

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

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June 16, 2026

Jordan Klein, Principal Planner  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

Dear Jordan Klein:

**RE: Review City of Berkeley's Accessory Dwelling Unit (ADU) Governance under State ADU Law (Gov. Code, §§ 66310–66342)**

On May 11, 2026, HCD sent the City of Berkeley a request to repeal the most recent adopted Accessory Dwelling Unit (ADU) ordinance that HCD had in its archive, which was adopted in 2023. City staff responded to note that the City updated its ADU ordinance in 2025. As no official copy was provided, HCD has reviewed the City's ADU Governance as it appears in the currently available Municipal Code and submits these written findings pursuant to Government Code section 66326, subdivision (a). HCD finds that the Ordinance fails to comply with State ADU Laws in the manner noted below. Pursuant to Government Code section 66326, subdivision (b)(1), the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than July 16, 2026, with a plan to either amend the current ordinance or adopt a resolution with findings.<sup>1</sup> Responses should be submitted formally on agency letterhead.

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

1. Table 23.306-1. – *Single Family Unit Allowance* – The Municipal Code allows, on lots with one single family primary dwelling, "1 Conversion ADU, 1 New Construction ADU, and 1 Junior ADU." However, this impermissibly restricts units created subject to Government Code section 66314. Section 66317 states that a permitting agency "shall either approve or deny the application to create or serve" an application subject to section 66314. Subdivision (d)(3) of section 66314 states an ADU may be "either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary

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<sup>1</sup> Gov. Code, § 66326, subd. (b)(2)(B).

dwelling, including detached garages.” Since section 66317 mandates that a local agency “shall approve or deny” an application under section 66314, while also requiring that “...a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following” under section 66323, the City must amend its Municipal Code to allow the full allotment of units described under section 66323 and at least one unit described under section 66314.

2. Table 23.306-1. – *Unit Allowance (Nonconformities)* – The Municipal Code allows, on lots with more than one single-family dwelling, “1 ADU.” However, multiple single-family dwellings on a single lot are considered a zoning nonconformity for the purposes of State ADU Law. Government Code section 66322, section (b) states, “The local agency shall not deny an application for a permit to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit.” Section 66323 describes categories of state-mandated units as being created with either “single-family primary dwellings” or “multifamily primary dwellings.” Therefore, a lot with multiple single-family dwellings would be eligible for one converted ADU, one new construction detached ADU up to 800 square feet, and one junior accessory dwelling unit (JADU) per lot. The City must amend the Municipal Code to remove this restriction.
3. Table 23.306-1. – *Unit Allowance (Multifamily Primaries)* – The Municipal Code provides only the allowances for multifamily primary dwellings that are described in Government Code section 66323. However, Government Code section 66314, subdivision (d) provides for at least one “accessory dwelling unit [that] is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling, including detached garages.” This section does not differentiate between single-family primary dwellings and multifamily primary dwellings; thus, a multifamily primary dwelling must be allowed at least one unit subject to section 66314. The City must amend the Municipal Code to provide for this allowance.
4. Section 23.306.040 A. – *Completeness* – The Municipal Code omits reference to items required by Government Code section 66317, subdivision (a)(2) that govern completeness. The City should review current State ADU Law and must provide compliant governance regarding application completeness.
5. Section 23.306.040 C. – *Deed Restrictions* – The Municipal Code states, “Deed Restriction. The property owner shall file a deed restriction with the Alameda County Recorder which states: The ADU shall not be sold separately from the main building, unless authorized under BMC 21.29 (ADU Condominium Ordinance) or under BMC 23.306.040(D)--ADUs Developed by a Qualified Nonprofit Developer, or as otherwise permitted by state law...[and] The ADU

shall not be rented for a term that is shorter than 30 days...” However, a deed restriction cannot be imposed on an ADU. Government Code section 66315 states, “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.” Although deed restrictions are required for JADUs, they are prohibited for ADUs. The City must amend the Municipal Code to remove the deed restriction requirement for an ADU.

6. Table 23.306-2 – *Interior Livable Space* – The Ordinance determines size maximums in terms of square feet. However, current State ADU Law measures all size maximums in terms of “square feet of interior livable space”.<sup>2</sup> The City must amend the Municipal Code to include “interior livable space” when measuring size maximums.

The City has two options in response to this letter.<sup>3</sup> The City can either 1) amend the Ordinance to comply with State ADU Law<sup>4</sup> or 2) adopt the Ordinance without changes and include findings in its resolution accompanying the Ordinance that explain the reasons the City believes that the Ordinance complies with State ADU Law despite HCD’s findings.<sup>5</sup> If the City fails to take either course of action, or if HCD finds that the newly adopted Ordinance remains out of compliance with State ADU Law despite the City’s findings and explanations, HCD must notify the City and may notify the California Office of the Attorney General that the City is in violation of State ADU Law.<sup>6</sup>

HCD appreciates the City’s efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Mike Van Gorder at [Mike.VanGorder@hcd.ca.gov](mailto:Mike.VanGorder@hcd.ca.gov) if you have any questions or wish to discuss any of HCD’s findings.

Sincerely,



Jamie Candelaria  
Section Chief, ADU Policy  
Housing Accountability Unit

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<sup>2</sup> Gov. Code, § 66321, subds. (b)(1), (b)(3).

<sup>3</sup> Gov. Code, § 66326, subd. (c)(1).

<sup>4</sup> Gov. Code, § 66326, subd. (b)(2)(A).

<sup>5</sup> Gov. Code, § 66326, subd. (b)(2)(B).

<sup>6</sup> Gov. Code, § 66326, subd. (c)(1).