



Community Development Department
MEMORANDUM

Date: March 3, 2025
To: Planning Staff and File
From: Suzanne Thorsen, AICP, Community Development Director
Re: Accessory Dwelling Unit Owner Occupancy Deed Restrictions

Background

An accessory dwelling unit (ADU), also referred to as a “second unit” or “in-law unit”, is a self-contained living unit on the same property as a primary residential building. These units can be detached from or attached to a primary dwelling and may be established by converting an accessory structure, garage or existing space in a home into a separate living unit.

Since 2016, the California State Legislature has passed a series of laws aimed at expanding and streamlining the development of ADUs and Junior Accessory Dwelling Units (JADU). The laws are intended to address the state’s housing shortage by making it simpler for homeowners to build or convert existing space into secondary housing units, or ADUs. Historically, the state’s regulations allowed cities to impose an owner-occupancy restriction requiring that the property owner reside either in the primary dwelling or the ADU.

ADU laws have been amended numerous times to clarify and further streamline the development process. Notably, in 2019, SB13 suspended owner-occupancy requirements until January 1, 2025, allowing property owners to rent out both the primary residence and the ADU without residing on the property. The SB13 suspension was made permanent with the passage of AB 976 which went into effect in 2024, which now prohibits local agencies from imposing owner-occupancy mandates on ADUs. These changes aim to encourage the construction of additional rental housing units, thereby addressing the state's housing shortage. State ADU laws were renumbered and the applicable regulation which was in Government Code Section 65852.2 is now found in Government Code Section 66315 which provides:

“Section 66314 establishes the maximum standards that a local agency shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. 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.”

Prior to AB976, the City of Benicia (“City”) required an owner-occupancy deed restriction for ADUs. To provide consistency in the interpretation and enforcement of

ADU regulations, this interpretation clarifies that absent future statutory amendments requiring or allowing owner-occupancy, the City will no longer impose or enforce owner-occupancy restrictions on ADUs.

Updated ADU Zoning Standards:

Prior to AB976, the Benicia Zoning Ordinance required that all ADUs built in the City of Benicia contain a deed restriction requiring owner-occupancy in one of the units. The deed restrictions were legally imposed and in compliance with state law.

The owner-occupancy deed restriction requirement was removed from the Benicia Zoning Ordinance. Consistent with Government Code Section 66315, Benicia Municipal Code section 17.70.060(L) currently provides, in part, that an executed deed restriction shall stipulate that (1) the rented unit shall not be rented for any period less than 30 days at a time and (2) that the ADU shall not be sold separately from the primary dwelling unless the provisions outlined in the California Government Code are met.

The City no longer imposes an owner-occupancy restriction for ADUs.

Interpretation of Legally Imposed Owner-Occupancy Requirements:

In compliance with Government Code Section 66315, the City will no longer enforce any previously imposed owner-occupancy requirement for ADUs. Property owners who wish to formally document the City's non-enforcement may request a Release of Deed Restriction by contacting the Benicia Planning Division at (707) 746-4301 or planning@ci.benicia.ca.us.

Owner-occupancy will continue to be required and enforced for JADUs in accordance with the requirements of Government Code Section 66333(b).

Appeal

This interpretation may be appealed pursuant to Benicia Municipal Code Chapter 1.44. Any interested person may file an appeal. Please be advised that the decision is final ten (10) business days from the date of publication. The deadline to file an appeal is 5:00 PM on March 17, 2025.