. These differences include:

- *Condominium Conversion Mitigation Fee*: The proposed ordinance would 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 three rent ordinance categories. The Planning Commission's recommendation bases tenant protections on an ADU's rent ordinance status.

A "Fully Covered Unit" is any residential rental unit that is not exempt under BMC 13.76.050. Covered units are subject to the rent-stabilization (rent ceiling/maximum annual rent increase) provisions and good-cause protections. According to the Rent Board, examples of Fully Covered Units include most multi-unit buildings built before June 1980, single family homes with tenants who moved in before 1996, and single-family homes with five or more rooms rented out with separate leases. For ADUs, examples of potentially Fully Covered Units include a legally established "secondary unit" with a certificate of occupancy predating the Rent Ordinance (June 1980), or a legally established "secondary unit" created before the City's first ADU regulations (2003).

"Partially Covered Units" are not subject to local rent ceilings but do remain subject to local just-cause eviction protections, registration, and annual security-deposit interest rules. According to the Rent Board, examples of Partially Covered Units include single family homes with current tenancies that began after 1996, most condominiums, and new construction that received a Certificate of Occupancy after June 1980. Post-2003 ADUs are typically Partially Covered.

¹ *Final Affordability of Accessory Dwelling Units*. https://abag.ca.gov/sites/default/files/documents/2025-04/ADU_Affordability_Report_June_13_2022.pdf

“Fully Exempt Units” include certain institutional housing types, Golden Duplexes, and tenancies in ADUs that started after November 2018 on properties where there is 1) only one single-family dwelling; 2) only one ADU; and 3) where an owner occupies either unit. Fully Exempt Units are not subject to local rent ceilings, local just-cause eviction protections, registration, or any annual security-deposit interest rules.

For purposes of the ADU Condominium ordinance, a Covered Rental ADU includes both Fully Covered and Partially Covered ADUs. The table below summarizes the applicability of tenants protections to ADU rentals.

Protection	Fully Covered	Partially Covered	Fully Exempt
Local rent ceilings (rent stabilization)	Yes	No	No
Petition rights	Yes	Some	No
Local just-cause eviction protections	Yes	Yes	No
Rent Board registration requirement	Yes	Yes	No
Annual security-deposit interest requirement	Yes	Yes	No
Local filing of rent-increase and termination notices	Yes	Termination notices only	No
Exclusive Right to Purchase (ERP) after condo conversion	Yes	Yes	No
Right to Remain / No Owner-Move-In — after condo conversion	Yes	Yes	No
Recent no-fault eviction screen — condo conversion eligibility	Yes	Yes	No

BACKGROUND

At its March 5, 2025 meeting, the Planning Commission received an informational report regarding AB 1033 implementation (**Attachment 3**) and directed staff to prepare an ordinance to permit 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**.

At its meeting of July 29, 2025, the City Council considered revisions to the Zoning Ordinance related to ADU development standards. At that meeting, the City Council adopted the Zoning Ordinance amendments, and continued consideration of the ADU condominium changes to a future meeting.

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).

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.

ALTERNATIVE ACTIONS CONSIDERED

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.

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: Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENTS TO BERKELEY MUNICIPAL CODE 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.** 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, 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).

21.29.020. -- 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.

21.29.030 -- 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.

21.29.040 -- 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.

21.29.050 -- 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) 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;

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.



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, 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 Storchak, 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

ATTACHMENT 4

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**AMENDMENTS TO TITLE 21 (SUBDIVISIONS) TO ALLOW SEPARATE
SALE OF ACCESSORY DWELLING UNITS**

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

The Department of Planning and Development is proposing an Ordinance to adopt proposed amendments to Title 21 (Subdivisions Ordinance) to implement Assembly Bill (AB) 1033 to establish local regulations for the separate sale of ADUs as condominiums.

The hearing will be held on January 20, 2026 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 January 8, 2026. **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 January 8, 2026.

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Mark Numainville, City Clerk

