
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2021 - 2022 Regular

Bill No: AB 2221
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Version: 6/6/22
Consultant: Favorini-Csorba

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Tax Levy: No
Fiscal: Yes

ACCESSORY DWELLING UNITS

Requires local agencies to either return in writing a full set of comments to the applicant with a comprehensive request for revisions, or to return the approved permit application within 60 days of submission of a completed application to create or serve an accessory dwelling unit.

Background

The Legislature has long identified accessory dwelling units (ADUs), also known as second units, in-law apartments, or “granny flats,” as a valuable form of housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods. In 1982, the Legislature first provided a framework for local governments to enact ordinances that permit the construction of ADUs, while preserving local government flexibility to regulate the units as necessary. When fewer ADUs than anticipated were developed, the Legislature significantly amended ADU law to address some of the barriers that property owners encountered while trying to develop them (AB 1866, Wright, 2002).

Among other provisions, AB 1866 allowed local governments to adopt an ordinance that allows the creation of ADUs in single-family and multi-family residential zones and to set standards on the units regarding parking, height, setback, maximum size, and potential adverse impacts on historic places. AB 1866 also prohibited local agencies from adopting an ordinance that entirely prohibits ADUs unless it made specific findings regarding adverse impacts from the units. Some local governments continued to impose onerous requirements or prohibit ADUs entirely.

Recent ADU law changes. In 2016, the Legislature revised ADU laws to address some of the barriers to ADU creation that had been adopted by local governments (SB 1069, Wieckowski and AB 2299, Bloom). These changes to ADU law prohibited local ordinances that entirely ban ADUs and required a local agency to, among other provisions:

- Designate areas within the jurisdiction where ADUs may be permitted;
- Impose standards on ADUs, including minimum lot sizes and requiring ADUs to be set back from the property line (“setbacks”);
- Consider permit applications within 120 days;
- Approve or disapprove an application for an ADU ministerially without discretionary review if the local government does not have an ADU ordinance when it receives a permit application; and
- Approve building permits to create an ADU ministerially if the ADU is within an existing residence, has independent exterior access, and meets certain fire safety requirements.

These bills also limited the cases when local agencies could require new utility connections for water and sewer, and limited the fees to be proportionate to the burden created by the ADU. AB 2408 (Thurmond, 2016) also allowed local agencies to adopt an ordinance regulating Junior ADUs (JADUs), which are smaller ADUs that are under 500 square feet, are contained entirely within an existing single-family residence, and may or may not have separate sanitation facilities. In 2017, the Legislature clarified portions of the law (SB 229, Wieckowski and AB 494, Bloom).

2019 changes. The Legislature expanded on many aspects of ADU law in 2019 through a set of three bills: SB 13 (Wieckowski), AB 68 (Ting), and AB 881 (Bloom). The most significant provisions of these bills:

- Require local governments to allow at least an 800 square foot ADU of up to 16 feet on the lot, regardless of local zoning standards;
- Require local governments to allow one ADU and one junior ADU (JADU) on a single-family parcel (even if the jurisdiction has not adopted an ordinance allowing JADUs);
- Allow up to two detached units on the same site as an existing multifamily dwelling and the ministerial creation of multiple ADUs within the portions of existing multifamily buildings that are not used as livable space, as long as each unit complies with state building standards for dwellings. Local governments must allow at least one such ADU and at least 25% of the number of existing multifamily units;
- Deem approved an application for an ADU if a local government doesn't act on it within 60 days;
- Prohibit local governments from requiring owner occupancy, until January 1, 2025;
- Exempt ADUs under 750 square feet from impact fees and require impact fees for larger ADUs to be proportional to the square footage of the primary unit;
- Allows, until January 1, 2030, ADU owners to request a delay of up to five years in any enforcement actions for violations of building standards if the enforcement agency determines that the standards are not necessary to protect public health and safety; and
- Requires the Department of Housing and Community Development (HCD) to notify local governments if they are in violation of state law and allows HCD to refer alleged violations to the Attorney General.

California YIMBY wants the Legislature to make additional changes to ADU laws to further spur ADU construction.

Proposed Law

Assembly Bill 2221 requires local agencies to either return in writing a full set of comments to the applicant with a comprehensive request for revisions, or to return the approved permit application within 60 days of submission of a completed application to create or serve an ADU.

The bill defines permitting agency to mean any entity that is involved in the review of 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.

AB 2221 also adds front setbacks to the existing list of standards a local agency may not impose if they would preclude an 800 square foot ADU from being built. It makes various clarifying and technical changes, including to state that:

- A local agency shall not impose any objective planning standards that conflict with those explicitly listed in the law;
- ADU law supersedes a conflicting local ordinance; and
- ADUs may be constructed with detached garages.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. 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.”

2. Too soon? AB 2221 continues what has been a nearly annual tradition of numerous significant revisions to ADU law. Beginning in 2016, when the Legislature rewrote ADU law, the Legislature has enacted 11 measures that amend ADU law to some degree, including three bills in 2019 that sent local agencies back to the drawing board on their ADU ordinances, including to prohibit local agencies from requiring owner-occupancy until January 1, 2025. AB 2221 proposes more changes that will require local agencies to update their ordinances yet again. Should the Legislature wait on further changes to ADU laws until local governments have had a chance to catch their breath and the Legislature can evaluate the effect of recent changes on ADU development?

3. Just decide already. Some cities and counties have adopted unusual interpretations of the requirement in ADU law that local agencies “act on” the application within 60 days of it being complete, including in some cases doing as little as acknowledging receipt. AB 2221 attempts to solve this problem by defining the term “act on” to mean that the local agency has returned a complete set of comments on the application. However, the bill continues to allow local agencies to take as long as they want before issuing a decision on the application because there is no requirement for subsequent action after the comments are returned. Other laws relating to housing development take a different approach: they require the local agency to approve or deny the application prior to the expiration of the applicable time limit. The Committee may wish to consider amending AB 2221 to require local agencies to approve or deny the permit within 60 days and return comments if the agency denies the permit.

4. Three-car pile-up. AB 2221 is one of three ADU bills the Committee will consider this year. AB 916 (Salas), which the Committee will also hear at its June 29th hearing, increases the height that local governments must allow for ADUs and prohibits hearings for creation of new bedrooms within existing units. SB 897 (Wieckowski), which the Committee approved at its April 7th hearing on a vote of 5-0, increases heights similarly to AB 916, clarifies that local agencies must approve or deny an ADU within 60 days, and makes numerous other changes to ADU law to relax the rules they must meet. SB 897 is currently pending in the Assembly Local

Government Committee. These bills directly conflict on some provisions, and on others they will have to be reconciled so that the changes made by all three bills go into effect.

5. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because AB 2221 imposes new duties on local officials regarding approval of ADUs, Legislative Counsel says that the bill imposes a new state mandate. AB 2221 disclaims the state's responsibility for providing reimbursement by citing local governments' authority to charge for the costs of implementing the bill's provisions.

6. Incoming! The Senate Housing Committee approved AB 2221 at its June 13th hearing on a vote of 8-0. The Senate Governance and Finance Committee is hearing AB 2221 as the committee of second reference.

Assembly Actions

Assembly Housing and Community Development Committee:	7-0
Assembly Local Government Committee:	7-0
Assembly Appropriations Committee:	15-0
Assembly Floor:	74-0

Support and Opposition (6/27/22)

Support:

California Yimby (Sponsor)
 Council Member Zach Hilton, City of Gilroy
 California Association of Realtors
 Fremont for Everyone
 Mountain View Yimby
 People for Housing Orange County
 Southern California Rental Housing Association
 Sustainable Growth Yolo
 Urban Environmentalists

Opposition:

Catalysts for Local Control
 City of Pleasanton

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