



PLANNING AND DEVELOPMENT DEPARTMENT
LAND USE PLANNING DIVISION

PLANNING COMMISSION MEETING AGENDA

Date: Wednesday May 7th, 2025

Time: 6:00 PM

Location: North Berkeley Senior Center
1901 Hearst Avenue, Berkeley

The Planning Commission meeting packet is available for review on the City's website, and linked here:

<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>

The Commission currently consists of nine members appointed by City Council:

Blaine Merker, District 1
Jeff Vincent, Chair, District 2
Darrell Owens, District 3
Christina Oatfield, District 4
Charles Kahn, District 5
Emily Marthinsen, District 6
Alfred Twu, District 7
Savlan Hauser, District 8
Vacant, Mayor



ACCESSIBILITY INFORMATION / ADA DISCLAIMER

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This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at: Email: ADA@berkeleyca.gov; Phone: 1-510-981-6418; TTY: 1-510-981-6347, at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

For inclusion in the Commissioners' agenda packet, please submit written comments by Wednesday the week prior to the meeting. One set of "late communications" will be distributed to the Commissioners two days before the meeting. Please submit any material for distribution as "late communications" no later than 12:00 noon on the Tuesday prior to the meeting. Please be advised: Commissioners do not have an opportunity to read written materials handed out at the meeting.

Correspondence and Notice of Decision Requests

- **To distribute correspondence for inclusion in the agenda packet** -- submit comments **by 12:00 noon, Wednesday April 30, 2025**. Please provide 12 copies of any correspondence with more than ten (10) pages or if in color or photographic format. This method is strongly preferred.
- **Late Communications** must be submitted **by 12:00 noon, Tuesday May 6, 2025**. Any correspondence received after this deadline will be given to Commission members on the meeting date just prior to the meeting. Correspondence received later, and after the meeting, will be posted to the website following the meeting.
- Staff will not deliver to Commission members any additional written (or e-mail) materials received after 12:00 noon on the day of the meeting.
- Members of the public may submit written comments themselves at the meeting. To distribute correspondence at the meeting, please provide 12 copies and submit to the Planning Commission Secretary. **Please be advised: You are strongly advised to submit written comments *prior* to the meeting date as Commission members do not have an opportunity to read written materials handed out at the meeting.**
- Written comments or request for a Notice of Decision should be directed to the Planning Commission Secretary.

Communications to Berkeley Boards, Commissions or Committees 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 a City Board, Commission or Committee, 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 Secretary of the relevant Board, Commission or Committee. 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 Secretary to the relevant board, Commission or Committee for further information.**

Contact:

Justin Horner, Planning Commission Secretary
(510) 981-7410 | jhorner@berkeleyca.gov | 1947 Center Street, Berkeley CA 94704

1. **ROLL CALL:** Please put all cellular phones and ringers on silent during the meeting.
2. **LAND ACKNOWLEDGEMENT STATEMENT:** The Commission recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this uncaded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.
3. **PUBLIC COMMENT on Non-Agenda and Information Items** (Three minutes per person; five minutes per organization, or at the discretion of the Chairperson)
4. **ORDER OF AGENDA**
5. **CHAIRPERSON REPORT**
6. **AD HOC Subcommittees and Liaison Comments**
Receive opportunity reports on status of projects for which the Planning Commission has established a subcommittee or liaison.
7. **COMMISSIONER ANNOUNCEMENTS**
8. **STAFF ANNOUNCEMENTS**
9. **APPROVAL OF MINUTES**
10. **ACTION AND DISCUSSION ITEMS**
 - A. **Action:** *Amendments to Title 21 (Subdivisions) to allow separate sale of ADUs as Condominiums*
Recommendation: Receive a staff presentation, take public comment, and make a recommendation to the City Council to adopt proposed amendments to Title 21 to implement Assembly Bill (AB) 1033.

Written Materials: Attached.
Presentation: N/A

11. INFORMATION REPORTS: None. Commissioners may ask for discussion to be scheduled on a future agenda (per Brown Act, no deliberation or final action may be taken).

12. CORRESPONDENCE

13. NEXT COMMISSION MEETING: Wednesday June 4, 2025 6:00 PM.

14. ADJOURN

NOTICE CONCERNING LEGAL RIGHTS

If you object to a project or to any City action or procedure relating to a project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.



Planning Commission

**DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING
April 16, 2025**

The meeting was called to order at 6:05 p.m.

Location: North Berkeley Senior Center, 1901 Hearst Avenue, Berkeley, CA 94709

1. ROLL CALL:

Commissioners Present: Jeff Vincent, Christina Oatfield, Alfred Twu, Darrell Owens, Emily Marthinsen, Blaine Merker, Savlan Hauser

Commissioners Absent: Charles Kahn

Staff Present: Secretary Justin Horner, Clerk Faye Messner, Robert Rivera

2. LAND ACKNOWLEDGEMENT

The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Chochen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this uncanceled stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.

3. PUBLIC COMMENT: 0

4. ORDER OF AGENDA:

5. CHAIRPERSON REPORT:

- Chair Vincent thanked the Commissioners for his time spent as Chair.

6. AD HOC SUBCOMMITTEES AND LIASON COMMENTS

- None

7. COMMISSIONER ANNOUNCEMENTS

- None

8. STAFF ANNOUNCEMENTS

- May 7th Meeting Agenda
 - Zoning Ordinance Amendments relating to ADUs
 - HCD ADU Letter
 - ADU AB 1033
 - Undergrounding of Utility Equipment
- June 4th Meeting
 - TBD - revision to the staff work plan following Council RRV
- Upcoming Council Items:
 - Middle Housing – April 29
 - Slate 2025
- Community Meeting – Corridor's Upzoning May 1, online 6:30-8:30 pm

9. APPROVAL OF MINUTES:

Motion/Second/Carried (Owens/Marthinsen) to approve the Planning Commission Meeting Minutes from March 5, 2025.

Ayes: Vincent, Oatfield, Sanderson, Twu, Kahn, Owens, Marthinsen, and Hauser. Noes: None. Abstain: None Absent: Kahn (7-0-0-1)

10. ACTION AND DISCUSSION ITEMS

A. Action: 2025 Elections for Chair and Vice Chair Elections

Commissioners voted for Chair and Vice Chair election.

Motions/Second for Chair:

1. (Vincent/Merker) to elect Commissioner Marthinsen as Chair.

Ayes: Vincent, Oatfield, Merker, Owens, Marthinsen, and Hauser. Noes: Twu. Abstain: None. Absent: Kahn (6-1-0-1)

Motions/Second for Vice Chair:

2. (Marthinsen/Vincent) to elect Commissioner Hauser as Vice Chair.

Ayes: Vincent, Oatfield, Merker, Twu, Owens, Marthinsen, and Hauser. Noes: None. Abstain: None. Absent: Kahn (7-0-0-1)

Public Comments: 0

B. Public Hearing: State Law and Technical Edits (SLTE) 2025

Senior Planner Robert Rivera presented on proposed zoning ordinance amendments to update the Berkeley Municipal Code to correct errors and make non-substantive, technical edits. Public comment was taken and the commissioners made a recommendation to City Council.

Motions/Second/Carried (Oatfield/Vincent) to close the public hearing.

Ayes: Vincent, Oatfield, Merker, Twu, Owens, Marthinsen, and Hauser. Noes: None. Abstain: None. Absent: Kahn (7-0-0-1)

Motions/Second/Carried (Twu/Merker) to recommend that City Council adopt staff's recommendation.

Ayes: Vincent, Oatfield, Merker, Twu, Owens, Marthinsen, and Hauser. Noes: None. Abstain: None. Absent: Kahn (7-0-0-1)

Public Comments: 0

12. INFORMATION REPORTS

- Corridors Upzoning Project Update – North Shattuck, College and Solano Avenue.

13. CORRESPONDENCE

- None

14. NEXT COMMISSION MEETING: Wednesday, May 7, 2025 at 6:00pm

15. ADJOURN

Motions/Second/Carried (Oatfield/Vincent) adjourn the meeting at 6:27 pm.

Ayes: Vincent, Oatfield, Merker, Twu, Owens, Marthinsen, and Hauser. Noes: None. Abstain: None. Absent: Kahn (7-0-0-1)

Members in the public in attendance: 0

Public Speakers: 0

Length of the meeting: 22 minutes



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: May 7, 2025

To: Members of the Planning Commission

From: Branka Tatarevic, Associate Planner

Subject: Amendments to Title 21 (Subdivisions) to allow separate sale of ADUs as condominiums pursuant to AB 1033

RECOMMENDATION:

Receive public comment, and upon conclusion, make a recommendation to the City Council to adopt proposed amendments to Title 21 (Subdivisions Ordinance) to implement Assembly Bill (AB) 1033 by establishing local regulations for the separate sale of ADUs as condominiums (see **Attachment 1**).

BACKGROUND AND DISCUSSION:

The proposed amendments to the Subdivision Ordinance respond to a May 2024 City Council referral (**Attachment 2**) to implement AB 1033, which enables the separate sale of ADUs by eliminating restrictions on their sale. 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.

At its March 5, 2025 meeting, the Planning Commission received an informational report from staff regarding AB 1033 implementation and directed staff to prepare an ordinance (see **Attachment 3**) that permits separate sale of ADUs as condominiums. Currently, condominium conversions are regulated in BMC Chapter 21.28 (Condominiums and Other Common Interest Subdivisions). The Planning Commission provided direction that would treat ADU condominiums differently than typical condominiums. The proposed ordinance reflects the following policy direction:

- **Condominium Conversion Mitigation Fee:** The proposed ordinance does not include the Condominium Conversion Mitigation Fee for ADU condominiums. The Commission felt the fee was unnecessary given the small scale of likely

ADU condominium projects and the potential benefits of affordable homeownership opportunities from ADU condominiums.

- **Tenant Protections:** The Commission affirmed the importance of maintaining tenant protections consistent with existing Chapter 21.28 requirements, including notice provisions and the right to remain in a unit after conversion.

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

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

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

The Planning Commission’s direction from their March 5, 2025 meeting included extending tenant protections to Exempt ADUs. To address that direction, the proposed ordinance includes a provision which would extend the right to remain to an Exempt ADU, as long as it has been occupied by the same tenant for at least 12 consecutive months.

- **Right of First Refusal:** The Planning Commission also considered whether an ordinance implementing AB 1033 should include a right of first refusal for tenants occupying an ADU proposed for separate sale as a condominium. Commissioners generally agreed that such a right is an important tenant protection and should be included. While Berkeley’s existing Condominium Conversion Ordinance provides tenants one year to exercise their right of first refusal, some Commissioners noted that a shorter timeframe may be more appropriate for ADU condominium conversions, given their smaller scale and the potential for quicker transactions. No formal motion was made to modify the timeline, and the proposed ordinance refers to the existing one-year requirement

(BMC 21.28.030(C) and 21.28.090(C)(2)) for covered rental ADUs.

The proposed ordinance includes an "Exclusive Right to Purchase an ADU Condominium Unit," defined in the new BMC Section 21.29.020, which provides a tenant of an Exempt ADU 180 days to exercise their right to purchase the unit. The "Exclusive Right to Purchase an ADU Condominium Unit" would apply to any Exempt ADU, as long as it has been occupied by the same tenant for at least 12 consecutive months.

The Planning Commission also has the option of applying the 180 day Exclusive Right to Purchase timeline to all ADU conversions.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed amendments 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).

NEXT STEPS AND RECOMMENDATION

Staff recommends that the Planning Commission receive public comment, discuss the proposed ordinance amendments, and forward a recommendation to the City Council to adopt the amendments, including any modifications identified through Commission discussion and action.

Attachments:

1. Planning Commission Resolution and ADU Condominium Ordinance, Title 21.
2. *Increasing Entry Level Homeownership Opportunities: Implementation of AB 1033 to Allow Accessory Dwelling Units (ADUs) To Be Sold Separately*, City Council Referral, May 14, 2024.
3. Planning Commission Staff Report, March 5, 2025.

ATTACHMENT 1

**PLANNING COMMISSION
RESOLUTION NO. 2025-04**

**A RESOLUTION OF THE CITY OF BERKELEY PLANNING COMMISSION
RECOMMENDING THE CITY COUNCIL ADOPT PROPOSED AMENDMENTS TO TITLE 21
(SUBDIVISIONS) TO ALLOW SEPARATE SALE OF ADUS AS CONDOMINIUMS
PURSUANT TO ASSEMBLY BILL 1033**

WHEREAS, the City of Berkeley's Subdivision Ordinance (Title 21 of the Berkeley Municipal Code) regulates development on and subdivision of land; and

WHEREAS, the State of California has adopted several laws to facilitate the development of ADUs, including Assembly Bill 1033 (2023); and

WHEREAS, Assembly Bill 1033 authorizes local agencies to adopt ordinances that allow the separate sale of ADUs as condominiums; and

WHEREAS, on May 7, 2025 the Planning Commission held a public meeting and considered all public comments received, the presentation by City staff and the staff report, and all other pertinent documents regarding the proposed request; and

WHEREAS, the proposed amendments to Title 21 incorporate direction provided by the Planning Commission; and

WHEREAS, all documents constituting the record of this proceeding are and shall be retained by the City of Berkeley Planning and Development Department, Land Use Planning Division, at 1947 Center Street, Berkeley, California; and

WHEREAS, the proposed amendments would have no adverse effect on the environment, as they do not affect the physical environment but only allow a change in the tenure of an existing building, and are thereby exempt from CEQA under CEQA Guidelines Section 15061(b)(3).

NOW, THEREFORE, IT BE RESOLVED that the Planning Commission does hereby recommend to the City Council of the City of Berkeley to add Section 21.29 to Title 21 of the Berkeley Municipal Code, as contained in **Exhibit A**, attached hereto and hereby incorporated by reference; and be it further

I HEREBY CERTIFY the foregoing resolution was passed and adopted by the Planning Commission of the City of Berkeley, at a regular meeting thereof, held on the 7th day of May 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Justin Horner
SECRETARY TO THE PLANNING COMMISSION

Exhibit A: Ordinance

EXHIBIT A

ORDINANCE NO. -N.S.

**TO ADD BERKELEY MUNICIPAL CODE CHAPTER 21.29:
ACCESSORY DWELLING UNIT CONDOMINIUM SUBDIVISION**

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

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

21.29. Accessory Dwelling Unit Condominium Subdivision

21.29.010. Purpose and Applicability.

- A. This Chapter establishes regulations and procedures for the subdivision of property to allow separate ownership of Accessory Dwelling Units (ADUs) from other buildings on the same lot in the City of Berkeley. It implements California Government Code Section 66342, which authorizes local ordinances permitting ADUs to be conveyed as condominiums
- B. This Chapter applies to all lots that contain (or will contain) one or more ADUs constructed in compliance with BMC Chapter 23.306 (Accessory Dwelling Units).
- C. Notwithstanding any other provision of the Berkeley Municipal Code, an ADU condominium subdivision that conforms to this Chapter and state law may be approved and recorded as provided herein. An ADU condominium subdivision shall not be subject to the provisions of Chapter 21.28, except that:
 - 1) *Covered Rental ADUs.* If the ADU is a covered rental unit under BMC Chapter 13.76 (Rent Stabilization Ordinance), the tenant protections of Chapter 21.28 shall apply in full, including:
 - a. A tenant in an ADU shall have a continued right to occupy the ADU after a conversion, pursuant to [Section 21.28.090\(C\)\(4\)](#)
 - b. A tenant in an ADU shall have an exclusive right to purchase the unit, pursuant to Section 21.28.030(C) and 21.28.090(C)(2).
 - 2) *Exempt ADUs with Long-Term Tenancy.* If the ADU is exempt from rent-ceiling coverage under BMC 13.76.050.I-1 but the current tenant has occupied the unit for twelve (12) consecutive months or more:

- 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. the tenant shall be given a right of first refusal to purchase the ADU condominium on terms defined under BMC 21.29.020.

3) 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. – Definitions.

Exclusive Right to Purchase an ADU Condominium Unit. "Exclusive Right to Purchase an ADU Condominium Unit" means the right of a resident tenant at the date of conversion of an Exempt ADU with Long-Term Tenancy to condominium unit to purchase the unit that they occupy, as set forth in the "Notice of Tenants' Rights Regarding ADU Condominium Conversion" required pursuant to BMC Section 21.29.050(F). The period of the Exclusive Right to Purchase begins on the date written notice is given to the resident tenant that the unit will be made available for purchase to persons other than the resident tenant, and lasts for 180 days except as otherwise provided in Section 21.28.090(C)(2).

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. Code Conformance. All structures and buildings included as part of an ADU condominium project shall conform to the building code and objective zoning requirements applicable to the zoning district in which the project is proposed. The designation of individual condominium units shall not be deemed to reduce, modify, or eliminate any such requirements.
- D. 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.
- E. 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.

F. 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\(C\)\(4\)](#) or 21.29.010(C), 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) or 21.29.010(C).

If the tenant does not exercise their right to purchase within the timeframe set forth in Section 21.29.010(C), the owner may proceed with the sale of the unit to another party. Any such transfer must be made subject to the tenant's right to

continued occupancy as provided in Section 21.28.090(C)(4).

- G. 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.
- H. 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.

21.29.06 -- 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. 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 Stochak, 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.

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(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."

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(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.



Planning and Development Department
Land Use Planning 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.

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

DISCUSSION

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.

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

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

*Existing Condominium Conversion Ordinance (BMC Chapter 21.28)*⁴

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

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

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>

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 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)).

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>

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 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

Correspondence

From: aimee baldwin <junk.menagerie@gmail.com>
Sent: Monday, April 28, 2025 2:22 PM
To: All Council; Berkeley Mayor's Office; Buddenhagen, Paul; White, David; Berkeley City Council Policy Committee; Planning Commission; Planning Dept. Mailbox; Klein, Jordan
Subject: Middle Housing Reinforces Historic Disparities

Follow Up Flag: Follow up
Flag Status: Flagged

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Berkeley's Middle Housing Zoning Amendments **Reinforce** Historic Disparities, rather than correct them

Dear Berkeley Representatives and Policy Makers,

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If you want to remove "racist" R1 zoning: do that. Make all R1 zoning R2A and we're done. Equity. Instead the City proposes to put the upzoned burden onto the sections of the City which were already upzoned -- doubling down on the systemic inequity that characterizes Berkeley.

As clearly marked on table 2 "Proposed Development Standards", page 132 of the [Zoning Ordinance and General Plan Amendments Relating to Middle Housing](#), the area of South-West Berkeley (D3,D2), largely zoned **R-2A**, **has 100% higher minimum density, and 50% higher maximum density as compared with R-1 zones**, largely in the formerly exclusive "blue" or "green" regions as shown on [the redlining map](#), (D5,6,8 areas *not* in the fire hazard zones).



It seems that the City's agenda is to push through Middle Housing zoning without allowing community access to the process, as policy makers have spent years replacing systems for community engagement, with venues for notification made to resemble meaningful outreach. I guess now policy makers are also allowed to rewrite history and the definition of equity, too.

Sincerely,
Aimee Baldwin

Correspondence

From: aimee baldwin <junk.menagerie@gmail.com>
Sent: Tuesday, April 29, 2025 12:03 AM
To: Humbert, Mark; All Council; Berkeley Mayor's Office; Buddenhagen, Paul; White, David; Berkeley City Council Policy Committee; Planning Commission; Planning Dept. Mailbox; Klein, Jordan
Subject: Re: Middle Housing Reinforces Historic Disparities

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Dear CP Humbert,

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There are further implications which I did not go into in my previous email, regarding the choice to leave the "R-1" designation, such as California ADU law [SB1211 that allows up to 8 ADUs on multifamily properties](#)....which (I assume) does not apply to any lot zoned as "single family". This still leaves the same "R-2" or "R-2A" zoned portions of the city taking on more potential density than designated "R-1", based on numbers of ADUs allowed in State law.

Would seeking parity mean eliminating any different designations of residential districts all together, or to just increase the density numbers of R-1 and R-2, to match R-2A on the "proposed development standards" chart?

The most historically exclusionary portion of your own district will remain largely untouched by this zoning change due to fire-hazard/hillside restrictions, same for most of D6, and portions of D5.

These exclusive areas also avoid having much transit by design both traditionally and now (how do you think the historical decisions were made on where to put BART?) but areas close to transit get designations for highest densities.

The same districts probably have the most properties that would qualify for historic exemptions to substantial changes (who had resources 100+ years ago to hire big name architects that are still recognized now; --I admit I don't know how historical exemptions apply to all assorted CA or city housing law).

I also know that historically privileged communities banned businesses, as stated in this [Berkeley Gazette clipping from Tuesday June 15, 1926](#) "...by this deed restriction procedure it will not only be possible to keep Asiatics and negros from the district but also to bar business and apartment houses...". When are we going to discuss the racist history of where/how Berkeley's business districts are, which also happen to be designated for highest densities in the city?

There is far more going on in how the "haves" have built exclusion and privilege that is not shared with the "have-nots" into our urban environment far beyond single family zoning, and if you want to use correcting past racist injustices for justification on major city changes, much more needs discussion.

Who is likely to see flooding storm drains from lack of planning around water run-off if we increase lot coverage, without commensurate policy to mitigate this? What about increased urban heat island effects of increased lot coverage, and no planned policy to address this?

Do we get to expect some attempt of equity across the rezoning of our different commercial districts? Will I get to see a citywide discussion that addresses how to prevent disparities in the rezoning *process itself* for San Pablo Ave as compared with Solano/Elmwood/North Shattuck?

The list goes on and on.

If the premise of "middle housing zoning is to remove past racism" is not just a manipulative tool for "moral leverage", then how did the imbalance of density between R-1 and R-2A get so far along in this current draft of the ordinance? How was that not the first thing to be addressed? How was it not addressed in the interim since last July when I, along with many other community members voiced concerns in letters and allotted one minute comment at the council meeting? The limited public process in the past four years on Middle Housing never gave an opportunity for these important discussions. This indicates that the process itself was done poorly.

My last email was not just about trying to achieve an appearance of equity in residential zoning, but about the massive irony in using past racism as a justification, in a process which avoids comprehensive, inclusive discussion on in the context of history, equity, and the urban landscape.

Ultimately, avoiding analysis of context or consequences, and gatekeeping access to the essential discussions and decision making process, is itself a repetition of past injustices, and likely to lead to new ones in the final decisions. I wish Berkeley's commitment to equity was more than just performative. I would like to see Berkeley stop repeating racist or segregationist practices in the way in which information, participation, and control is sequestered, denied, or selectively shared, and in whose version of "progress" is validated or denied.

Thanks,
Aimee

From: aimee baldwin <junk.menagerie@gmail.com>

Sent: Monday, April 28, 2025 2:21 PM

To: All Council <council@berkeleyca.gov>; Berkeley Mayor's Office <Mayor@berkeleyca.gov>; Buddenhagen, Paul <PBuddenhagen@berkeleyca.gov>; White, David <DWhite@berkeleyca.gov>; Berkeley City Council Policy Committee <policycommittee@berkeleyca.gov>; Planning Commission <PlanningPC@berkeleyca.gov>; Planning Dept. Mailbox <Planning@berkeleyca.gov>; Klein, Jordan <JKlein@berkeleyca.gov>

Subject: Middle Housing Reinforces Historic Disparities

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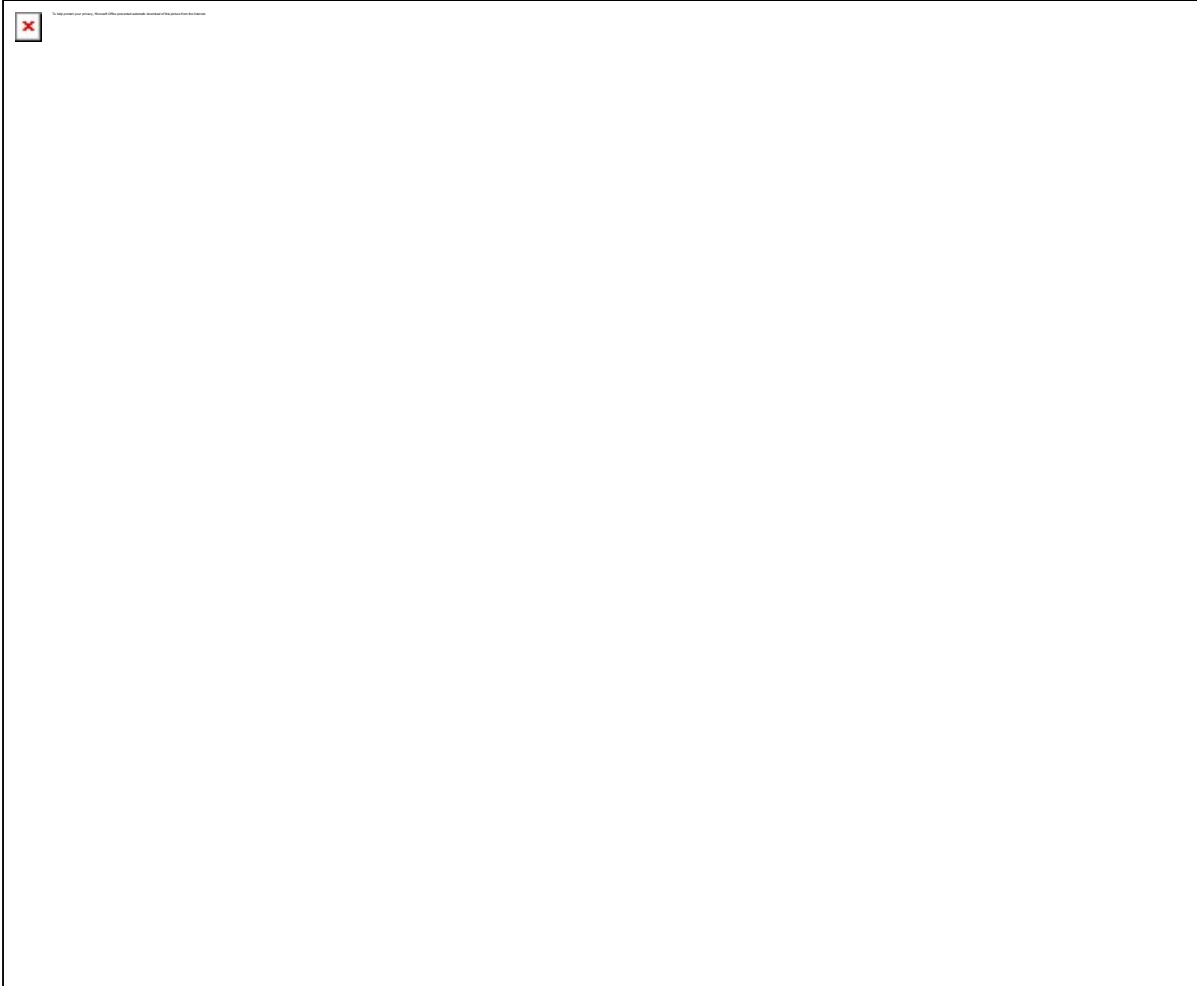
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Sent: Tuesday, April 29, 2025 10:32 AM
To: Humbert, Mark; All Council; Berkeley Mayor's Office; Buddenhagen, Paul; White, David; Berkeley City Council Policy Committee; Planning Commission; Planning Dept. Mailbox; Klein, Jordan
Subject: Re: Middle Housing Reinforces Historic Disparities

Follow Up Flag: Follow up
Flag Status: Flagged

One last thing that I seemed to have edited out of my last email:

Based on the glaringly obvious disparities in density of the Middle Housing Ordinance, which reinforce historic racist housing practices, the intentions of the ordinance appear to be to streamline gentrification of our historic minority communities, buried in the language of it being a correction of past racist injustices.

-Aimee

On Tue, Apr 29, 2025 at 12:02 AM aimee baldwin <junk.menagerie@gmail.com> wrote:

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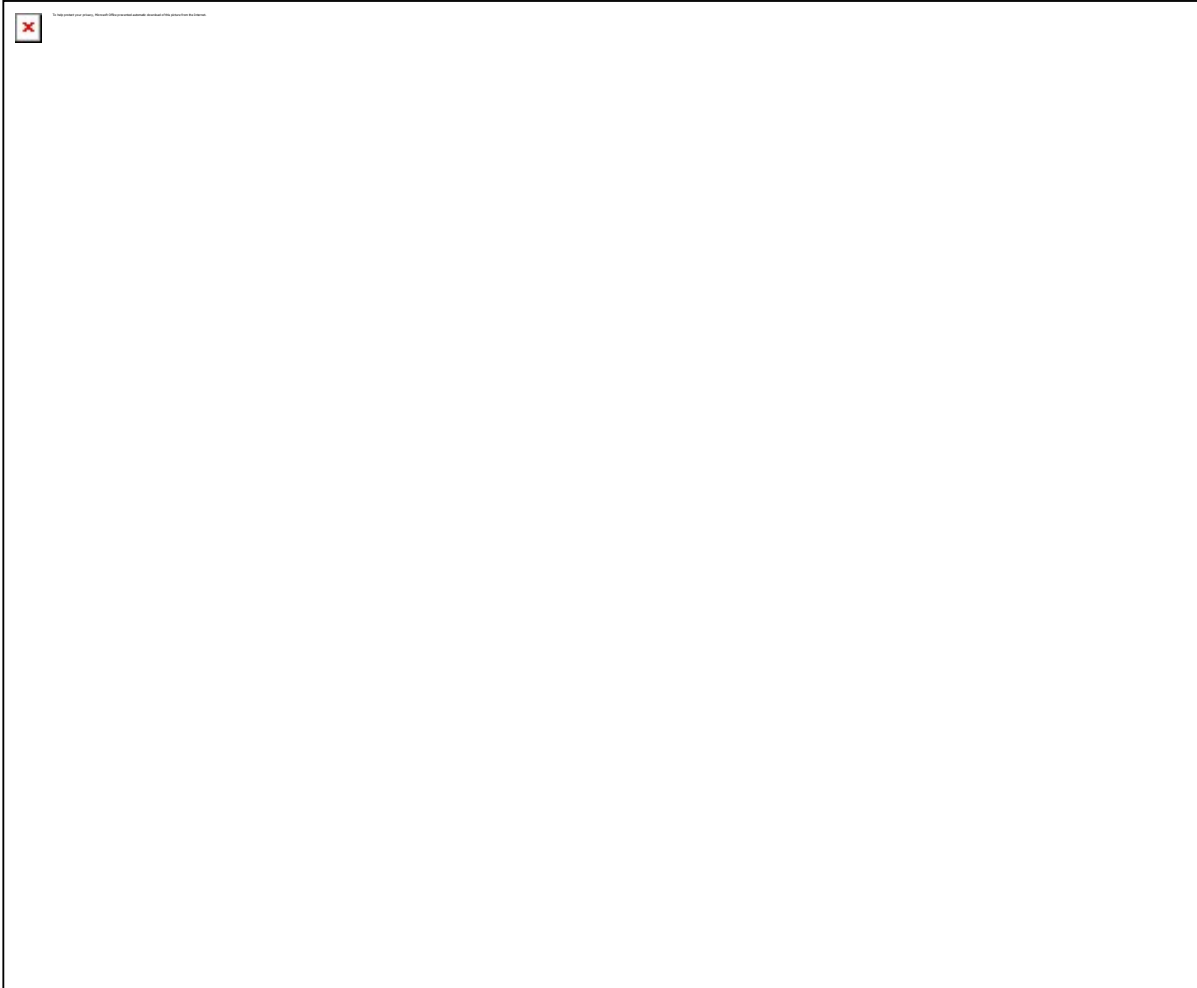
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