



November 24, 2019

**VIA EMAIL**

City of Berkeley Agenda & Rules Committee  
City Clerk Department  
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RE: November 25, 2019 Agenda & Rules Committee Meeting, Agenda Item 2

To the Agenda & Rules Committee:

Californians for Homeownership is a 501(c)(3) non-profit organization devoted to using legal tools to address California's housing crisis. I am writing as part of our work monitoring local compliance California's laws regarding accessory dwelling units (ADUs).

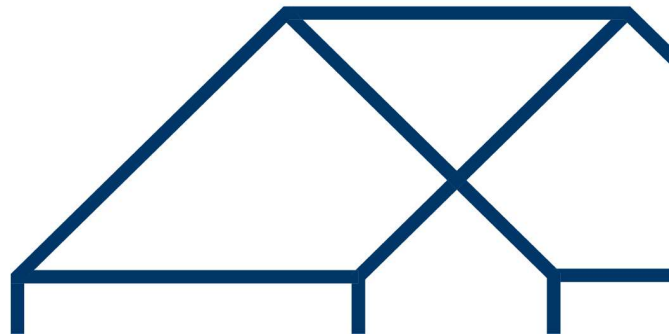
At your November 25, 2019 meeting, you will discuss the draft agenda for the December 10, 2019 meeting of the City Council. On that draft agenda, as Agenda Item 30, is a public hearing on an urgency ordinance to amend City law to comply with several new state ADU bills, including SB 13 (Wieckowski), AB 68 (Ting), and AB 881 (Bloom). These bills broadly overhaul state ADU law, and they nullify any local ordinance that does not strictly comply with their requirements.<sup>1</sup>

We are enclosing two documents that we hope will help the City as it crafts a revised ADU ordinance. The first is a clean copy of the version of Government Code Section 65852.2 that will become operative on January 1, derived from Section 1.5 of AB 881. The second is a list of key provisions of the revised law.

We do want to raise one concern about the item as agendized on the draft agenda, which suggests that the City Council will "establish interim limits on ADU development pending further analysis, deliberation and adoption of local regulations, in order to help ensure public safety." If the City imposes limits—permanent or "interim"—that are more restrictive than Section 65852.2

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<sup>1</sup> A previous version of AB 68 provided that a conflicting local ordinance would be "null and void to the extent of such conflict." That provision was struck from the final bill, which provides for complete invalidation.



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requires, the City's entire ADU ordinance will be void as of January 1, 2020. This is just as true for an urgency ordinance. The new state ADU laws were deliberately designed to require a city to apply permissive state rules for ADU applications unless and until the city adopts a fully-complaint local ADU ordinance. A city cannot avoid that aspect of the law by adopting an interim ordinance, unless the interim ordinance itself fully complies with state law. Nor can a city adopt limits on ADUs that are more restrictive than those allowed by state law in the guise of "public safety"; the Legislature has already weighed concerns about the impacts of density against the vital need for additional housing supply in California's cities, and the state ADU laws reflect the outcome of those deliberations. We are closely monitoring cities statewide for any plans to enact unlawful ADU moratoriums, and we intend to litigate against any city that adopts such a moratorium.

We hope to be active participants in the process of developing the City's new ADU ordinance. To that end, we request that you send us the staff report and other supporting materials regarding the ADU ordinance for the December 10 meeting when they are ready, and that you include us on the notice list for all future public meetings regarding any ADU policy or ordinance in the City. We also request that this letter and its attachments be included in the correspondence file for the December 10 meeting. We hope you will also consider reaching out to us with any questions you have about the new law and to seek feedback on drafts of the ordinance during the development process. We look forward to working with you.

Sincerely,



Matthew Gelfand

cc: Timothy Burroughs, Acting Planning & Development Director  
(by email to [tburroughs@cityofberkeley.info](mailto:tburroughs@cityofberkeley.info))