
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2023 - 2024 Regular

Bill No: AB 1033
Author: Ting
Version: 6/29/23
Consultant: Peterson

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Tax Levy: No
Fiscal: Yes

ACCESSORY DWELLING UNITS: LOCAL ORDINANCES: SEPARATE SALE OR CONVEYANCE

Allows cities and counties that have a local accessory dwelling unit (ADU) ordinance to allow ADUs to be sold separately or conveyed from the primary residence.

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 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 local governments had adopted (SB 1069, Wieckowski and AB 2299, Bloom). These changes 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 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:

- Prohibit local governments from requiring owner occupancy, until January 1, 2025;
- 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 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 the construction of at least 25% of the number of existing multifamily units more in the form of ADUs;
- Deem approved an application for an ADU if a local government does not act on it within 60 days;
- 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 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.

2022 changes. The Legislature made further changes to many aspects of ADU law in 2022 through two bills: SB 897 (Wieckowski) and AB 2221 (Quirk-Silva). The most significant provisions of these bills:

- Adjust the minimum ADU height limit a local agency may impose, as follows:
 - For detached ADUs on a lot with an existing or proposed single family, a 16 feet height limitation is allowed.
 - For detached ADUs on a lot with an existing or proposed multifamily dwelling unit, an 18 feet height limitation is allowed.
 - For a detached ADU within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, an 18 feet height limitation is allowed. Also, requires a local agency to allow an additional two feet in height to

- o accommodate a roof pitch on an ADU that is aligned with the roof pitch of the primary dwelling unit; and
 - o For ADUs attached to the primary dwelling, a height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, is allowed.
- Require a permitting agency to act by specifically approving or denying an application for an ADU or JADU within 60 days from receiving it. If a permitting agency denies an application, it must return in writing a full set of comments on how the application can be remedied;
- Prohibit a local agency from denying a permit for a constructed, unpermitted ADU built before January 1, 2018, that is in violation of building standards, but the correction is not necessary to protect health and safety;
- Provide the construction of an ADU on a property does not trigger a requirement for fire sprinklers in the proposed or existing primary dwelling; and
- Add front setbacks to the list of local development standards local governments cannot impose if they would preclude construction of an attached or detached ADU.

Separate sale or conveyance. ADU law generally prohibits property owners from selling or transferring their ADU separately from the primary residence. However, in 2019, the Legislature enacted AB 587 (Friedman) to allow cities and counties to adopt an ADU ordinance that provides for the separate sale or conveyance of an ADU under certain conditions. Specifically, an ADU and primary residence built on the same parcel of land may be conveyed to separate owners if the jurisdiction where the property is located adopts an ordinance allowing separate sale and the following conditions are met:

- The property was built or developed by a qualified nonprofit corporation, defined to be a nonprofit corporation that receives a welfare exemption from property tax under state law for properties intended to be sold to low-income families who participate in a special no-interest loan program;
- The sale is to a qualified buyer, defined to be persons or families of low- or moderate-income—up to 120% of area median income;
- There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that meets the requirements in existing law that restrict the use of the unit for 30 years to housing at an affordable cost;
- The property is held pursuant to a recorded tenancy in common agreement that:
 - o Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
 - o Requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property;
 - o Requires the qualified buyer to occupy the property as the buyer’s principal residence; and
 - o Imposes affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing and will be sold or resold to a qualified buyer.
- A deed describing the transfer is recorded in the county in which the property is located and the change of ownership is filed with the recorder, pursuant to existing law.

AB 587 was enacted at the request of Habitat for Humanity because some affiliates expressed interest in building houses with ADUs that could be used to house additional low-income families with the same opportunity as owners of primary dwellings to build equity. In response to Habitat for Humanity affiliates' difficulties persuading local agencies to adopt the ordinances necessary to implement AB 587, the Legislature enacted AB 345 (Quirk-Silva, 2021) to require a city or county to allow an ADU to be sold or separately conveyed if it meets the conditions in AB 587.

AB 345 also added new requirements on tenancy in common agreements for these ADUs if those agreements are recorded after December 31, 2021, specifically:

- Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant must agree not to claim a right of occupancy to an area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied;
- Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property, as specified; and
- Procedures for dispute resolution among the parties before resorting to legal action.

Common interest developments. The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments (CIDs). CIDs are self-governing forms of real estate in which each homeowner has an exclusive ownership in a unit and a shared stake in common areas and amenities. CIDs come in a wide variety of physical formats: condominiums, apartment buildings, and neighborhoods of detached, single-family residences, for example. The owners of the separate properties within the common interest development are the members of it. Each member is subject to the covenants, conditions, and restrictions that govern the development, as well as annual assessments that pay for communal expenses. Units within common housing developments currently account for approximately a quarter of the state's overall housing stock, meaning that the laws governing such development have a large impact on the population.

Subdivision Map Act. The Subdivision Map Act (Map Act) governs how local officials regulate the division of real property into smaller parcels for sale, lease, or financing. Cities and counties adopt local subdivision ordinances to carry out the Map Act and local requirements. City councils and county boards of supervisors use the Map Act to control a subdivision's design and improvements. Local subdivision approvals must be consistent with city and county general plans.

Under the Map Act, cities and counties can attach scores of conditions. The Map Act allows local officials to require, as a condition of approving a proposed subdivision, the dedication of property within a subdivision for streets, alleys, drainage, utility easements, and other public easements and improvements. Once subdividers comply with those conditions, local officials must issue final maps. For smaller subdivisions that create four or fewer parcels, local officials usually use parcel maps, but they can require tentative parcel maps followed by final parcel maps. The Map Act also constrains the dedications and improvements that local cities and counties can require as a condition of a subdivision of four or fewer lots to only the dedication of

rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created.

The Bay Area Council and the Casita Coalition want to expand opportunities to separately convey ADUs from the primary residence.

Proposed Law

Assembly Bill 1033 allows a local agency to adopt an ordinance to allow the separate conveyance of the primary dwelling unit and the ADU as condominiums. The ordinance must provide that:

- Condominiums must be created pursuant to the Davis-Stirling Common Interest Development Act;
- Condominiums must be created in conformance with all objective requirements of the Subdivision Map Act, and all objective requirements of a local subdivision ordinance;
- Before recording the condominium map, the owner must conduct a safety inspection of the ADU, as evidenced through a certificate of occupancy from the local agency, or a housing quality standards report from a building inspector with United States Department of Housing and Urban Development certification;
- A county recorder cannot record the condominium map without each lienholder's consent. Lienholders may refuse to give consent, and a lienholder may consent provided that any terms and conditions the lienholder requires are satisfied;
- Before recording the initial condominium map, or any subsequent modifications, the owner must provide written evidence of the lienholder's consent to the county recorder, including a signed statement from each lienholder documenting their consent;
- A notice to consumers on any ADU or JADU unit submittal checklist or public information issued describing requirements and permitting for ADUs, including as standard condition of any ADU permit or condominium map approval, that describes these requirements; and
- If an ADU is established as a condominium, the local government must require the homeowner to notify providers of utilities, including water, sewer, gas, and electricity, of the condominium creation and separate conveyance.

AB 1033 allows a local agency, special district, or water corporation to require the applicant to install a new or separate utility connection directly between the ADU and the utility, and can also impose a connection fee or capacity charge.

An ADU must only be separately conveyed pursuant to these requirements or pursuant to the provisions for property built or developed by a qualified nonprofit corporation.

The bill also makes findings and declarations to further its intent.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, “The lack of home ownership opportunities in most California communities for working families is contributing to the State’s growing population of renters and driving families out of state so that they can buy a home. Many neighborhoods have become de-facto gated communities, with median home prices of \$700K to \$1M keeping out all but a small percentage of Californians from ever dreaming of home ownership, reducing the state’s population and harming our economy. The absence of available homes for purchase at rates affordable to moderate-income working families bars wealth-building and housing stability for Californians harmed by historic discriminatory housing policies. By repealing the current law prohibiting the separate conveyance of ADUs, AB 1033 allows cities and counties the freedom to pursue homeownership programs and to create a path to wealth-building for families.”

2. How would this work? Up to this point, the only authority to convey ADUs separately from their primary residence was in the relatively narrow set of circumstances for ADUs built or developed by a qualified nonprofit corporation with a tenancy in common agreement. AB 1033 would greatly expand the opportunities for local agencies to allow separate conveyance of ADUs, although it would be up to the local agency to decide whether to include separate conveyance in their ordinance. Local agencies that decide to allow it will have to update their ADU ordinances to specify that these newly separated residential units are subject to rules for condominiums in the Davis-Stirling Common Interest Development Act and Subdivision Map Act. This means tenants will have agreements in place to outline the rules and conditions for sharing the property. Owners must also take certain steps, such as getting the consent of their lienholders, and recording those documents with the county recorder. While these safeguards could help prevent issues with mortgages and other liens on the property, additional questions remain, including:

- The California Association of Realtors states in opposition to the measure that AB 1033’s provisions for separate conveyance could circumvent rules set by federal Government-Sponsored Entities (GSEs), including the Federal National Mortgage Association (FNMA or ‘Fannie Mae’), the Federal Home Loan Mortgage Corporation (Freddie Mac), both regulated by the Federal Housing Finance Authority.
- The Community Associations Institute’s California Legislative Action Committee raises the following questions about how AB 1033 applies to existing homeowner associations:
 - How would the association address voting rights, assessments, and access to common areas?
 - Would the association need to provide easements to members of the condominium association to access their property?”

Should the Legislature allow local agencies to adopt separate conveyance policies in their ADU ordinances while questions remain?

3. Too soon? AB 1033 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 at least 13 measures that amend ADU law to some degree, including two bills in 2022 that sent local agencies back to the drawing board on their ADU ordinances. Given the short amount of time that has elapsed, 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?

4. Related legislation. The Legislature is currently considering other legislation on ADUs:

- AB 976 (Ting, 2023) makes the existing prohibition on local government's ability to require owner-occupancy on a parcel containing an ADU permanent. The bill is also scheduled for the Committee's July 5th meeting.
- AB 1332 (Juan Carrillo, 2023) requires local agencies to create a program for the pre-approval of ADUs. The bill is also scheduled for the Committee's July 5th meeting.

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 1033 imposes new duties on local officials regarding approval of ADUs, Legislative Counsel says that the bill imposes a new state mandate. AB 1033 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 1033 at its June 20th hearing on a vote of 8-1. The Senate Governance and Finance Committee is hearing AB 1033 as the committee of second reference.

Assembly Actions

Assembly Housing and Community Development Committee:	6-1
Assembly Local Government Committee:	5-2
Assembly Appropriations Committee:	12-4
Assembly Floor:	50-16

Support and Opposition (6/30/23)

- Support: Bay Area Council (Sponsor)
 CASITA COALITION (Sponsor)
 City of Oakland Mayor Sheng Thao
 Abodu
 CA Black Chamber of Commerce
 California Communiity Builders
 California State Association of Counties
 Casita Coalition
 Community Build, INC.
 Council of Infill Builders
 East Bay Yimby
 Farmworkers Institute of Education & Leadership Development
 Fresno Business Council
 Grow the Richmond
 Ho9 Development
 How to Adu
 Hpp Cares
 Inland Socal Housing Collective

Inspired Adus
Jesse Miranda Center for Hispanic
League of California Cities Latino Caucus
Meta
Mountain View Yimby
Napa-Solano for Everyone
National Association of Hispanic Realtors
National Diversity Coalition
New California Coalition
Northern Neighbors
Oak Impact Group
Peninsula for Everyone
People for Housing Orange County
Progress Noe Valley
San Francisco Yimby
Santa Cruz Yimby
Santa Rosa Yimby
Slo County Yimby
South Bay Yimby
The Fresno Business Council
The Two Hundred
The Unity Council
Unidosus
Ventura County Yimby
Villa
Yimby Action

Opposition: California Association of Community Managers
California Association of Realtors
City of Eastvale
Community Associations Institute - California Legislative Action Committee

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