

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, 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.
- 5) Provides that no reimbursement is required by this bill, pursuant to Section 6 of Article XIII B of the California Constitution, because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill.

**EXISTING LAW:**

- 1) Defines ADU and JADU as follows:
  - a) An ADU means 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.
  - b) A JADU means 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.

- 2) 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.
- 3) Requires a local agency to complete the review of an application to create an ADU or JADU 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.
- 4) Specifies that if a local agency fails to act upon a completed application within the specified period than the application is deemed approved.
- 5) Authorizes a local agency to establish development standards for both attached and detached ADUs, except that they cannot establish the following:
  - a) A minimum square footage requirement for either an attached or detached ADU that prohibits an efficiency unit.
  - b) 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.
  - c) 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.
    - vi) Minimum lot size.
- 6) Requires a local agency to 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.

- b) A height limitation of 16 feet.

**FISCAL EFFECT:** This bill is keyed fiscal and contains a state-mandated local program.

**COMMENTS:**

- 7) **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."
- 8) **Background.** California faces a severe housing shortage. The California Department of Housing and Community Development (HCD) estimates that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. Numerous tools and measures are necessary to address the state's housing shortage. The Legislature has long identified ADUs, also known as second units, in-law apartments, or "granny flats," as a valuable form of housing.
  - a) **Accessory Dwelling Units.** ADUs are additional living quarters that are independent of the primary residence on the same lot. ADUs are either attached or detached to the primary residence, and provide complete independent living facilities for one or more persons, including separate access from the property's primary unit. This includes permanent provisions for living, sleeping, eating, cooking, and sanitation.
  - b) **Legislative Action on ADUs.** The Legislature passed a number of bills to ease zoning restrictions and expedite approval processes for ADUs at the local level in the last few years. These actions cumulatively contributed to a substantial increase in the development of ADUs throughout the state. According to HCD, ADUs accounted for less than one percent of new housing construction permits in 2017. Currently, more than 12,000 ADUs are permitted annually, accounting for approximately 10 percent of new housing construction permits.
  - c) **Permitting ADUs.** The significant increase in ADU permits issued over the last five years creates a base of knowledge and expertise in ADU development that did not exist prior to the legislative changes. ADU law is frequently amended as ADU developers, financiers, local regulators, HCD, and other stakeholders implementing these laws identify new issues and ambiguities.
- 9) **Bill Summary.** This bill makes multiple changes to ADU law:
  - a) **Defining "Act."** This bill 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 states that that to "act" means 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.

- b) **Defining “Permitting Agency.”** This bill would expand “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.”
- c) **Objective Standards.** This bill specifies 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.

This bill is sponsored by California YIMBY.

10) **Policy Considerations.** The Committee and the author may wish to consider the following:

- a) **Permitting.** ADU law requires local agencies to act on an application to create an ADU or JADU within 60 days of receipt of a complete application. In practice, this requires the planning and or building departments of local agencies (defined in ADU law as a city or county) to act on building permits within 60 days. ADUs and JADUs may require permits or similar approvals from entities other than the local agency. For example, an ADU may need a water or sewer connection from a municipal utility district operating independently of the local agency. This bill defines permitting agency to include utilities and special districts, expanding the scope of the permit review time period to cover additional entities.

Existing law requires permitting agencies to act on applications to “create” an ADU or JADU; “create” implies the authority to begin construction which is vested in building permits issued by local agencies. In practice, utilities and special districts do not permit the “creation” of ADUs and JADUs; rather, they approve service connections for ADUs and JADUs where applicable. ***The Committee wish to consider*** whether the language in existing law needs to be clarified to reflect the expanded category of permits and entities subject to the 60 day processing time period.

- b) **Conflicting Legislation.** ADU law, as proposed to be amended by this bill, will require local agencies to approve or deny ADU and JADU permits within 60 days. AB 2234 (R.Rivas) will require local agencies to approve or deny postentitlement nondiscretionary permits for housing developments with less than 25 units within 30 days of deeming an application complete. While this bill applies to approvals not covered by AB 2234, both bills currently cover building permits for ADUs and JADUs. ***The Committee may wish to recommend*** that the authors of these bills coordinate their efforts to avoid conflict.

11) **Committee Amendments.** To address some of the issues raised above, the Committee may wish to consider the following:

- a) Amend the bill to clarify that the requirement for permitting agencies to act within 60 days applies to applications to create or serve ADUs and JADUs upon the permitting agency receiving a complete application.
- b) Amend the bill to clarify that the permitting agency means an entity involved in the review of ADUs and JADUs.

- 12) **Arguments in Support.** California YIMBY writes in support, “California has a statewide housing shortage of nearly 3.5 million homes. Low- and middle income households face historic rent burden in California, and the problem worsens by the day as middle income households move into naturally affordable housing previously occupied by low-income renters forcing these households to move further away from their jobs, and in some cases, onto the streets. Undersupply of ‘Missing Middle’ housing, or medium density housing, such as ADUs, near jobs and transit, is one of the key factors contributing to the displacement and rent burden of Californians across the state. State ADU law has already created tens of thousands of homes across California.”
- 13) **Arguments in Opposition.** Catalysts for Local Control writes in opposition, “This bill harms the communities and constituents you represent with negligible impact on increasing the supply of affordable housing. As an unfunded mandate, it adds cost-burden on cities, when the burden to show compliance with city ordinances belongs to the applicant. City staff work under difficult conditions, yet you would add to their workload a requirement to write comprehensive explanations to developers. This policy allows developer/investor to call the shots.”
- 14) **Related Legislation.** AB 2234 (R. Rivas) requires public agencies to post information related to post entitlement phase permits for housing development projects, process those permits in a specified time period depending on the size of the housing development, and establish a digital permitting system if the local agency meets a specific population threshold. AB 2234 is pending in the Housing and Community Development Committee.
- 15) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee, where it passed on a 7-0 vote on April, 5 2022.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California YIMBY [SPONSOR]  
California Association of Realtors  
Fremont for Everyone  
Mountain View YIMBY  
People for Housing Orange County  
Sustainable Growth Yolo  
YIMBY Action  
Zach Hilton City Council Member, City of Gilroy

### **Opposition**

Catalysts for Local Control

**Analysis Prepared by:** Hank Brady / L. GOV. / (916) 319-3958