

CONCURRENCE IN SENATE AMENDMENTS

AB 2221 (Quirk-Silva)

As Amended August 24, 2022

Majority vote

SUMMARY

Makes numerous changes to the laws governing accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs), as specified.

Senate Amendments

- 1) Align the height limits of this bill to align with those proposed in SB 897 (Wieckowski) of the current legislative session, which would increase the minimum ADU height limit that a local agency may impose, as follows:
 - a) For ADUs attached to a primary dwelling, increases the minimum height limit from 16 feet to the lower of 25 feet or the local agency's applicable height limit. Provides that the local government could specify that such ADUs are no more than two stories tall;
 - b) For a detached ADU within a half-mile walking distance of a major transit stop or a high-quality transit corridor, increases the minimum height limit from 16 feet to 18 feet for a detached ADU. Requires that a local agency must allow an additional two feet in height to accommodate a roof pitch on an ADU that is aligned with the roof pitch of the primary dwelling unit; and
 - c) For detached ADUs that do not meet the criteria in (a) but are on a lot that has an existing multifamily, multistory dwelling, increases the minimum height from 16 feet to 18 feet.
- 2) Specify that a local agency must "approve or deny" an ADU or JADU within the proscribed timeframes, rather than they must "act." Add that, if a permitting agency denies an application for an ADU or JADU, the permitting agency must return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.
- 3) Move into the currently operative version of Government Code Section 658582.2 the ability for local agencies to impose owner-occupancy standards after January 1, 2025. Enables the elimination of the version of Government Code Section 65852.2 that would have become operative as of January 1, 2025.
- 4) Remove the proposed requirement that, for a new detached ADU, the local agency could not impose any objective planning standards that conflict with the ability for an ADU to be at least 800 square feet and 16 feet in height.

COMMENTS

California's Housing Crisis: California is in the midst of a housing crisis. Only 24% of households can afford to purchase the median priced single-family home – 50% less than the

national average, and 33% less than at the start of the pandemic.¹ Over half of renters – and 80% of low-income renters – are "rent burdened," in households paying more than 30% of their income toward housing, which means they have less to pay for other essentials such as food, transportation, and health care.² In 2020, over 160,000 Californians experienced homelessness on a given night.³

A major cause of our housing crisis is the mismatch between the supply of housing and the need for housing. While there are various estimates of the size of this mismatch, they all concur that the deficit is in the millions of units. The Statewide Housing Plan adopted by HCD earlier this year, determined that, to address this mismatch, in the next eight years, California needs approximately 2.5 million units of housing, including one million units affordable to lower income households.⁴ That would require production of over 300,000 units a year. According to HCD, the state needs 180,000 units of housing built a year to keep up with demand – including about 80,000 units of housing affordable to lower-income households. By contrast, production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing.⁵

Second Units as a Solution: In California, most of the land suitable for housing has already been developed. The remaining developable areas are typically far from job centers, in high-risk wildfire areas, and/or land that is environmentally sensitive or important for agriculture. Therefore, addressing the housing crisis in an environmentally responsible way will require an increase in density in already developed areas.

Increasing density can occur in multiple ways. In recent decades, this has often meant high-density housing near major transit stops. However, such housing is both expensive to build, and limited in geographic scope. Recently, there has been a national trend to allow for more "gentle density," e.g., ADUs, duplexes, four-plexes, townhomes, and other moderately dense developments that were common before the imposition of zoning. In recent years, the Legislature has taken a more active role in facilitating such gentle density. In 2016 SB 1069 (Wieckowski), Chapter 720, Statutes of 2016, and AB 2299 (Bloom), Chapter 735, Statutes of 2016, permitted accessory dwelling units (ADUs) by right on all residentially-zoned parcels in the state. By permitting an ADU as a second unit on all single-family lots, these laws effectively doubled their allowed density. Last year, SB 9 (Atkins), Chapter 162, Statutes of 2021, furthered this trend by making duplexes by-right on single-family zoned properties.

These state laws have transformed ADUs from being less than one percent of permitted new construction before 2017 to now being approximately 10%, at over 12,000 units per year.⁶ The number of ADUs is expected to continue growing as the ADU construction and financing industry matures, which will help meet the market feasibility for ADUs that is estimated to be approximately 1.8 million units in California.⁷

¹ [California Association of Realtors Housing Affordability Index](#). Data for the 3rd quarter of 2021.

² HCD, [California Statewide Housing Plan](#), February 2018, Table 1.2

³ [The 2020 Annual Homeless Assessment Report \(AHAR\) to Congress \(huduser.gov\)](#)

⁴ Data from [Roadmap Home 2030](#), California Housing Partnership Corporation and Housing California, 2021.

⁵ <https://www.hcd.ca.gov/policy-research/housing-challenges.shtml>

⁶ Per HCDs "APR Dashboard", page 11: <https://www.hcd.ca.gov/implementation-and-apr-dashboard>

⁷ Monkonnen et al, 2020, *One to Four: The Market Potential of Fourplexes in California's Single-Family Neighborhoods*, UCLA Working Paper Series: <https://www.lewis.ucla.edu/research/market-potential-fourplexes/>

Additionally, because ADUs are typically smaller than the average home in a community, they tend to be more affordable than other market-rate units, thereby better serving lower income households. A survey of ADU owners in coastal markets found that over a third of the owners were renting their ADUs at a rate affordable to lower income households.⁸ As such, ADUs have become an important part of the addressing the state's affordable housing needs.

Challenges in Implementing ADU Law: It has been five and a half years since the state made ADUs and JADUs permitted by right. In that time, a substantial amount of knowledge and expertise has been developed by invested parties, such as ADU developers, financiers, and regulators such as local planning and permitting staff, special districts, and utilities, and HCD. Not surprisingly, these parties have been able to identify areas of the law that could benefit from clarification or where existing law does not facilitate the timely permitting of ADUs and JADUs envisioned by the enabling legislation.

This bill provides multiple measures to address some of the identified friction points. First, it defines "permitting agency" to mean "any entity that is involved in the review a permit for an ADU or JADU and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts." In practice, the concept of "permitting agency" has centered on the local agency that receives the ADU building permit, making the local agency responsible for the existing timelines in the law. However, a building permit for an ADU or JADU often needs approval from additional bodies, including special districts and utilities that have separate governance structures and operations from the local agency. These entities are often not held to the same 60-day timeline as local agencies, which can result in delays for ADU and JADU projects and present a challenge for local governments to manage entities beyond their control. By including special districts and utilities in the definition of permitting agency, this bill would require that these entities meet the timelines specified in this bill.

Next, this bill specifies what it means for a permitting agency to "act" on an application. One change is to clarify that an action includes decisions regarding the service of an ADU or JADU with utilities, in addition to decisions regarding whether to grant a permit for its creation. Additionally, this bill provides clarity regarding the action itself. Currently, the law says that a permitting agency must act within 60 days, but does not specify what it means to act. This bill clarifies that to "act," a permitting agency must approve the permit or return a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.. This change will help reduce the time spent by all sides reviewing and revising applications.

In addition to these procedural changes, this bill attempts to make it easier to build ADUs in two ways. First, it prohibits local governments from imposing front setback standards that make it impossible to build a new ADU. Second, it incorporates the proposed changes to ADU height limits that are proposed in SB 897 (Wieckowski, 2022). This change would facilitate two-story ADUs in certain locations that are amenable to that height, such as near transit, when the ADUs are part of a multi-story multifamily project, or when the ADU is attached to the primary home;

⁸ Chapple et al, Implementing the Backyard Revolution: Perspectives of California's ADU Owners, UC Berkeley Center for Community Innovation, April 2021, Table 3: <https://www.aducalifornia.org/wp-content/uploads/2021/04/Implementing-the-Backyard-Revolution.pdf>

According to the Author

"Before the COVID 19 pandemic, our state was facing the nation's worst housing crisis and in the last two years we have seen several families become housing insecure. Some Californians have had their homes foreclosed on, while others are at a greater risk of homelessness. Homeownership rates in California are the second lowest in the nation. Last year, California broke the \$800,000 median home price mark for the first time in history. Accessory dwelling units (ADUs) can play an important role in solving California's complex housing crisis. AB 2221 would make it easier to build ADUs by clarifying elements of existing law."

Arguments in Support

Supporters of this bill argue that it would help expedite development of ADUs, which are a critical part of solving the state's housing crisis. According to CA YIMBY (the sponsor of this bill), "These changes will help homeowners get access to ADUs and speed the development of housing across California."

Arguments in Opposition

Opponents of the bill argue that the bill goes too far in pushing a use that is meant to be "accessory," particularly as it relates to allowing ADUs in front setbacks. According to the City of Newport Beach, "this will have the unintended consequence of completely changing the character of all neighborhoods."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

No state costs. Local costs resulting from this bill are not reimbursable by the state because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates.

VOTES:**ASM HOUSING AND COMMUNITY DEVELOPMENT: 7-0-1****YES:** Wicks, Seyarto, Carrillo, Gabriel, Kalra, Quirk-Silva, Ward**ABS, ABST OR NV:** Kiley**ASM LOCAL GOVERNMENT: 7-0-1****YES:** Aguiar-Curry, Lackey, Bloom, Ramos, Luz Rivas, Robert Rivas, Voepel**ABS, ABST OR NV:** Boerner Horvath**ASM APPROPRIATIONS: 15-0-1****YES:** Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Voepel, Mike Fong, Fong, Gabriel, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson**ABS, ABST OR NV:** Eduardo Garcia**ASSEMBLY FLOOR: 74-0-4****YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon**ABS, ABST OR NV:** Berman, Boerner Horvath, Nguyen, O'Donnell**UPDATED**

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