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THIRD READING

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Bill No: AB 2221  
Author: Quirk-Silva (D)  
Amended: 8/24/22 in Senate  
Vote: 21

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SENATE HOUSING COMMITTEE: 8-0, 6/13/22  
AYES: Wiener, Caballero, Cortese, McGuire, Ochoa Bogh, Skinner, Umberg,  
Wieckowski  
NO VOTE RECORDED: Bates

SENATE GOVERNANCE & FIN. COMMITTEE: 5-0, 6/29/22  
AYES: Caballero, Nielsen, Durazo, Hertzberg, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 74-0, 5/25/22 - See last page for vote

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**SUBJECT:** Accessory dwelling units

**SOURCE:** California YIMBY

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**DIGEST:** This bill clarifies and expands requirements for approval of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs).

*Senate Floor Amendments* of 8/24/22 address chaptering issues with other ADU bills (SB 897 and AB 916).

**ANALYSIS:**

Existing law:

- 1) Requires a local agency to ministerially approve, within 60 days, in an area zoned for residential or mixed-use, an application for a building permit to create an ADU and a JADU as follows:

- a) The ADU or JADU that is within a proposed or existing structure, or the same footprint as the existing structure, provided the space has exterior access from the proposed or existing structure and the side and rear setbacks are sufficient for fire and safety.
  - b) One detached ADU that is within a proposed or existing structure or the same footprint as the existing structure, along with one JADU, that may be subject to a size limit of 800 square feet, a height limit of 16 feet, and side and rear yard setbacks of four feet.
- 2) Requires a local agency to ministerially approve, within 60 days, on a lot with a multifamily dwelling:
- a) Multiple ADUs within the existing structures that are not used as livable space, if each unit complies with state building standards for dwellings.
  - b) Two detached ADUs that are subject to a height limit of 16 feet and rear and side yard setbacks of four feet.

This bill:

- 1) Requires a permitting agency to specifically “approve or deny” an application to serve an ADU or a JADU within the same timeframes.
- 2) Specifies the requirement for a permitting agency to act on an application means either to return the approved permit application or to return in writing, within the prescribed time period, 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.
- 3) Defines “permitting agency” to mean any entity that is involved in the review of an ADU or JADU permit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.
- 4) 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.
- 5) Specifies, 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 meet the standards listed in 3) above.

6) Clarifies the following:

- a) An ADU can be attached to or located in a detached garage.
- b) Local ADU ordinances do not supersede state ADU laws.

## Background

According to the Department of Housing and Community Development (HCD), “ADUs are an innovative, affordable, effective option for adding much needed housing in California.” ADUs, also known as accessory apartments, accessory dwellings, mother-in-law units, or granny flats, are additional living spaces on single-family or multifamily lots that have a separate kitchen, bathroom, and exterior access independent of the primary residence. These spaces can either be attached to, or detached from, the primary residence. Local ADU ordinances must meet specified parameters outlined in existing state law.

Local governments may also adopt ordinances for JADUs, which are no more than 500 square feet and are bedrooms in a single-family home that have an entrance into the unit from the main home and an entrance to the outside from the JADU. The JADU must have cooking facilities, including a sink and stove, but is not required to have a bathroom.

The cost of constructing an ADU, however, can still be high. According to the State Treasurer’s Office, many lower income homeowners, as well as homeowners who have not yet built up significant equity in their homes, are struggling to obtain loans to construct ADUs.

## Comments

- 1) *Housing Crisis*. California’s housing crisis is a half century in the making. Decades of underproduction underscored by exclusionary policies have left housing supply far behind need and costs soaring. California currently has 13 of the 14 least affordable metropolitan areas for homeownership in the nation; it also has the second highest rate of renter households paying more than 30% of their income for housing at 52%. According to the 2022 Statewide Housing Plan, published by HCD, California must plan for more than 2.5 million homes over the next eight-year cycle, and no less than one million of those homes must meet the needs of lower-income households. This represents more than double

the housing planned for in the last eight-year cycle. The lack of housing supply is the primary factor underlying California's housing crisis.

During the 1990s, California averaged only 110,000 new housing units per year. During the early 2000s, production increased significantly, reaching a peak of 212,000 units in 2004 before plummeting to historic lows during the recession. Unfortunately, the downward trend continues; the fact is that California has under-produced housing every single year since 1989.

As a result, millions of Californians, who are disproportionately lower income and people of color, must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation—one in three households in the state doesn't earn enough money to meet their basic needs.

- 2) *Encouraging ADU construction.* According to a UC Berkeley study, *Yes in My Backyard: Mobilizing the Market for Secondary Units*, second units are a means to accommodate future growth and encourage infill development in developed neighborhoods. Despite state law requirements for each city in the state to have a ministerial process for approving second units, local regulations often impede development. In response, several bills, including SB 1069 (Wieckowski, 2016), SB 13 (Wieckowski, 2019) and AB 68 (Ting, 2019), have relaxed multiple requirements for the construction and permitting of ADUs and JADUs.

According to a 2020 UCLA Working Paper, “state ADU and JADU legislation has created the market-feasible potential for nearly 1.5 million new units.” Since 2013, the number of permitted ADUs increased from 799 to 12,813 in 2020, for a total of almost 44,000 ADUs permitted statewide. With localities across the state facing large regional housing needs allocations for the sixth housing element cycle, ADUs and JADUs represent a key tool in the housing production toolbox.

- 3) *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 tension 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, within the specified time period, in writing 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.

Next, this bill would define “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 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.

- 4) *Another ADU bill?* Earlier this year, the Senate Housing Committee heard SB 897 (Wieckowski), another bill that makes changes to the law governing ADUs. The primary overlap between this bill and SB 897 are in the provisions relating objective standards, an act by an agency, and allowable ADU footprint. A third bill making changes to ADU law, AB 916 (Salas), is also making its way through the legislature.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: Yes

**SUPPORT:** (Verified 8/23/22)

California YIMBY (source)  
California Association of Realtors  
Councilmember Zach Hilton, City of Gilroy  
People for Housing - Orange County  
Southern California Rental Housing Association  
Urban Environmentalists  
YIMBY Action

**OPPOSITION:** (Verified 8/23/22)

City of Pleasanton

**ARGUMENTS IN SUPPORT:** 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 OPPOSITION:** The City of Pleasanton submitted the only opposition for AB 2221, in which they express concern about the expansion of ADU law, parking, and local control issues.

**ASSEMBLY FLOOR:** 74-0, 5/25/22

**AYES:** 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

NO VOTE RECORDED: Berman, Boerner Horvath, Nguyen, O'Donnell

Prepared by: Mehgie Tabar / HOUSING / (916) 651-4124  
8/26/22 15:41:26

\*\*\*\* **END** \*\*\*\*