
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No:	AB 1033	Hearing Date:	6/20/2023
Author:	Ting		
Version:	5/26/2023		
Urgency:	No	Fiscal:	Yes
Consultant:	Mehgie Tabar		

SUBJECT: Accessory dwelling units: local ordinances: separate sale or conveyance

DIGEST: This bill allows cities and counties that have a local accessory dwelling unit (ADU) ordinance to allow ADUs to be sold separately or conveyed from the primary residence.

ANALYSIS:

Existing law:

- 1) Defines an ADU as an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It must include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated on.
- 2) Provides that an ADU cannot be sold or conveyed separately from the primary residence, except as under the circumstances described in (2) below.
- 3) Requires a local agency to ministerially approve, within specified timelines, an application for a building permit within a residential or mixed-use zone to create one or more ADUs that meet all state and local requirements.
- 4) Provides that a local agency is limited in its ability to establish local development standards that differ from specified standards for such issues as height, square footage, and setbacks.
- 5) Authorizes. starting January 1, 2025, a local agency to impose an owner-occupant requirement on a parcel containing an ADU.

- 6) Requires a local agency to enable an ADU to be sold or conveyed separately from the primary residence if all of the following occur:
- a) The ADU was built by a nonprofit corporation that receives a property tax exemption because they sell properties to low-income families who participate in a special no-interest loan program;
 - b) The property contains a deed restriction that it must be affordable to a low-income family for 45 years;
 - c) The property is sold to a lower or moderate-income household via a tenancy in common agreement with the primary residence;
 - d) The purchaser must use the ADU as their primary residence; and
 - e) The purchaser of the ADU is subject to a repurchase option such that, if they desire to sell the property, they must first offer to sell it to the qualified nonprofit corporation from whom they purchased the ADU.

This bill:

- 1) Authorizes a local agency to adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and ADU or ADUs as condominiums. Provides that any such ordinance must include all of the following requirements:
 - a) The condominiums must be created pursuant to the Davis-Stirling Common Interest Development Act.
 - b) The condominiums must be created in conformance with all applicable objective requirements of the Subdivision Map Act and all objective requirements of a local subdivision ordinance.
 - c) Before recordation of the condominium map, a safety inspection of the ADU must 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) Prior to the recordation of the condominium map, that written evidence of each lienholders consent, as specified, be provided to the county recorder.
 - e) The county recorder must record each lienholder's consent.
 - f) Local agencies must include a notice to consumers outlining the requirements specified in d) and e) in any ADU submittal checklist, building permit approval, condominium map approval, or other information describing the requirements and approval process for an ADU.
- 2) Allows a local agency, special district, or water corporation to require an applicant to install a new or separate utility connection directly between the

ADU and the utility or impose a related connection fee or capacity charge, upon separate conveyance of the ADU.

COMMENTS:

- 1) *Author's statement.* “The lack of home ownership opportunities in most California communities for working families is contributing to the State’s growing population of renters and driving families out of state so that they can buy a home. Many neighborhoods have become de-facto gated communities, with median home prices of \$700K to \$1M keeping out all but a small percentage of Californians from ever dreaming of home ownership, reducing the state’s population and harming our economy. The absence of available homes for purchase at rates affordable to moderate-income working families bars wealth-building and housing stability for Californians harmed by historic discriminatory housing policies. By repealing the current law prohibiting the separate conveyance of ADUs, AB 1033 allows cities and counties the freedom to pursue homeownership programs and to create a path to wealth-building for families.”
- 2) *Second Units as a Solution to the Housing Crisis?* California’s high — and rising — land costs necessitate dense housing construction for a project to be financially viable and for the housing to ultimately be affordable to lower-income households. Yet, recent trends in California show that new housing has not commensurately increased in density. In a 2016 analysis, the Legislative Analyst’s Office (LAO) found that the housing density of a typical neighborhood in California’s coastal metropolitan areas increased only by four percent during the 2000s. In addition, the pattern of development in California has changed in ways that limit new housing opportunities. A 2016 analysis by BuildZoom found that new development has shifted from moderate but widespread density to pockets of high-density housing near downtown cores surrounded by vast swaths of low-density single-family housing. Specifically, construction of moderately-dense housing (2 to 49 units) in California peaked in the 1960s and 1970s and has slowed in recent decades.

Recently, there has been a national trend to allow for more "gentle density" (e.g., ADUs, duplexes, four-plexes, townhomes, and other moderately dense developments that were common before the imposition of zoning). In recent years, the Legislature has taken a more active role in facilitating such gentle density. In 2016, AB 2299 (Bloom) and SB 1069 (Wieckowski), permitted ADUs by right on all residentially-zoned parcels in the state. By permitting an ADU as a second unit on all single-family lots, these laws effectively doubled their allowed density.

Prior to the Legislature requiring ministerial approval of ADUs in 2017, ADUs were less than one percent of permitted new construction. Now they are approximately 10%, at over 9,600 completed units in 2022. Additionally, because ADUs are typically smaller than the average home in a community, they tend to be more affordable than other market-rate units. A survey of ADU owners found that, in the Bay Area, ADUs rents were affordable to households making the median income.

- 3) *Homeownership Opportunity for Lower Income Households.* Homeownership is the primary mechanism for American households to create and maintain wealth. The financial outcomes between homeowner and renter households are stark: the median net worth of homeowners (\$337,000) is almost 60 times larger than that of renters (\$5,700).¹

Not all households have access to homeownership. The statewide median home price is nearly \$800,000.² At that price, only 17% of households can afford to purchase the median priced single-family home.³ This figure is less than half of the national average, and less than half of the rate at the start of the pandemic.⁴ Additionally, homeownership outcomes are worse for Latinx and Black households. While 68% of white households are currently homeowners, only 49% of Latinx and 41% of Black households are homeowners.⁵ Approximately 12% of Black and Latinx households can afford the current median price of a single-family home in California.⁶

One potential pathway to homeownership for moderate- and lower income households could be through the sale or conveyance of ADUs. The average size of a single-family home in California is 1,860 square feet.⁷ By comparison, the average size of an ADU in California is less than one-third of

¹ US Census Bureau, "The Wealth of Households: 2020," August 2022:

<https://www.census.gov/content/dam/Census/library/publications/2022/demo/p70br-181.pdf>

² California Association of Realtors Housing Affordability Index. Data for the 4th quarter of 2022.

<https://www.car.org/marketdata/data/haitraditional>

³ Ibid. This methodology presumes a down payment of 20 percent and an interest rate that reflects the current national average.

⁴ Ibid

⁵ <https://www.calhfa.ca.gov/community/index.htm>

⁶ California Association of Realtors Housing Affordability Index:

<https://www.car.org/marketdata/data/haitraditional/haiethnicity>. Data from 2021.

⁷ <https://www.ahs.com/home-matters/real-estate/the-2022-american-home-size-index/>

that, at 615 square feet.⁸ Presuming a commensurate reduction in price, the purchase of an ADU would be affordable to lower income households.⁹

This bill allows local agencies to adopt ordinances to allow the separate conveyance of ADUs and primary residences that are located on the same parcel. The bill requires any ordinance to require that the process to establish the condominiums complies with both the Davis-Stirling Common Interest Development Act, which governs homeowners associations (HOAs), and the Subdivision Map Act, which governs the subdivision of property. The bill also requires that there is written and recorded evidence that each lienholder consents to the establishment of the condominiums. Finally, the bill requires the local agency to provide notice to applicants for ADUs of these requirements, such that they can make informed decisions in advance.

- 4) *Opposition.* The California Association of Realtors has an oppose unless amended position on this bill, over concerns that a lot split may violate federal mortgage loan terms for homeowners.
- 5) *Double-referral.* This bill is also referred to the Senate Governance and Finance Committee.

RELATED LEGISLATION:

AB 976 (Ting, 2023) — makes permanent the existing prohibition on local government's ability to require owner-occupancy on a parcel containing an ADU. *This bill is also being heard at this hearing.*

AB 345 (Quirk-Silva, Chapter 343, Statutes of 2021) — required cities and counties to allow an ADU to be sold separately from the primary residence to a qualified buyer if certain conditions are met.

AB 587 (Friedman, Chapter 657, Statutes of 2019) — allowed cities and counties to allow an ADU to be sold or conveyed separately from the primary residence to a qualified buyer under specified circumstances.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

⁸ Chapple et al, Implementing the Backyard Revlution: Perspectives of California's ADU Owners, UC Berkeley Center for Community Innovation, April 2021: <https://www.aducalifornia.org/wp-content/uploads/2021/04/Implementing-the-Backyard-Revolution.pdf>

⁹ Presuming a down payment of 20% and an interest rate of 7%, an ADU is affordable to a household earning approximately \$62,000 a year. According to the US Census, the median household income in California is slightly over \$84,000 a year (<https://www.census.gov/quickfacts/fact/table/CA/BZA210220>).

POSITIONS: (Communicated to the committee before noon on Wednesday, June 14, 2023.)

SUPPORT:

Bay Area Council (Co-Sponsor)
Casita Coalition (Co-Sponsor)
Abodu
Bequall
CA Black Chamber of Commerce
California Community Builders
California State Association of Counties
City of San Jose
Coresgb, LLC
Council of Infill Builders
Decor Revolution
East Bay YIMBY
Facebook, INC.
Farmworkers Institute of Education & Leadership Development
Grow the Richmond
Ho9 Development
How to ADU
HPP Cares
Inland So Cal Housing Collective
Inspired ADUs
Jesse Miranda Center for Hispanic
League of California Cities Latino Caucus
LISC San Diego
Mountain View YIMBY
Napa-Solano for Everyone
National Association of Hispanic Real Estate Professionals (NAHREP)
National Diversity Coalition
Northern Neighbors SF
Oak Impact Group
Peninsula for Everyone
People for Housing - Orange County
Plus Home Construction
Progress Noe Valley
Rebuilding Green
Samara Living
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco YIMBY

San Luis Obispo YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
South Bay YIMBY
Southside Forward
The Two Hundred
The Unity Council
Unidosus
Ventura County YIMBY
Villa
YIMBY Action
1 Individual

OPPOSITION:

California Association of Realtors

-- END --