

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Buffy Wicks, Chair

AB 2221 (Quirk-Silva) – As Amended March 29, 2022

SUBJECT: Accessory dwelling units

SUMMARY: Clarifies and expands requirements for approval of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs). Specifically, **this bill:**

- 1) Specifies that the requirement for a permitting agency to “act” on an application means either to return the approved permit application or to return in writing a full set of comments to the applicant with a comprehensive request for revisions.
- 2) Defines “permitting agency” to mean any entity that is involved in the review of an ADU permit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.
- 3) Adds front setbacks to the list of local development standards that local governments cannot impose if they would preclude construction of an attached or detached ADU of at least 800 square feet, that is at least 16 feet in height, and that has at least four-foot side and rear yard setbacks.
- 4) Specifies that, in ministerially approving an application for a building permit to create one detached, new construction ADU on a lot with a single-family dwelling in a zone that allows residential use, a local agency must not impose any objective planning standards that conflict with the ability for the ADU to be at least 800 square feet, at least 16 feet in height, and have at least four-foot side and rear yard setbacks.

EXISTING LAW: Requires a local agency to ministerially approve an application for a building permit within a residential or mixed-use zone to create one or more ADUs or JADUs, as specified (Government Code Sections 65852.2 and 65852.22), including that:

- 1) An ADU is defined to mean an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It must include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated on. An ADU also includes an efficiency unit and a manufactured home.
- 2) A JADU is defined to mean a unit that is no more than 500 square feet in size and is contained entirely within a single-family residence. A JADU may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
- 3) A permit application for an ADU or JADU must be considered and approved ministerially without discretionary review or a hearing, as follows:

- a) If there is an existing single-family or multifamily dwelling on the lot, the permitting agency must act on the application to create an ADU or JADU within 60 days from the date the local agency receives a completed application;
 - b) If the permit application to create an ADU or JADU is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the ADU or JADU until the permitting agency acts on the permit application to create the new single-family dwelling;
 - c) If the applicant requests a delay, the 60-day time period must be tolled for the period of the delay; and
 - d) If the local agency has not acted upon the completed application within 60 days, the application must be deemed approved.
- 4) A local agency may establish local development standards for both attached and detached ADUs, except that they cannot establish the following:
- i. A minimum square footage requirement for either an attached or detached ADU that prohibits an efficiency unit.
 - ii. A maximum square footage requirement for either an attached or detached ADU that is less than 850 square feet, or 1,000 square feet for an ADU that provides more than one bedroom.
 - iii. Any of the following local development standards if they would preclude the construction of an attached or detached ADU of least 800 square feet that is at least 16 feet in height and has four-foot side and rear yard setbacks:
 - I. Any other minimum or maximum size for an ADU;
 - II. A requirement on size based upon a percentage of the proposed or existing primary dwelling;
 - III. Limits on lot coverage;
 - IV. Limits on floor area ratio;
 - V. Limits on open space; and
 - VI. Minimum lot size
- 5) A local agency must ministerially approve an application for a building permit within a residential or mixed-use zone to create one detached, new construction ADU that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. For such ADUs, the local agency may impose the following conditions:
- a) A total floor area limitation of not more than 800 square feet; and
 - b) A height limitation of 16 feet.

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: 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.”

California’s Housing Crisis: California is in the midst of a housing crisis. Only 24 percent of households can afford to purchase the median priced single-family home – 50 percent less than the national average, and 33 percent less than at the start of the pandemic.¹ Over half of renters – and 80 percent of low-income renters – are “rent burdened,” in households paying more than 30 percent 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 and demand 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. One such analysis from 2021 determined that, to address this mismatch, California needs approximately 2.6 million units of housing, including 1.2 million units affordable to lower income households.⁴ And according to the state’s Department of Housing and Community Development (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, further exacerbating the housing crisis.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)

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>

and AB 2299 (Bloom) 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) 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 percent, 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

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 slightly more than five 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 specifies what it means for a permitting agency to “act” on an application. 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 in writing to the applicant with a comprehensive request for revisions. This change will help reduce the time spent by all sides reviewing and revising applications.

Next, this bill would defines “permitting agency” to mean “any entity that is involved in the review of an ADU permit 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

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/>

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>

utilities in the definition of permitting agency, this bill would require that these entities meet the timelines specified in the bill.

Finally, this bill clarifies the ways in which a local government can and cannot use objective standards to regulate ADUs. Specifically, the bill says that local governments cannot apply front setback requirements if they would preclude construction of an attached or detached ADU of least 800 square feet that is at least 16 feet in height and has with four-foot side and rear yard setbacks.

Arguments in Support: Supporters of the 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 the bill), “These changes will help homeowners get access to ADUs and speed the development of housing across California.”

Arguments in Opposition: The opponent of the bill, Catalysts for Local Control, argues that it would cause work for local governments without resulting in a significant increase in affordable housing. According to Catalysts for Local Control, “city staff work under difficult conditions, yet you would add to their workload a requirement to write comprehensive explanations to developers.”

Related Legislation:

AB 916 (Salas, 2021). This bill prohibits a local agency from establishing by ordinance a maximum height of less than 18 feet for an accessory dwelling unit (ADU) on a lot that has an existing multifamily and multistory dwelling. It is pending referral in the Senate.

AB 68 (Ting), Chapter 655, Statutes of 2019, AB 881 (Bloom), Chapter 659, Statutes of 2019, and SB 13 (Wieckowski), Chapter 653, Statutes of 2019: Collectively, these bills make changes to ADU and JADU laws, including narrowing the criteria by which local jurisdictions can limit where ADUs are permitted, clarifying that ADUs must be ministerially approved if constructed in existing garages, eliminating for five years the potential for local agencies to place owner-occupancy requirements on the units, prohibiting an ordinance from imposing a minimum lot size for an ADU, and eliminating impact fees on ADUs that are 750 square feet or less and capping fees on ADUs that are 750 square feet or more to twenty-five percent.

AB 2299 (Bloom), Chapter 735, Statutes of 2016 and SB 1069 (Wieckowski), Chapter 720, Statutes of 2016: Collectively, these bills required a local government to ministerially approve ADUs if the unit complies with certain parking requirements, the maximum allowable size of an attached ADU, and setback requirements.

Double referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California YIMBY (Sponsor)

California Association of Realtors

Opposition

Catalysts for Local Control

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