

# A Guide to Ending Single-Family Zoning

## Lessons Learned from 39 Years of ADU Legislation

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California Renters Legal Advocacy and Education Fund  
[www.carlaef.org](http://www.carlaef.org)

# **A Guide to Ending Single-Family Zoning: Lessons Learned from 39 Years of ADU Legislation**

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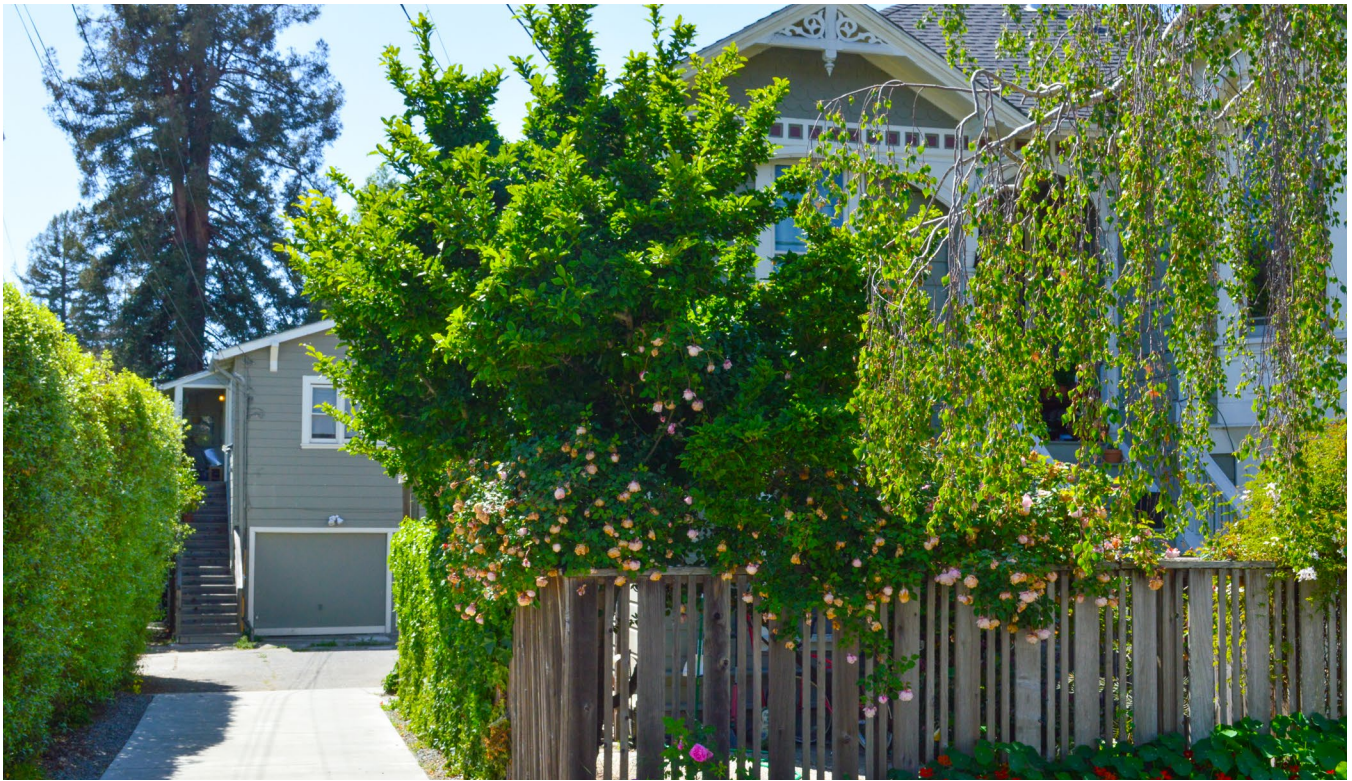


## Executive Summary

In order to move forward with the reforms of single-family housing policies we are seeing gain momentum around the country, we need to identify and learn from successful models. In this paper, we use the example of California's 39-year effort to allow for accessory dwelling units statewide as a model to identify the vital components of successful zoning reforms. We look at the history and foundations of single-family zoning to show how these areas are defined not just by the form of the buildings,

but also by the policies of exclusion. We retrace the steps taken over the decades to allow for an additional home to be developed in California's single-family neighborhoods. In conclusion, we show how in order to achieve success, zoning reform efforts must look beyond just what is allowed to be built and take a comprehensive approach to reform fees, occupancy restrictions, and approval processes, while providing oversight to ensure local compliance.





## Dismantling Single-Family Zoning

Single-family zoning dominates residential neighborhoods throughout the country, including in California.<sup>1</sup> This state of affairs grew out of a desire and demand for suburban life as well as a desire to exclude others from this same opportunity. Today, we are on the cusp of a sea change in this facet of American life; efforts around the country to reverse and deconstruct single-family zoning are starting to take off. Minneapolis,<sup>2</sup> Oregon,<sup>3</sup> and Berkeley<sup>4</sup> have all enacted or are in the process of enacting single-family zoning reforms. California has also gone through its own evolution on single-family zoning regulations, in the form of the statewide standards for Accessory Dwelling Units (ADUs), also referred to as granny cottages or casitas. California's ADU standards allow single-family neighborhoods to continue to exist, but take aim at their central feature of one family per lot

by allowing two or sometimes three homes on virtually every lot in the state. These reforms legally guarantee that every piece of residential property in the state can contain at least two units of housing, going further than any other state's reforms to end the most fundamental aspect of single-family zoning.

In this guide, we retrace how California ended single-family zoning through universal ADU standards and the lessons we can learn from this process about the larger challenge of zoning reform. Make no mistake — this shift towards ADUs as a tool to walk back the detrimental effects of single-family zoning did not happen overnight. It was the product of nearly four decades of continuous legislative reforms tackling nearly all the regulatory barriers to ADUs.

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1 <https://www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html>

2 <https://tcf.org/content/report/minneapolis-ended-single-family-zoning/>

3 <https://www.npr.org/2019/07/01/737798440/oregon-legislature-votes-to-essentially-ban-single-family-zoning>

4 <https://www.sfchronicle.com/bayarea/article/Berkeley-vows-to-end-single-family-zoning-by-the-15976115.php>

## What is Single-Family Zoning?

In the 1974 case of *Village of Belle Terre v. Boraas*, the United States Supreme Court upheld the authority of local governments to limit occupancy to a single family. Justice Douglas wrote for the majority of the lofty goals behind these local regulations:

*A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. . . . The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.*<sup>5</sup>

Today, we know that single-family zoning has not only failed at these goals, but in many cases it has actively degraded them. Instead of providing clean air free from motor vehicles, single-family zoning has contributed to auto-dependent sprawl, air pollution, and climate change. Far from being a “sanctuary for people,” single-family zoning is closely linked to entrenched segregation and exclusion. We all know single-family neighborhoods today by their appearance: many similarly sized properties with yards and one freestanding house and garage, usually no taller than one story. But from the beginning, single-family neighborhoods have been defined not only by this aesthetic, but also by who is—and is not—allowed to live in and enjoy the benefits of these neighborhoods.

Single-family zoning was first adopted in Berkeley, California in 1916, when developer Duncan McDuffie, whose developments barred owners from selling or renting to people of color, had a dual goal of preventing a Black-owned dance hall from moving in and making sure adjacent neighborhoods would not allow families of color to move in and lower property values.<sup>6</sup> As this idea spread, some of the first single-family zones were tied to explicit racial



*Claremont Court, Berkeley, the Mason-McDuffie development that led to the creation of single-family zoning*

The first zoned district created in Berkeley was the single-family residence restriction applied to Elmwood Park. Other zoning actions by the City Council in response to property owner petitions included one which required two Japanese laundries, one Chinese laundry, and a six-horse stable to vacate an older apartment area in the center of town, and another that created a restricted residence district in order to prevent a “negro dance hall” from locating “on a prominent corner.”<sup>36</sup> That the focus of Berkeley’s zoning law should be on racial restrictions is not surprising given the anti-Chinese origins of zoning in California.<sup>37</sup> Physical design and building restrictions were a vital aspect of subdivision planning, as Duncan McDuffie frequently articulated, but “wise use of restrictions” by subdivision developers also involved racial exclusion. In 1925 and 1926 the *California Real Estate* magazine reported that one of the most popular examples of “service rendered” by a local real estate board “to members and to the community at large” was the attempt by the Berkeley Realty Board, a strong supporter of city planning and zoning, “to organize a district of some twenty blocks under the covenant plan as protection against invasion of Negroes and Asiatics.” The

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**Urban Land Developers, Weiss**

magazine stated that reaction in Berkeley to the realty board’s action “has been one of commendation and praise.”<sup>38</sup>

*Excerpt from “Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley” by Marc A. Weiss, 1986*

covenants that excluded non-white homebuyers.<sup>7</sup> These covenants were reinforced by decades of discriminatory lending practices designed to segregate by race. These explicitly racist practices

5 416 U.S. 1, 3 (1974).

6 <https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning>

7 <https://www.berkeleyside.org/2019/03/12/berkeley-zoning-has-served-for-many-decades-to-separate-the-poor-from-the-rich-and-whites-from-people-of-color>



were repealed by the courts<sup>8</sup> or made finally illegal by the passage of the Fair Housing Act of 1968.

Even after these reforms, zoning continued to be preoccupied with who is allowed to live in a single-family neighborhood. In many cities, zoning regulations still require that occupants of a single-family home must be related by blood or law.<sup>9</sup> In 1980, the California Supreme Court found that these restrictions violated the constitutional right to privacy, but they live on in other states.<sup>10</sup> Today many cities around California seek to perpetuate this policy of exclusion by defining the “family” or “household” in a way that does not require blood or legal relationships. Berkeley, for example, defines a “household” as group or people in a “living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the Household and other similar characteristics indicative of a single Household.”<sup>11</sup> These restrictions avoid the legal pitfalls of explicit discrimination based on race, but they are an attempt to prevent single-family homes from being used as boardinghouses, single room occupancy rentals, or other more affordable types of living arrangements.

In today’s single-family zoning rules and restrictions based explicitly on the identity of the occupants are either illegal or rarely enforced. Instead of outright prohibiting “undesirable” occupants, today’s zoning regulations perpetuate this historical exclusion by prohibiting construction of the types of housing that would be affordable.<sup>12</sup> Entire cities are devoted to 4,000 square foot homes, each on a minimum of one acre of property. These rules ensure that only

the most unaffordable homes are built in these cities. The prevalence of similar rules throughout California drives our statewide housing shortage, rendering more cities even more exclusive and unaffordable.

It may be impossible to say what motivated lawmakers who adopted these policies as they were enacted over the course of decades across thousands of city governments. What is clear is that they have the impact of discriminating and excluding based on race, class, sexual orientation, gender identity, and familial status. California and other states with high housing costs remain deeply segregated, and it should come as no surprise that this segregation is closely linked to the prevalence of single-family zoning.<sup>13</sup> Other than a simple desire to exclude, there is no way to explain why a property should be required to contain only a single 4,000 square foot home, rather than four affordable 1,000 square foot apartments contained within the same walls. Today’s zoning regulations perpetuate the explicit exclusion of the past by making more affordable housing options illegal, or by adding so many costs to the process that only the most expensive homes are worth building.

In dissent to the majority opinion in *Belle Terre*, Justice Marshall wrote that:

*Zoning officials properly concern themselves with the uses of land – with, for example, the number and kind of dwellings to be constructed in a certain neighborhood or the number of persons who can reside in those dwellings. But zoning authorities cannot validly consider who those persons are, what they believe, or how they choose to live, whether they are Negro or white, Catholic or Jew, Republican or Democrat, married or unmarried.*<sup>14</sup>

Today we live in a reality where exclusion and de facto segregation are driven by housing shortages and exclusionary zoning. We should

8 Shelly v. Kramer, 334 U.S. 1 (1948)

9 <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1293&context=flr>

10 City of Santa Barbara v. Adamson, 27 Cal.3d 123 (1980)

11 Berkeley Mun. Code Section 23F.04.010

12 <https://www.codepublishing.com/CA/Atherton/html/Atherton17/Atherton1732.html#17.32>

13 <https://belonging.berkeley.edu/report-single-family-zoning-dominates-bay-area-housing-presenting-barrier-integration>

14 Belle Terre v. Boraas, 416 U.S. 1, 14-15 (1974)

take Justice Marshall’s reasoning a step further and recognize that limits on the number and types of dwelling also inevitably concern the identity of people and families who are allowed to live in a neighborhood, city, or region. To deconstruct single-family zoning, we should look beyond the form of the buildings. We must also examine all of our rules and processes that drive housing costs and perpetuate exclusion.

## **California’s Experience with Statewide ADU Standards Shows How to Dismantle Single-Family Zoning**

California’s 2020 ADU laws are designed to allow for Accessory Dwelling Units (ADUs), commonly known as granny cottages or casitas, on every single family property in the state. This law was not a new creation; for nearly three decades the state legislature has been working to promote ADUs as a part of the solution to the state’s housing shortage. Over this time period, the state’s housing shortage has gotten progressively worse, and housing costs have

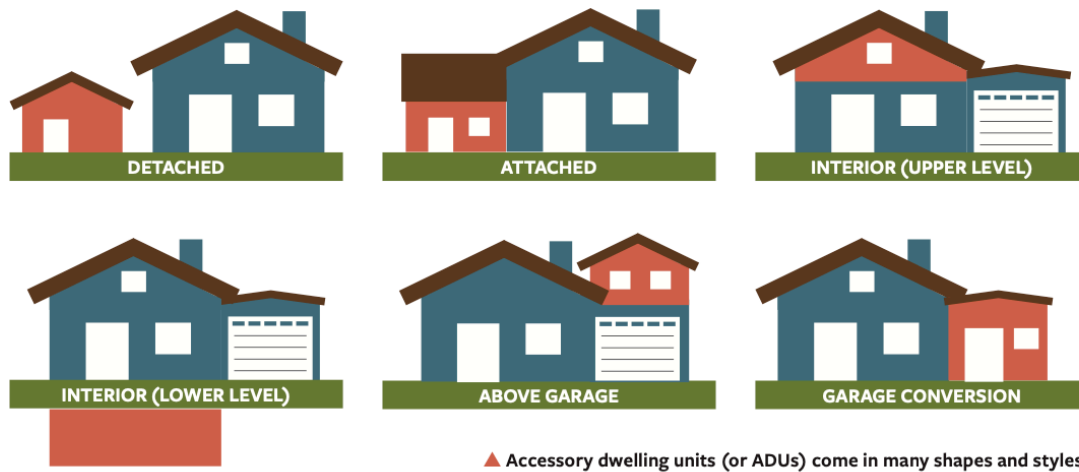
skyrocketed. Each attempt to open the door for ADU development resulted in disappointment because state lawmakers continued to protect local control over the specifics of zoning regulations. In turn, local governments used this control to make ADU development close to impossible in a narrow-minded pursuit of the misguided post-war dream: one nuclear family per parcel.

The housing shortage isn’t getting any better, so we can’t afford to disregard hard-earned lessons from the past reforms and repeat the same mistakes again. We need policies that will work today. As we now look forward to policies allowing for three or even four units on a standard single-family lot, it is worth looking back at California’s decades-long effort to allow for just two.

## **California’s Journey to Universal ADUs**

Statewide legislative efforts to promote ADU development as a way to tackle the problem of housing affordability started in 1982 with





▲ Accessory dwelling units (or ADUs) come in many shapes and styles.

the passage of the state's first ADU law. This law has been amended eight times through 13 different bills since. With housing affordability only worsening over time, the legislature felt compelled to reduce local authority to impose standards, fees, or other requirements on ADU permits more and more with each amendment.

### 1982 - SB 1534, California's First ADU Law

In 1982, the state legislature had determined that local governments left to their own devices would not succeed at solving the housing shortage already facing the state, so Senate Bill 1534<sup>15</sup> to allow for second units was considered and enacted. Local governments were given three options to promoting ADUs:

- **Local ADU ordinances:** Cities could adopt their own local ADU ordinance to allow for ADU development. In return, they could hold on to their authority to impose development standards, such as height, setback, floor area, and other measures.
- **State minimum standards:** Cities could choose not to adopt any ordinance and instead be subject to the state ADU standards. The bill allowed only for attached ADUs to be added to existing single family homes, with up to a 10%

increase in floor area. ADUs under this program would still need to comply with zoning regulations generally applicable to the property, however.

- **Local ADU ban:** State law gave cities the option to completely ban ADUs, provided that they make findings showing adverse effects of ADUs on health, safety, or general welfare.

SB 1534 represented the smallest of impositions on local control of ADU standards that the legislature felt it could make. Cities were invited to enact local ordinances to promote ADUs, but were also allowed to impose whatever development standards they deemed necessary. Even if a city failed to enact an ordinance, the state standards only allowed for a small increase in floor area, and ADUs still needed to comply with existing development standards that applied to the lot—standards designed for one single-family home, leaving no room for a small ADU.

### 1986 - AB 4343

Assembly Bill 4343<sup>16</sup> was enacted to **increase the state minimum standards** in the previous bill to allow for detached ADUs up to 640 square feet and for a modest 15 percent increase in floor area for attached ADUs.

15 Added Stats 1982 ch 1440 §2

16 Amended Stats 1986 ch 156 §1, operative April 1, 1987



## 1990 - AB 3529

These **minimum standards were increased** once again with AB 3529<sup>17</sup> to allow for up to 1200 square foot detached ADUs, or a 30 percent increase in floor area for an attached ADU. Again, these standards would apply where a city had not passed any local ordinance, although any ADU under these standards would need to comply with underlying zoning requirements. Setbacks, lot coverage and other development standards would still effectively prohibit ADU development on most single-family lots.

## 1994 - AB 3198

AB 3198<sup>18</sup> amended state ADU law to **limit local parking requirements** to one space per ADU or per bedroom, unless findings were made to show the necessity of more, and it would ensure a city's local minimum or maximum unit size requirements must at least allow for an efficiency unit.

## 2002 - AB 1866

AB 1866 required that all **ADU permits be considered ministerially**, without discretionary review or hearings. While cities still had broad freedom to impose development standards that made ADU development impossible on most lots, this change at least mandated a process for ADU permits that homeowners should be able to navigate. Nevertheless, some cities ignored this mandate for over 15 years<sup>19</sup> after it was enacted by the state legislature.

*Only after CaRLA was founded and we began to sue the suburbs did this mandate gain the force of law.*

17 Stats 1990 ch 1150 §2 (AB 3529)

18 Stats 1994 ch 580 §2 (AB 3198)

19 <https://carlaef.org/2019/06/18/the-end-of-single-family-zoning-in-san-francisco/>

## 2016 - SB 1069 and AB 2299

SB 1069 and AB 2299, enacted together, imposed a major shift in state requirements for local ADU regulations. Facing a worsening housing shortage, and perhaps realizing that local governments could not be entrusted with establishing their own ADU programs that would promote widespread ADU development, the state legislature finally decided to aggressively curtail local discretion over ADU development standards. After 34 years of allowing cities broad authority over whether to enact an ADU ordinance, what standards to impose, what fees to charge, and how to process permits, the state fought back:

- **Minimum standards for local ordinances:** The state imposed a legal floor on local ordinances for the first time. While local governments still retained the ability to impose certain standards, side and rear setbacks were limited to 5 feet, parking requirements around transit stations were eliminated, covered parking requirements elsewhere were barred, and ADUs were exempted from density limits imposed through zoning.
- **Time limit on permitting:** Compliant ADUs submitted through ministerial permitting processes were now required to be approved within 120 days.



- **Establish “Exemption ADUs”:** A new category of ADUs was established that would be exempt from all local standards. As long as setbacks were maintained sufficient for fire safety, ADUs that were entirely contained within an existing home or accessory structure were required to be approved notwithstanding any requirements of the local ordinance or underlying zoning.
- **Limited local fees:** The 2016 reforms required that local utility fees must be proportional to the impact of the ADU. Additionally, ADUs could not be considered a new residential use for the purpose of calculating these fees.
- **Created a minimum ADU allowance:** Local ordinances cannot apply development standards that in combination would prohibit an 800 square foot ADU.
- **Limited restrictive maximum ADU sizes:** Local ordinances must allow for 850 square foot ADUs with one or fewer bedrooms, and 1,000 square feet for two bedroom ADUs.
- **Expanded the Exemption ADU program:** The 2019 reforms established new categories of ADUs that must be approved notwithstanding any local zoning requirements:
  - One detached ADU for every single-family property under 800 square feet, 16 feet in height, and maintaining 4 foot setbacks.
  - Multiple ADUs converted from nonresidential space in multifamily buildings, adding up to 25 percent more homes to existing buildings.
  - Two new detached ADUs for each multifamily property, under 800 square feet, 16 feet in height, and maintaining 4 foot setbacks.
  - The ability to combine a new detached ADU with a JADU, allowing for three units on a previously single-family property.

## 2017 - SB 229 and AB 494

SB 229 and AB 494 were enacted to **allow for ADUs to be included in plans for new single-family homes**. Previously, ADUs were only allowed once a single-family home had been built or already existed on a lot.

## 2019 - SB 13, AB 670, and AB 881

SB 13, AB 670, and AB 881 provided the most comprehensive reforms yet. The changes were too numerous to catalog here, but we covered all of the changes in detail when they were enacted.<sup>20</sup> The 2019 reforms:

- **Prohibited minimum lot size requirements**
- **Lowered setback requirements** to 4 feet from the rear or side lot line
- **Eliminated fire sprinkler requirements**, unless they were also required in the primary dwelling
- **Prohibited owner occupancy requirements** until 2025
- **Limited review of ADU permits** to 60 days
- **Eliminated or reduced local impact fees for ADUs under 750 square feet**, and required that fees above that must be discounted according to the size of the ADU.
- **Required HCD oversight of local ordinances**
- **Curtailed unreasonable ADU limits by homeowners associations** in common interest developments

20 <https://carlaef.org/2019/09/13/making-sense-of-this-years-adu-legislation/>





## Lessons From California's ADU Journey to Support More Housing through Fourplexes

It took California nearly four decades to remove all of these barriers to ADU development, yet even now significant barriers still remain that prevent homeowners from developing ADUs. While these reforms have effectively ended single-family zoning in California, we still have much work to do to slow and reverse California's nearly century-long housing shortage.

The state legislature, and cities like Berkeley, Oakland, and South San Francisco, are leading the way towards new solutions. Realizing that we cannot rely solely on ADUs and large developments to meet our housing goals, cities are now considering plans to allow single-family properties to be redeveloped or converted into fourplexes. This "missing middle" strategy promotes small apartment buildings that can be found in many cities but are nearly impossible to develop in California today. Zoning, setbacks, and parking requirements make existing missing middle housing illegal, and in the few places where it is legal we have attached so many costs to the permitting process that only large, luxury developments can afford to run such a gauntlet.

The California ADU experience serves as a guide to the types of barriers that must be removed to make way for missing middle housing. If single-family properties are going to be a source of housing growth for duplexes, triplexes, or fourplexes, developers and property owners will face very similar issues as aspiring ADU builders have over the last four decades. When considering reforms we should try to remove all of these barriers upfront, rather than spending another half-century getting it right—Californians don't have time to deal with the housing shortage. Fourplexes and missing middle reforms need to address as many of these barriers as possible:

### Limit Local Discretion

The central flaw in California's early attempts to promote ADU policy was that it allowed local governments broad discretion to impose development standards limiting ADU development. Similar to ADUs, you cannot develop a fourplex on most single-family lots while following height, setback,



yard, open space, lot coverage, and floor area restrictions designed to only allow one home on a property. Reforms need to ensure that local governments cannot use their authority to create absurd or infeasible development standards and effectively prohibit fourplexes.

### **Guarantee Buildable Area for Every Lot**

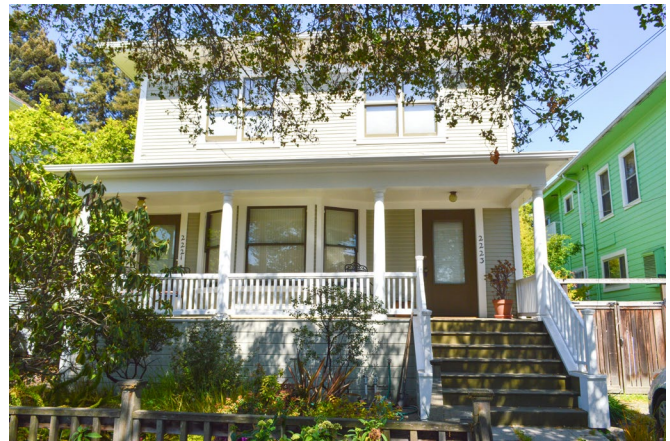
One way to prevent local standards from interfering or prohibiting fourplexes is to guarantee a baseline level of development allowed on every lot. Fourplex reforms should start with an area on an average lot and an amount of floor area allowance similar to the “exemption ADU” program that was adopted in 2019. Each lot should be guaranteed a certain amount of lot coverage to develop, a certain height, and a floor area that will allow for a reasonably sized fourplex. If local development restrictions prevent this, they should be ministerially waived.

### **Create a Permitting Process that Is Clear, Simple, and Fast**

Similar to ADUs, fourplex programs will rely on small single-family property owners to become developers to help alleviate our housing shortage. Most local permitting processes are not set up to encourage these types of applicants. Permitting processes for fourplexes should be fast and involve minimal back and forth between city staff and the applicant. Once a permit is approved, discretionary appeals by neighbors should be prohibited. The most appropriate time for neighborly input is during a city’s months-long outreach and consultation as part of their regular planning and zoning updates.

### **Mandate Only Objective Development Standards**

The key to an easy and fast approval process is to make sure the regulations are clear and objective. This means that architects, homeowners, and city staff will all understand and rarely disagree with





interpretations. Current standards that are commonplace in California zoning, like vague architectural guidelines, waivers based on staff discretion, and numerous other subjective regulations should be avoided or eliminated.

### **Don't Forget about *All* of the Fees**

Impact fees were one of the last barriers to ADU development to fall. Despite this change, utility fees make ADU development impossible in many areas. These fees combined can easily add up to more than \$50,000 per unit. If property owners can avoid fees by building a single-family home plus an ADU and JADU, fourplexes large enough for families will go unrealized. Fee reforms should cap overall fee costs—including impact fees, utility fees, and administrative fees—to levels that will not render projects infeasible beyond the shadow of a doubt.

### **Eliminate or Limit Parking Requirements**

Parking is extremely expensive, especially in new developments under modern building codes. We can't afford to continue to miss out on new homes for people because we mandate homes for cars. Mandatory parking requirements should be eliminated where a development is close to transit or job centers. Elsewhere, covered parking requirements should be eliminated and parking should be allowed in tandem and in setback areas.

### **Monitor and Enforce Local Compliance**

Even if we do a perfect job crafting state policy reforms, many local governments are going to ignore the details of reforms with which they disagree. **San Francisco went 15 years out of compliance with ADU standards until CaRLA fought the city in court.** In order to ensure that housing reforms are accurately and fairly implemented in all jurisdictions we need to devote meaningful resources to reviewing local implementation,

both through local ordinances and in the implementation of these ordinances to individual permits.

### **Don't Worry about Who Lives in the New Housing**

For decades nearly all ADUs in California have come with a requirement that the property owner live in either the ADU or the primary dwelling. Only in the last set of reforms was this requirement removed. We know from other jurisdictions that owner occupancy requirements are a strong deterrent to development, as they interfere with property values, appraisals, and financing. Though these requirements are mostly motivated by a genuine desire to promote homeownership by limiting corporate ownership of small properties, they are far too broad of a mandate to achieve this goal. They not only discourage development, but they bar tenants from a significant portion of the new housing. Future measures should focus on making housing widely available and affordable to everyone, and not on limiting who is allowed to live in certain areas.

By no means is this a comprehensive list; producing such a thing is impossible as barriers to housing growth are not always the obvious development standards on which we often focus. A multi-faceted approach that considers legal, economic, and even cultural barriers is needed. For ADUs, the legislature has recently begun to remove some of these unforeseen barriers. As an example, AB 670 limits private restrictions on ADUs in common interest developments that prevented ADU development for a huge portion of homeowners. In addition, the legislature is currently working to address financing availability shortfalls for ADUs. To be successful, fourplex reforms must use these lessons to remove barriers in advance to allow these policies to reach their full potential.







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