



ASSOCIATION OF BAY AREA GOVERNMENTS
METROPOLITAN TRANSPORTATION COMMISSION



Technical Assistance
for Local Planning
HOUSING

Amnesty for Unpermitted ADUs

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This memo provides guidance on developing and implementing an Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) legalization or amnesty program. Under California state law, jurisdictions must allow homeowners to legalize most ADUs and JADUs originally built before January 1, 2020, without the required permits. However, jurisdictions have considerable flexibility in program implementation.

In many jurisdictions there are existing unpermitted ADUs, some of which may pose health and safety risks for tenants. Recent studies found that in San José, 78% of detached ADUs constructed between 2016 and 2020 were unpermitted.¹ Amnesty programs can help homeowners legalize their ADUs and JADUs to avoid future noncompliance issues, remedy existing substandard health and safety conditions (protecting both tenant and landlord) and may help jurisdictions more accurately understand rental availability and affordability.

Often jurisdictions may find more unpermitted ADUs in lower-income neighborhoods.² Amnesty programs can directly support these low-income homeowners and renters to prevent displacement and improve overall housing quality in the community.

What is ADU Amnesty?

ADU amnesty refers to the process of legalization and issuance of permits for an ADU or JADU originally built without permitting approval. State law requires that jurisdictions issue permits for certain existing ADUs and JADUs originally built prior to January 1, 2020, and eliminate financial penalties to property owners who opt to legalize their unpermitted ADU or JADU. Often the jurisdiction issues some type of documentation to recognize that the ADU or JADU may not have been built to satisfy zoning and construction code requirements but has been inspected and meets basic health and safety requirements (for example, a “certificate of compliance” or “certificate of occupancy” issued by the building department).

The goal of an ADU amnesty program is to allow an ADU or JADU that was built without proper permits to be:

1. Inspected
2. Brought into compliance with the health and safety standards specified in [Health and Safety Code Section 17920.3](#)
3. Eligible for permits to correct substandard health and safety conditions and legalize the unit
4. Assessable for tax purposes
5. Insurable
6. Habitable and rentable

ADU amnesty programs can also be designed to meet related local housing goals, such as improving affordability, protecting tenants and supporting low-income homeowners.

There are policy and legal issues involved with establishing a local amnesty program, and this decision should be made in consultation with elected officials, legal counsel, planning and building staff and code enforcement

¹ Jo, et al. (2024). [Not \(Officially\) in My Backyard: Characterizing Informal Accessory Dwelling Units and Informing Housing Policy with Remote Sensing](#), Journal of the American Planning Association

² Jo, N., et al. (2024). [Not \(Officially\) in My Backyard](#)

officers. Creating a program can help address unsafe units and may help satisfy Regional Housing Needs Allocation (RHNA) requirements. It also gives jurisdictions more control over implementing the law and gives staff clearer direction for how to oversee the process of legalization.

NOTE: The Metropolitan Transportation Commission (MTC) Transit Oriented Communities (TOC) Policy [Protection Policy 7](#) and [Preservation Policy 8](#) Implementation Guides on Preventing Displacement from Substandard Conditions and Associated Code Enforcement Activities provide more information about how to develop proactive code enforcement programs.

What’s Required by State Law?

AB 2533 (2024) codified as [Government Code Section 66311.7](#) (renumbered from Section 66332), requires that jurisdictions create an ADU and JADU legalization process that provides permits for previously unpermitted ADUs and JADUs unless the unit is substandard pursuant to [Health and Safety Code Section 17920.3](#). The law is meant to encourage homeowners to seek permits to legalize ADUs and JADUs by removing barriers and deterrents like unclear requirements or financial penalties. For purposes of this guide, Health and Safety Code Section 17960 *et seq.* will be referred to as the “construction code standards”.

State law does not allow jurisdictions to deny a permit for unpermitted ADUs or JADUs due to violation of construction code standards or for failure to comply with the California ADU statute or local ADU ordinance. Jurisdictions can only deny a permit for an unpermitted ADU or JADU for specified substandard health and safety conditions.

Health and Safety Standards

- Must limit health and safety standards required for permitting to those outlined in [Health and Safety Code Section 17920.3](#).
- Must provide a checklist of these health and safety standards in public information materials, including permit checklists and webpages.

NOTE: The [Regional Housing Technical Assistance \(RHTA\) Unpermitted ADU Checklist Template](#) outlines legal requirements under Health and Safety Code Section 17920.3 and can be used by homeowners and building inspectors to assess if an unpermitted ADU meets Health and Safety Code requirements.

Permit Process

- Must provide a pathway for any unpermitted ADU or JADU built before 2020 to apply for amnesty permits to legalize the unit.
- Cannot deny amnesty permits on the basis of a lack of construction permits, violation of the building code in effect when the project was built, or noncompliance with local or state ADU law.

- May withhold permits to legalize the unit until the homeowner remedies substandard health and safety conditions (must approve necessary permits to remedy substandard health and safety conditions).
- Cannot charge penalty fees.
- Cannot charge connection or impact fees, unless required for utility infrastructure needed to correct substandard building conditions as outlined in construction code standards and the fee would otherwise be allowed under the state ADU law ([Government Code Section 66324\(e\)](#)).

Inspection

- **Prior to application:** Homeowners may obtain an inspection from a licensed private contractor to determine the unit's condition or potential scope of improvements.
- **After receiving application:** Jurisdiction may obtain an additional inspection of the unit to determine compliance with health and safety standards and make recommendations for corrections necessary to legalize the unit.

NOTE: Under state law, homeowners may engage a third-party inspector before applying for permits. Jurisdictions may also consider engaging third-party inspectors for any post-application, jurisdiction-required inspections. For homeowners, this can reduce the perceived threat of code enforcement and improve program trust, and for jurisdictions this can reduce administrative burden. Contracting with a third-party inspector may incur higher costs and requires that jurisdictions clearly communicate the applicable health and safety standards with the inspector. For examples of jurisdictions that employ third-party inspectors, see the Amnesty in Action section at the end of this guide.

Public Information

- Must add information about these requirements to permit checklists and the jurisdiction's website, including the following two items:
 - A publicly accessible checklist of conditions that make a unit substandard under construction code standards.
 - Information explaining that before submitting an application for amnesty permits, homeowners may obtain a confidential third-party code inspection from a licensed contractor assessing conditions and the potential scope of necessary building improvements.

NOTE: The [RHTA Template Public Information Language for ADUs](#) includes customizable information about Unpermitted ADUs.

Establishing Date of Construction

Barring specific health and safety issues resulting in a substandard unit, jurisdictions must approve permits for ADUs and JADUs built before 2020. State law does not dictate what evidence homeowners should provide to establish the date of construction when seeking amnesty permits. Jurisdictions can establish a list of accepted forms of construction proof. Possible evidence jurisdictions may want to consider includes, but is not limited to:

- Utility bills
- Income tax bills
- Dated lease or rental agreements
- Rental receipts
- Dated communication between landlord and tenant(s) showing when the unit was rented
- Written affidavits from neighbors, former owners, or former tenants saying the unit existed prior to 2020
- Contractor bills
- Photos of the unit or unit construction, if the photos can be dated with time stamps or other context clues
- Sales or real estate records that reference the structure

Legal Ambiguities Around Legalization

ADU legalization is addressed in [Government Code Section 66311.7](#), [Government Code Section 66331](#) and [Health and Safety Code Section 17980.12](#). Health and Safety Code Section 17980.12 stipulates that homeowners can request a five-year delay of code enforcement for any construction code violations found in ADUs that are constructed prior to 2020, unless the construction code violation is a threat to health and safety. It is not entirely clear how Health and Safety Code Section 17980.12 interacts with Government Code Section 66311.7, which requires the legalization of unpermitted ADUs even if the ADUs did not comply with the applicable construction code requirements, so long as they meet the Health & Safety Code standards contained in Section 17920.3.

Table 1: Key Differences of Government Code Section 66311.7 and Health and Safety Code Section 17980.12

Statute	Requirements
Government Code Section 66311.7	• Requires jurisdictions to legalize unpermitted ADUs and JADUs unless the unit is deemed substandard under Health and Safety Code Section 17920.3. • Cannot deny a permit because the unit does not meet applicable construction code requirements.

**Health and Safety
Code Section
17980.12**

- Requires jurisdictions to grant five-year delays of code enforcement to ADUs (unless the code violations are a threat to health and safety, in which case jurisdictions can take immediate enforcement action).
- After five years, jurisdictions can require the unit be brought up to code, including applicable construction code requirements.

While one section of the law allows jurisdictions to require homeowners to bring ADUs up to code (after a delay of five years), the other section of law does not allow jurisdictions to deny a permit legalizing an unpermitted ADU because of noncompliance with applicable construction code requirements but rather only allows a denial if the ADU is substandard under Health and Safety Code Section 17920.3.

NOTE: It may be helpful to look at a hypothetical scenario:

A city inspector cites a homeowner for having an unpermitted ADU constructed before January 1, 2020, with construction code violations. The inspector requires that the construction code violations be corrected. None of the construction code violations are a threat to health and safety, but they are expensive. The homeowner instead asks to have their ADU legalized. Under Government Code Section 66311.7, the city is obligated to legalize the unit unless it is substandard under Health and Safety Code Section 17920.3. The city finds that the unit is not substandard, and therefore it is legalized even though it has construction code violations.

Now the homeowner has a permitted ADU with construction code violations. Could the city still require those construction code violations to be fixed? Doing so would seem to contradict the intent of Government Code Section 66311.7, which requires that ADUs be legalized even if they have construction code violations. From a homeowner's perspective, legalizing a unit and then years later requiring expensive repairs may feel like a bait and switch. One reasonable interpretation of the statute is that the city cannot require correction of existing construction code violations once the ADU is permitted under Section 66311.7. However, future violations of the construction code (for example, unpermitted additions that violate construction code) will be subject to enforcement.

Another interpretation would be that the city could still require the construction code violations to be addressed post-permitting. With this interpretation, the city requires the existing construction code violations to be fixed after permitting the ADU. The homeowner, understanding their rights under Health and Safety Code Section 17980.12, requests a five-year delay of code enforcement. The request is granted since the correction of the violation is not necessary to protect health and safety.

There is no case law on how these sections of code interact. Jurisdictions should consult with their city attorney or county counsel on how to approach the interaction of these two statutes, with consideration for local housing goals and community context.

Establishing an ADU Amnesty Program

Minimum Program: Required by State Law

The framework for an ADU Amnesty Program must include the following to meet state law:

- Options for establishing date of construction.
- Checklist of requirements for achieving requisite health and safety standards, which must be posted to the jurisdiction's website.
- Publicly accessible information regarding the option to obtain a third-party inspection prior to applying for a permit.

NOTE: Jurisdictions may be able to leverage an ADU amnesty program to more accurately track unit affordability for RHNA credit by requiring applicants to report how much the unit is rented for. The [ADU Affordability Survey Tool](#) may also be useful for tracking affordability of ADUs. See the [Using ADUs to Satisfy RHNA](#) to learn more about tracking ADUs for RHNA.

Gold Star Program

Jurisdictions can create more robust and accessible programs to encourage participation, improve internal processes, and strive for more equitable outcomes that further local housing goals.

- **Lower barriers to entry**, especially for low-income homeowners. Focus on accessibility, simple requirements and an easy application process to improve program uptake.
- **Give homeowners privacy** to submit anonymous inquiries through a confidential web form or help line.
- **Train inspectors** or create a dedicated inspection team for permit applications. This improves building staff knowledge and helps establish trust with homeowners. Create an ongoing training plan and develop reference sheets for inspectors to use during inspections.
- **Equip inspectors with outreach materials** so that in the event a homeowner receives a citation, inspectors can share program information on first contact.
- **Consider third party inspectors** to reduce the burden on building staff and improve program trust.
- **Plan for outreach** to homeowners, raising awareness and reassuring homeowners that they will not face unnecessary barriers. Work with public information officers to plan an outreach budget and deliver accessible web resources and effective outreach to vulnerable communities.
- **Partner with nonprofits and community groups** to offer interpretation services, improve program trust, deliver incentives, increase outreach and strategize best practices for specific communities.
- **Create robust education tools** such as a checklist of materials required for amnesty applications, an overview or flowchart explaining program participation, and information on any financing and technical assistance resources.

NOTE: The Program Administration Checklist and the Resources section at the end of this guide provide further guidance on establishing a program. The [RHTA ADUs Putting it All Together memo](#) contains strategies for effective public information.

Incentives for Housing Affordability

Jurisdictions can create incentives to encourage homeowners to apply for permits, and in some cases ADU amnesty programs can leverage these incentives to improve and protect affordability for renters. While a pathway to legalization must be made available to all permit applicants, jurisdictions may want to consider providing additional benefits for homeowners who agree to limit rent increases or adopt affordability restrictions.

These incentives are often especially appealing to low-income homeowners who may not have access to the financial resources needed to effectively update a unit, so offering additional incentives can create more equitable outcomes for low-income households. Unpermitted units are also often rented at more affordable rates, providing a valuable source of affordable housing.

Consider exploring these questions with community organizations:

- What resources do people need to be able to afford the legalization process?
- How can an amnesty program help minimize displacement of low-income tenants?

Homeowners receive an automatic incentive for pursuing permits for their ADU and JADU because state and local ADU and JADU standards are waived. Some other incentives jurisdictions can offer include:

- Extended construction date threshold that includes ADUs and JADUs built after 2020, such as allowing ADUs and JADUs built more than a certain number of years prior to the current date.
- Low-interest loans or grants for bringing an ADU or JADU up to health and safety standards or correcting applicable construction code violations.
- Project management support, usually through partnership with a nonprofit organization.
- One-on-one, ongoing support for navigating the permitting process.
- Landlord training and support to find tenants.

NOTE: The [RHTA ADU Affordability from Planning to Implementation Memo](#) provides a detailed overview of building and implementing affordability programs. Affordability programs can be combined with amnesty programs to better serve low-income communities and create new housing opportunities for low-income renters.

Checklists for Developing an ADU Amnesty Program

These checklists outline the steps to develop a **gold star ADU Amnesty Program**, including program planning and internal permit review. See the Resources section at the end of this memo for additional templates and tools.

Planning an ADU Amnesty Program

- ☐ **Prioritize early collaboration** with Building and Planning departments and the City Attorney or County Counsel, as well as relevant agencies like the Fire Department. Discuss the housing needs of your jurisdiction, the goals of your program, and your internal capacity. Keeping everyone on the same page will reduce confusion and streamline internal communication.
- ☐ **Research the needs, impacts and costs of an amnesty program.** Estimate the potential number of unpermitted units. Talk to inspectors, planners, community service providers and housing advocates.
- ☐ **Consider affordability incentives and support for homeowners and tenants**, especially those in low-income households. Seek feedback from community groups on local needs.
- ☐ **Consider partnering with community-based organizations** to answer questions from potential applicants and support homeowners through the legalization process.
- ☐ **Consider partnering with contractors and tradespeople** to spread the word about legalization programs to homeowners.
- ☐ **Budget for outreach and administration.** Consider staff capacity, potential partnerships, and ongoing outreach. Designate staff for program training and set up ongoing partnerships with staff from ADU and housing affordability programs.
- ☐ **Establish how amnesty requests will be handled.** Consider who will be involved in receiving an amnesty request and which departments will need to review the application.
- ☐ **Establish how a legalized unit is recorded.** For unpermitted ADUs that have no construction code violations and comply with existing ADU ordinances, consider issuing a Certificate of Occupancy and record similarly to an ADU that used the traditional permitting process.
- ☐ For units that do not comply with construction codes or the ADU ordinance, jurisdictions may still use a Certificate of Occupancy (COO) or may consider creating an alternative recordation status that indicates the unit has been inspected for health and safety standards and is now a legal unit. The new status should allow the unit to be rented legally and be subject to property taxes. **Create a process for establishing the construction date** for the ADU. See the section on Establishing Date of Construction for options.
- ☐ **Create a checklist of health and safety criteria** by which an ADU or JADU would be deemed substandard. See the Resources, Templates and Tools section for a template checklist.
- ☐ **Create an application form** for homeowners applying to legalize an ADU. Consider requiring the homeowner to fill out the [ADU Affordability Survey Tool](#) as part of the application process for tracking unit affordability.
- ☐ **Teach staff and departments about the new process** so they are ready to accept and review applications and start inspections.

- ☐ **Post information to the jurisdiction website.** Public information that is easy to access and understand is key to getting homeowners comfortable with the idea of legalizing an unpermitted ADU.

The [RHTA Unpermitted ADU Checklist Template](#) may be used as a checklist of criteria or an application form, or both. The ABAG Transit Oriented Communities Policy includes implementation guidance for Preventing Displacement from Substandard Conditions and Associated Code Enforcement Activities. See [Protection Policy 7](#) and [Preservation Policy 8](#).

The Permitting Process for Legalizing ADUs

The administrative process for an amnesty program can be split into two tracks: ADUs that require rehabilitation for health and safety, and ADUs that meet health and safety standards and do not require rehabilitation. Generally, the steps of the permitting process include:

- ☐ **Applicant requests information** to legalize an unpermitted ADU or JADU.
- ☐ **Jurisdiction shares permitting information** with the applicant:
 - Application process information and materials including a health & safety checklist.
 - *[If applicable]* Affordability program incentives and requirements information.
- ☐ **Jurisdiction conducts inspection** and/or reviews third-party inspection of the ADU or JADU.
- ☐ **If improvements are required, the jurisdiction provides a list of required health & safety improvements** and applicant must make improvements. *[If applicable]* Jurisdiction provides assistance or incentives as part of the affordability program.
- ☐ **If no improvements are required**, or after required improvements are complete, the applicant submits all permit application materials. At this point the jurisdiction may conduct an inspection to ensure improvements have been made and no health and safety concerns exist.
- ☐ **If no remaining health and safety issues remain, jurisdiction issues a COO or other certification.**
- ☐ *[If applicable]* Jurisdiction conducts ongoing monitoring for affordability requirements.

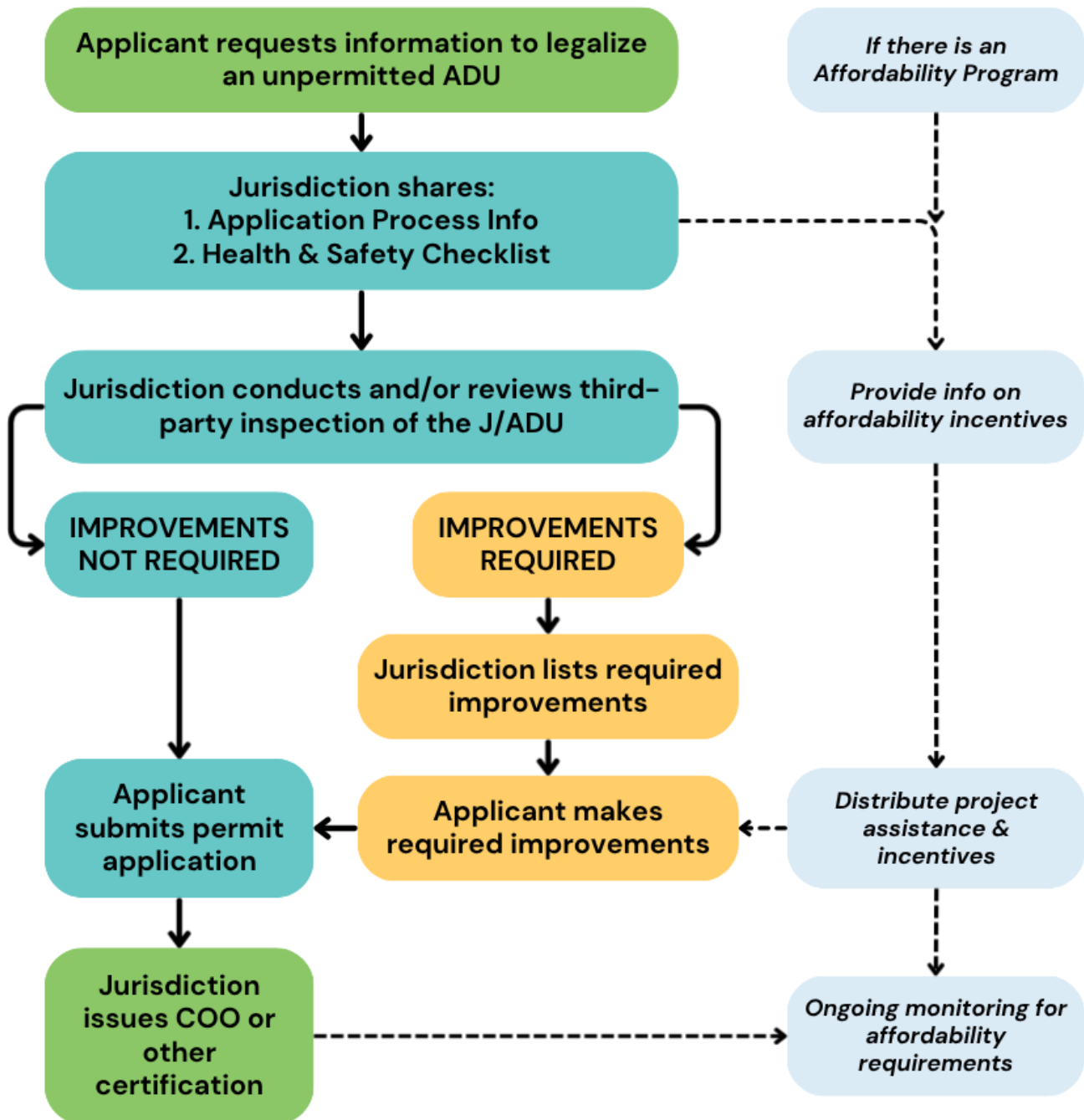


Figure 1: Flow Chart Showing the Permitting Process Steps (graphic representation of the steps in the section above “The Permitting Process for Legalizing ADUs.”)

Preparing for Each Step of the Permitting Process

Pre-Intake & Public Information:

Think about how to offer information to potential applicants in a way that encourages them to apply.

Important considerations include:

- ☐ **Create a process for homeowners to request information.** Allow this service to be used anonymously if possible; this gives homeowners peace of mind that exploring their options won't lead to immediate code enforcement action. Consider a webform, helpline, or email contact that homeowners can reach out to anonymously and make it clear that these communications will remain anonymous.
- ☐ **Inform potential applicants that they can engage a third-party licensed inspector** to provide a confidential analysis on the existing conditions of the ADU or JADU.
- ☐ **[If applicable] Provide affordability program information** at this step.

Intake:

Outline a process for homeowners to access ADU amnesty resources and begin a permit application. Steps should include:

- ☐ **Initial homeowner inquiry** either through voluntary outreach or referral from code enforcement.
- ☐ **Direct homeowners to resources** including health and safety standards checklists, information on establishing date of construction and an overview of the permitting process.
- ☐ **Internal review of date of construction documentation.** Conducting this review during intake determines whether the homeowner is eligible for the ADU Amnesty Program. Consider doing this confidentially to encourage engagement with potential applicants.

Inspections:

Plan for a different inspections process based on whether the ADU will require updates for health and safety. Provide a process overview to both homeowners and inspectors to reduce confusion and timeline delays.

Prepare a process to:

- ☐ **Receive homeowner application to legalize the ADU or JADU** in order to begin the inspections process. Make sure to allow applicants to submit third-party inspections that may have been conducted.
- ☐ **Conduct or review third-party initial inspection of the ADU** to check for health and safety issues.
- ☐ **Document required health and safety improvements** using the health and safety standards checklist and share with the applicant.
- ☐ **Issue necessary permits that are requested** to make health and safety improvements.
- ☐ **[If applicable] Deliver loan or project assistance** if employing an incentive program that provides homeowner support.

- ☐ **Conduct the second inspection**, if required, to confirm that health and safety improvements have been completed.
- ☐ **Finalize permits** and send certificate of occupancy or other recordation certificate to the applicant.

Prepare an internal process for each of the following steps:

- ☐ **Explain the permit process** to the applicant using the permit process checklist.
- ☐ **Complete the permit recordation process** within the planning and/or building departments.
- ☐ **[If applicable] Confirm affordability incentives and requirements** are being met.

Amnesty in Action Across California

The following jurisdictions have ADU amnesty programs that may be useful to review when planning for a local amnesty program.

Program	Notable Highlights
Atherton ADU Amnesty Program	Detailed step-by-step explanation.
Berkeley Amnesty Program for Unpermitted Dwelling Units	- Comprehensive public information materials. - Offers confidential consultations with designated amnesty program staff. - Differentiates between Certificate of Occupancy and Certificate of Compliance. - Allows five-year delay of code enforcement.
Citrus Heights ADU Amnesty Program	- Provides confidential eligibility assessment. - Provides a Self-Assessment Checklist.
Marin County ADU Amnesty Program Summary	Previously offered an incentive program for the legalization of unpermitted ADUs, including financial support, dedicated staff and ongoing outreach and marketing.
Milpitas Safe ADU Legalization Program	Designated Safe ADU Program Coordinator.
Oakland Legalization of Unpermitted ADUs	- Previously offered an Accessory Dwelling Unit Loan Program for the legalization of unpermitted ADUs. - Comprehensive public information. - Allows five-year delay of code enforcement.

Pasadena Second Unit ADU Program	Program offers comprehensive assistance with finance, design, permitting and construction in exchange for affordability commitments. Loans may be used to cover rehabilitation costs for bringing an unpermitted ADU into compliance with health and safety standards.
Rohnert Park Amnesty Program for Unpermitted ADUs	- Offers confidential assessment. - Differentiates between Certificate of Occupancy and Certificate of Compliance.
San Diego ADU Legalization	Detailed webpage explaining state law and permit requirements.
Santa Cruz County AB 2533 Webpage	Detailed step-by-step process overview.
Truckee Existing, Unpermitted ADUs Process	Truckee's ADU Mini-Grant Program provides \$1,000 to assist with construction and/or permitting costs associated with bringing unpermitted ADUs or JADUs into compliance.

Regional Housing Technical Assistance Program Links

RHTA ADU Work Group Resources & Materials

[ADU Work Group Session Materials Webpage](#)

[ADU Technical Assistance Guidance, Memos & State Law Resources Webpage](#)

- [Unpermitted ADU Permit Information Checklist Template](#)
- [California ADU State Laws Summary & Checklist](#)
- [ADU Affordability from Planning to Implementation Memo](#)
- [Separate Conveyance of ADUs as Condominiums Memo](#)
- [ADUs Putting It All Together Memo](#)
- ADU Model Ordinance (coming soon)

[ADU Technical Assistance Public Information Resources Webpage](#)

- [ADU Mini Guide for Homeowners Handout \(template\)](#)
- [Language for ADU Public Information & Websites \(template\)](#)
- [Glossary and FAQ Handout \(template\)](#)
- [Spanish Glossary and FAQ Handout \(template\)](#)
- [Building an ADU Slide Deck for Meetings \(template\)](#)
- [Social Media Materials for ADU Info and Events \(template\)](#)
- [Graphics and Icons Image Library](#)

[AB 1332 Pre-approved ADU Plans Information Sessions & Resources Webpage](#)

Other RHTA Guidance and Resources

- Preventing Displacement from Substandard Conditions and Associated Code Enforcement Activities [Transit Oriented Communities \(TOC\) Protection Policy 7](#) and [TOC Preservation Policy 8](#) Implementation Guides
- [ADU Affordability Survey Tool](#)
- [Using ADUs to Satisfy RNHA](#)

Relevant Bills & Code

- [Government Code Section 66311.7](#)
- [Government Code Section 66331](#)
- [Health and Safety Code Section 17980.12](#)
- [Health and Safety Code Section 17920.3](#)