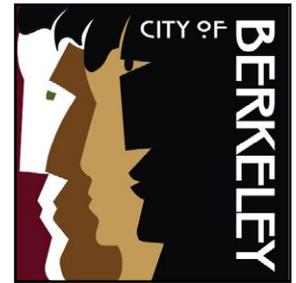


Amnesty Program for Unpermitted Dwelling Units Program Rules 2024



Planning Department
Building and Safety Division

PROGRAM DETAILS

The City of Berkeley is offering an Amnesty Program for Existing Unpermitted Dwelling Units constructed prior to January 1, 2020 without the proper building permits and inspections. For a limited time, until December 31, 2028, the Amnesty Program is promoting inspection and certification of unpermitted units to ensure the units are safe, healthy and habitable.

Timeline: (January 1, 2025 – December 31, 2028)

At this time, the pilot amnesty program will be limited to single family dwellings (SFD) with an unpermitted Accessory Dwelling Unit (ADU) and/or Junior Accessory Dwelling Unit (JADU).

Disclaimers:

Certification under the Amnesty Program does not imply an unpermitted dwelling unit meets current Building Code standards or that building code violations do not exist. The goal of the Amnesty Program is to offer pathways to legalization without the fear of disciplinary action for property owners.

Issuance of a Housing Certificate of Compliance shall not be deemed to grant authorization for any work to be done in violation of the provisions of State Housing Law, the California Building Standards Code, or any other applicable regulation, law, or ordinance. If owners perform additional unpermitted work on units pursuing legalization or compliance under the amnesty program, their participation in the Amnesty Program will end and code enforcement proceedings will be initiated.

WHY LEGALIZE?

- Provide safe living conditions for tenants
- Minimize risk of code enforcement
- Protect yourself as an owner by ensuring the unit is safe for occupancy
- Make your property more desirable for potential buyers and renters
- Reduce your liability: Home insurance may not cover damages related to an unpermitted dwelling unit
- Reduce risk of tenant's not paying rent or submitting a request to investigate unpermitted work due to illegal status of unit
- Give yourself peace of mind

PROGRAM BENEFITS

Anonymity and Confidentiality

Free anonymous and confidential consultations with program staff prior to application submittal without providing identifying personal owner information required

Delay of Code Enforcement

Owner will be given the opportunity to request a 5 year delay of code enforcement penalties for units undergoing legalization, or units issued a Certificate of Compliance under the Amnesty Program

Alternate Compliance Standards

Acceptance of reasonable alternatives to prior or current code requirements

Program Process Assistance

Extensive guidance throughout the legalization process by Planning Department staff

The Amnesty Program is available for a limited time, from January 1, 2025 through December 31, 2028. Owners are encouraged to apply as soon as possible to take full advantage of this pilot program's benefits.



ELIGIBILITY CRITERIA

- The unpermitted Accessory Dwelling Unit (ADU) and/or Junior Accessory Dwelling Unit (JADU) is located where residential uses are allowed by the zoning ordinance.
- Single Family Lot - The unpermitted ADU and/or JADU is located on a lot containing one single-family dwelling. Duplexes and multi-family buildings are not eligible for participation in the initial pilot phase of the Amnesty Program.
- The unpermitted ADU and/or JADU was constructed or converted prior to January 1, 2020.
- If the unpermitted unit is a Junior Accessory Dwelling Unit (JADU), either the main dwelling unit or the JADU must be owner occupied.
- The number of ADUs to be legalized does not exceed the maximum allowable number of ADUs per lot. For more information see the [ADU webpage](#).

ELIGIBLE TYPES OF UNPERMITTED DWELLING UNITS

Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) are independent and semi-independent dwelling units with complete or partial provisions for sleeping, cooking, and sanitation. ADUs and JADUs located on properties with single-family dwellings that were constructed prior to January 1, 2020 without the proper permits and inspections may be eligible for legalization or certification under the Amnesty Program.



Accessory Dwelling Unit (ADU)

A secondary unit with independent access, living/sleeping quarters, a full kitchen and full bathroom. This may include an attached ADU or an ADU converted from a portion of an existing structure or building.



Junior Accessory Dwelling Unit (JADU) or Accessory Dwelling Unit contained within the Main Dwelling

A unit that is contained entirely within the walls of a single family dwelling with a separate exterior entrance and an efficiency kitchen. May include separate sanitation facilities or may share sanitary facilities with the single family dwelling.



Detached Accessory Dwelling Unit

A freestanding structure or detached accessory structure conversion with living/sleeping quarters, a full kitchen and full bathroom.

** The initial pilot phase of the Amnesty Program will be limited to single family dwellings with one unpermitted ADU and/or JADU.*



QUICK PROGRAM OVERVIEW

The City of Berkeley's Amnesty Program provides 2 pathways to legalization:

PATH 1:

Legalization through the standard building permit process and issuance of a Certificate of Occupancy

PATH 2:

Legalization through issuance of a Housing Certificate of Compliance (unit meets Housing Code and minimum fire and life safety standards)

SUMMARY OF NEXT STEPS:

1. Get Informed: Contact program staff to learn more about the Amnesty Program for unpermitted dwelling units
2. Complete a Pre-Submittal Checklist
3. Schedule a free and anonymous consultation with a Program Manager or Coordinator before submitting a program application
4. Submit your Amnesty Program Application, along with documentation regarding construction/ conversion date of your unpermitted unit
5. Initial Inspection: An inspection by a City Inspector will be performed to determine whether any health or life safety violations exist that need to be corrected immediately, document if any Housing Code violations exist, and assess the unpermitted unit for potential legalization. The property owner must consent to inspection as a condition of participating in this program.
6. Consult with the City Inspector and Program staff to discuss the necessary improvements to bring the unit into compliance and determine which pathway to legalization works for you.
7. Obtain letters from licensed professionals (if pursuing legalization under a Housing Certificate of Compliance).
8. Obtain the necessary building permits.
9. Complete corrective work.
10. Schedule Reinspections to ensure the previously unpermitted unit now meets all code and program requirements.
11. Legalization or Compliance:
 - Path 1: Issuance of a Certificate of Occupancy (legalized)
 - Path 2: Issuance of a Certificate of Compliance (legalized)

KEY DIFFERENCES BETWEEN LEGALIZATION PATHWAYS

Description	Certificate of Occupancy	Certificate of Compliance
Legalization upon issuance	YES	YES
Building Permits Required	YES	Only if needed for corrective work
Building Permit Fees	Based on % of permit valuation for total estimated construction/ conversion costs	Based on % of permit valuation for <u>specific corrective work only</u>
Zoning Review Required	YES	NO
Could future violations revoke my legalization or compliance status?	NO	YES
Energy and Green Building Code Compliance Required?	YES – with exceptions for replacement of windows, doors and major appliances*	NO
Letter from a Licensed Professional Required?	NO	YES

*Additional exceptions may be considered on a case by case basis at the discretion of the Building Official.



CONFIDENTIAL CONSULTATIONS (ANONYMOUS AND FREE):

Potential applicants may request free and confidential consultations with program staff prior to submitting an Amnesty Program Application form to clarify the application process and discuss pathways to legalization under the amnesty program without having to identify the ownership, occupancy or location of the qualifying property.

The purpose of confidential consultations is to provide applicants the opportunity to discuss legalization of their unpermitted unit without fear of disciplinary action or code enforcement proceedings.

Once potential applicants have reviewed and completed the pre-submittal checklist, they are encouraged to schedule an additional free and confidential consultation to review the pre-submittal checklist and discuss which pathway to legalization makes sense for them.

WHAT SHOULD I DO BEFORE SUBMITTING AN AMNESTY PROGRAM APPLICATION?

1. Contact Amnesty Program staff to schedule a free and confidential consultation to discuss legalization of your Unpermitted Dwelling Unit.
2. Review application materials, Program Rules and eligibility requirements.
3. Research your property to determine the construction or conversion date of the unpermitted unit. To be eligible for participation in the Amnesty Program, the unit must have been constructed or converted prior to January 1, 2020.
4. For unpermitted Junior Accessory Dwelling Units (JADUs), collect documents that prove the property owner resides at the property in either the primary unit or the attached JADU.
5. Complete a Pre-Submittal Checklist.
6. Contact Amnesty Program staff to schedule a second free and confidential consultation to review the Pre-Submittal Checklist and discuss pathways to legalization.





PATHWAYS TO LEGALIZATION

PATH 1 - CERTIFICATE OF OCCUPANCY (LEGALIZED UNIT)

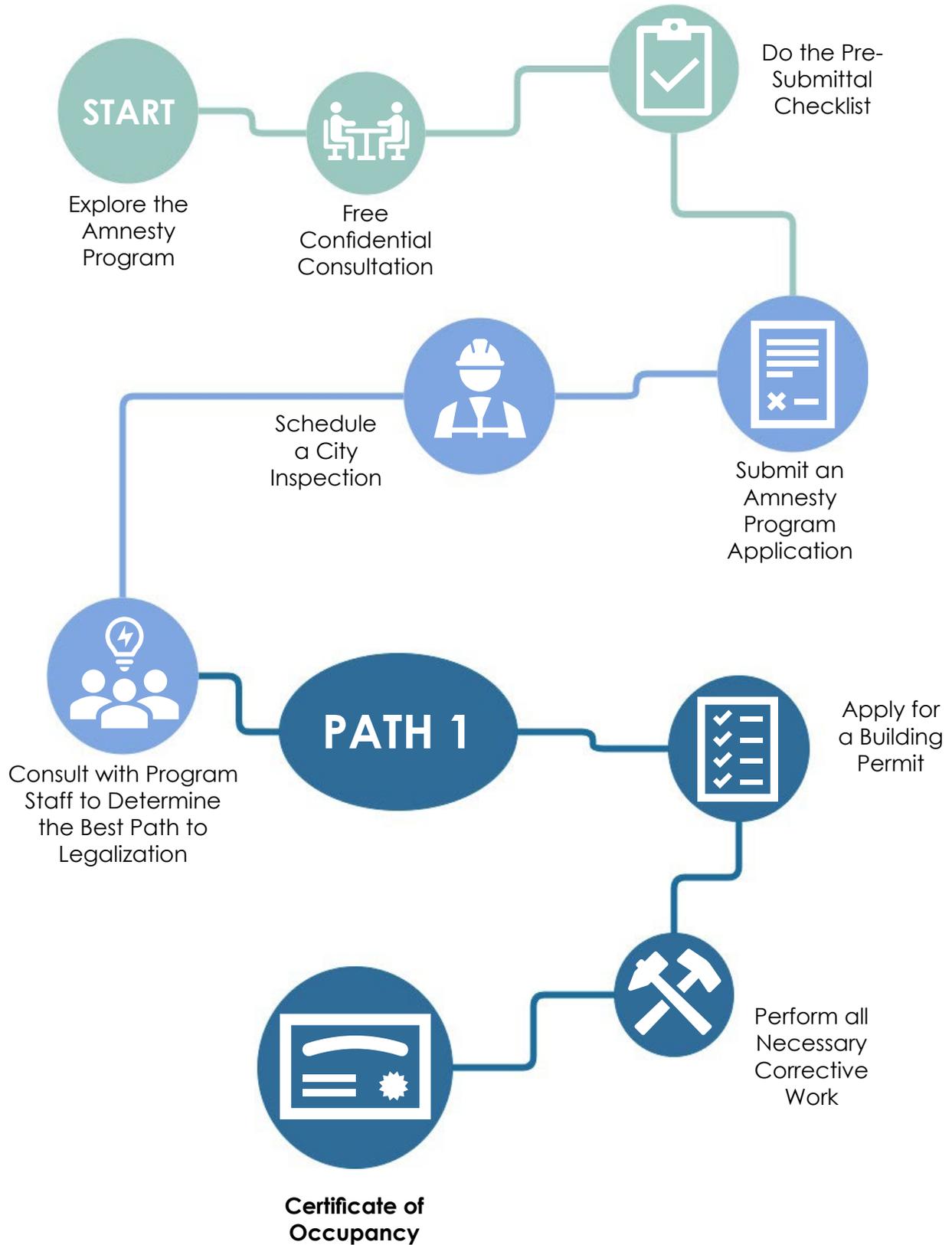
This pathway to legalization follows the standard building permit process and requires submittal of detailed plans including but not limited to a site plan, floor plans, interior elevations, building sections, and details demonstrating specific code compliance requirements such as the fire resistant rating of a wall. Owners of unpermitted dwelling units seeking legalization and issuance of a Certificate of Occupancy must obtain a building permit and have inspectors verify code compliance as approved by the plans. Compliance with building code requirements and the ADU zoning and development standards is reviewed as part of the [building permit process](#).

Required Documentation and Permits:

- A completed Amnesty Program Application
- Documentation regarding construction/ conversion date
- Documentation proving owner occupancy either in primary unit or JADU, if the unpermitted unit is a Junior ADU
- Construction Documents, including fully dimensioned site and floor plans showing all buildings and parking areas, heights of ceilings, window type and dimensions, and labeling of each building and room's use. (Applicants may request to have their plans reviewed under the current code cycle or the code in effect at the time the unit was constructed or converted.)

*Note Regarding Legalization of Junior Accessory Dwelling Units (JADUs):
Full legalization of a JADU only requires an approved Final inspection and does not result in issuance of a Certificate of Occupancy.*

PATH 1 - CERTIFICATE OF OCCUPANCY FLOWCHART



PATH 2- CERTIFICATE OF COMPLIANCE (LEGALIZED UNIT)

The Building and Safety Division will issue a Certificate of Compliance after an unpermitted unit is recognized by the City of Berkeley as a legalized unit under the Amnesty Program. To obtain a Housing Certificate of Compliance the unpermitted unit must be inspected by a City Inspector and any fire and life safety and Housing Code violations documented at the time of the inspection must be corrected.

The Certificate of Compliance provides assurance to the property owner that code enforcement proceedings on the previously unpermitted unit will not be triggered as long as no additional unpermitted work is performed on the unit. Any future fire and life safety and Housing Code violations resulting from a Request for Service or Rental Housing Safety Program (RHSP) proactive inspection must be addressed by the owner in a timely manner.

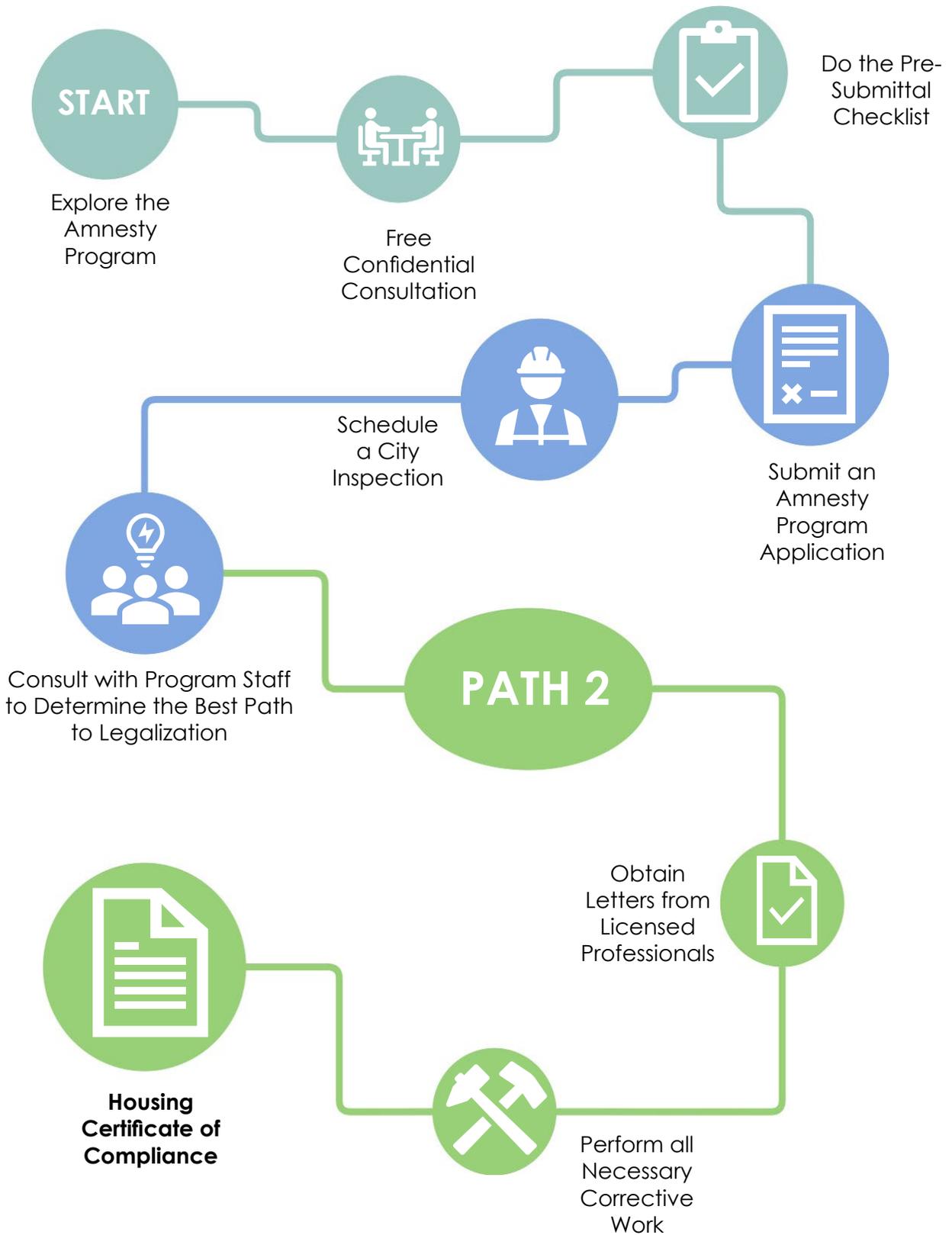
If an applicant chooses not to seek a Housing Certificate of Compliance, the owner may request a 5-year delay of code enforcement for violations that do not present a threat to public health and safety. Under no circumstances can a 5-year delay be requested for abatement of fire, life and health safety violations.

Applicants seeking legalization through issuance of a Housing Certificate of Compliance will also be required to hire licensed professionals and submit inspection certification forms verifying that the electrical, mechanical, and plumbing are in good working order and/or identifying potential violations. Applicants may also be required to obtain building permits to perform specific corrective work.

Required Documentation and Permits:

- A completed Amnesty Program Application
- Documentation regarding construction/conversion date
- Documentation confirming owner occupancy either in primary unit or JADU, if the unpermitted unit is a JADU
- If corrective work requires a permit, applicants must obtain a building permit and receive any necessary inspections and approvals
- Documentation from licensed professionals certifying that the unpermitted unit's electrical, mechanical, and plumbing are in good working order and the unit has no major structural deficiencies

PATH 2 - CERTIFICATE OF COMPLIANCE FLOWCHART



PROGRAM FEES

Fee Description	Standard Building Permit Process (Path 1)	Certificate of Compliance (Path 2)
Pre-Application Consultation	No fee	No fee
Amnesty Program Application Fee*	\$590	\$590
Amnesty Reinspection Fee	-	\$250
Address Assignment	\$250	\$250
Building Permit Plan Check and Inspection Fees	Based on % of permit valuation for total estimated construction/ conversion costs	Based on % of permit valuation for <u>specific corrective work only</u>

*The Amnesty Permit Fee includes a filing fee, Amnesty Permit Application fee, Initial Inspection fee, and Technology fee.

Applicants may also be required to hire licensed design professionals to draft plans and other construction documents necessary for permit issuance, and licensed contractors to perform corrective work for legalization of the unit.

BUILDING CODE STANDARDS

Per California Health and Safety Code - HSC § 17958.12, a Building Official has the discretion to apply the building standards that were in effect at the time a residential unit was constructed. This is permissible under the authority to grant modifications on a case-by-case basis and the authority of a building department to approve a material, appliance, installation, device, arrangement, or method if it finds that the design is satisfactory and equivalent to the building standards code.

When applying for a building permit to fully legalize an unpermitted dwelling unit under Path 1, Amnesty Program applicants may choose to have their plans reviewed under current code requirements or the code cycle in place at the time the unpermitted unit was constructed or converted. Proof of construction or conversion date will need to be provided by the applicant during the application submittal process.

CONSTRUCTION / CONVERSION DATE

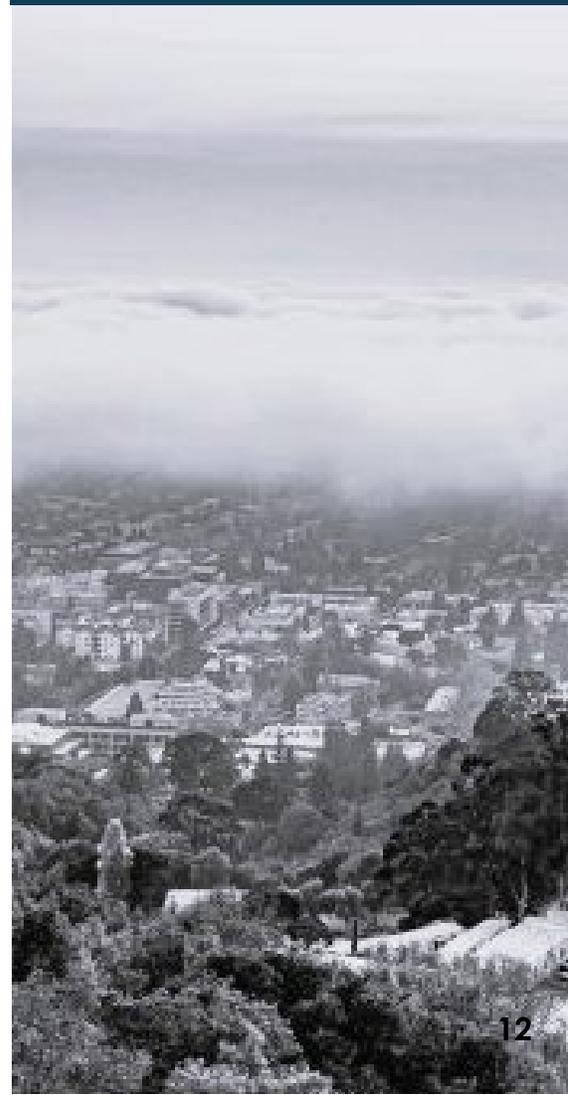
Only unpermitted dwelling units constructed or converted prior to January 1, 2020 are eligible for participation under the Amnesty Program. The construction/conversion date may be established with one or more of the following forms of documentation:

- A signed/stamped letter from a licensed professional
- The County Assessor's initial date recognizing the unpermitted dwelling unit
- Escrow documents identifying the unit and the year of construction
- Prior official Building, Planning, or Code Enforcement records of the unit
- Real estate transfer disclosure forms for unpermitted unit

If the above information is not available then a combination of the following can be utilized to establish the construction/conversion date

- Insurance documents
- Notarized letters from previous owners or tenants
- Other documents will be considered on a case by case basis
- Photos (if available) dated, showing approximate time of construction

Pursuant to Berkeley Municipal Code Section 19.40.010.7 when a building permit record for a residential unit does not exist, the Building Official is authorized to make a determination of when the residential unit was constructed and then apply the building standards in effect when the residential unit was determined to be constructed or the current building standards, whichever is the least restrictive, provided the building or portion thereof does not become or continue to be a substandard or unsafe building. The Building Official is authorized to accept reasonable alternatives to the requirements of the prior or current code editions when dealing with unpermitted dwelling units.



FREQUENTLY ASKED QUESTIONS

How much will it cost to legalize my unit?

Amnesty Program applicants will be required to pay a \$590 Amnesty Program Application Fee (initial inspection included) and a \$250 Address Assignment Fee. For applicants pursuing legalization of their unpermitted unit under Path 2, a \$250 Amnesty Reinspection Fee may apply. Other fees may be applicable to fully legalize an unpermitted unit including building permit fees.

Can my Certificate of Compliance be revoked?

Yes, if future Notice of Violations are issued as a result of a Request for Service or a Rental Housing Safety Program (RHSP) proactive inspection, and these violations are left unaddressed, then your Certificate of Compliance may be revoked. Owners have 30 days from issuance of a Notice of Violation to address fire and life safety and Housing Code violations.

- Owners issued a Certificate of Compliance must meet all minimum life safety and Housing Code requirements to retain certification and legal status, and avoid code enforcement proceedings.

Can I request a 5-year delay of code enforcement?

Per California State law, property owners are allowed to request up to a 5-year delay of code enforcement to bring the unpermitted unit into compliance with a specified building standard. Under no circumstances can these delays be applicable to the abatement work needed to address fire, life and health safety violations.

To request your 5-year delay of code enforcement, submit an ADU Code Enforcement Delay Request Form to program staff. You can submit the form in-person to 1947 Center St, 3rd floor (Permit Services Center) or email to Planning@berkeleyca.gov.

What happens if a property is sold after a request for a 5-year delay in code enforcement was submitted?

The new owner would then be responsible for completion of all the necessary correction work. The 5-year code enforcement delay corresponds to the building, not the current owner.

Will my entire property be inspected or just the unpermitted dwelling unit?

The purpose of the program is to ensure the safety and habitability of the unpermitted unit. The primary unit and the surrounding property will not be inspected unless such inspections are necessary to adequately evaluate the unpermitted unit.

Do I need a new address assignment for my unpermitted dwelling unit?

Owners of all ADUs, except Junior ADUs, seeking legalization through the standard building permit process or issuance of a Housing Certificate of Compliance will need a new address assignment. Submit the [address assignment request](#) for your ADU to the Building and Safety Division with a non-refundable payment of \$250 prior to issuance of the building permit or Certificate of Compliance.

Will my unpermitted dwelling unit need to meet current Energy and Green Building Codes?

Amnesty Program applicants may not be required to meet current Energy Efficiency and Green Building Code requirements. Compliance with current energy requirements may be required when reasonably feasible, such as if a window is required to be made larger, or simply replaced, a dual-pane window shall then be installed.

Will I need to open up walls or ceilings for the inspections?

Selective opening of walls or ceilings may be required at the discretion of the Inspector, in order to determine if all systems meet code and program requirements.

Can I rent out my unpermitted unit as a short-term rental?

No.

If I decide that meeting all requirements to legalize my unit will be too expensive, can I back out of the program?

Per California State law, property owners are allowed to request up to a 5-year delay of code enforcement to bring the unpermitted unit into compliance with a specified building standard. Under no circumstances can these delays be applicable to the abatement work needed to address fire, life and health safety.

Applicants who do not address minimum life safety violations will be subject to code enforcement.

CONTACT INFORMATION

AMNESTY PROGRAM COORDINATOR
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Phone #: (510) 981-7500
Email: permits@cityofberkeley.info
1947 Center Street, 3rd Floor, Berkeley, CA
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BUILDING AND SAFETY
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HELPFUL RESOURCES

Link to City of Berkeley's ADU/JADU page: <https://berkeleyca.gov/construction-development/permits-design-parameters/permit-process/residential-additions-and>

ADU Ordinance Summary Table: <https://berkeleyca.gov/sites/default/files/documents/2022-08-29%20ADU%20Tables.pdf>