

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2890 (Ting) – As Amended April 12, 2018

SUBJECT: Land use: accessory dwelling units.

SUMMARY: Revises, restructures, and expands accessory dwelling unit (ADU) and junior accessory dwelling unit (JADU) law. Specifically, **this bill:**

- 1) Revises existing law, which says that a local agency may, by ordinance, provide for the creation of ADUs in areas *zoned* to allow single-family or multifamily use, to instead specify that a local agency may, by ordinance, provide for the creation of ADUs in areas where a single-family or multifamily dwelling *is authorized*.
- 2) Revises existing law that specifies what is required to be in the ordinance, as referenced in 1), above, to instead specify that the ordinance shall *impose not more than the following standards on ADUs*:
 - a) Impose any parking requirements on an ADU, as specified;
 - b) Limit the height of an ADU, unless it is more than 16 feet; and,
 - c) Limit ADUs that are greater than 800 square feet that are attached to the rear of an existed or proposed dwelling or are located in the rear yard of a dwelling.
- 3) Deletes the authority for a local agency to designate areas where ADUs *may be permitted* based on criteria that may include, but not be limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety, and instead, allows a local agency to designate areas where ADUs *may be excluded* for fire and life safety purposes.
- 4) Requires the local agency to designate areas where ADUs may be excluded for fire and life safety purposes *based on clear findings that are supported by a preponderance of evidence*.
- 5) States that the designation of these areas shall be based on criteria that include the adequacy of water and sewer services and other fire and live safety issues.
- 6) Provides that if a local agency adopts an ADU ordinance, the ordinance shall:
 - a) Require an ADU to comply with small building standards that the Department of Housing and Community Development (HCD) shall adopt, per this bill;
 - b) Require a manufactured ADU to comply with building standards adopted by HCD;
 - c) Provide that no setback shall be required for an existing living area or accessory dwelling area that is converted to an ADU or to a portion of an ADU; and,

- d) Provide that a setback of no more than five feet from the side and rear lot lines shall be required for an ADU that is constructed or attached to a garage or that is constructed in a rear or side yard area.
- 7) Adds to the types of owner-occupants that a local agency can issue permit for an ADU to include:
 - a) A trust in which ownership of the lot is placed if at least one beneficiary of the trust is a person with a disability and that person occupies the primary dwelling or the ADU; and,
 - b) An organization that owns the lot in order to provide long-term, deed-restricted affordable housing that is subject to a regulatory agreement with a local agency.
 - 8) Provides that if an ordinance imposes an owner occupancy restriction, the restriction shall not be monitored more frequently than annually based on published public documents that evidence ownership, including a driver's license, school registration, or a voter registration document.
 - 9) Requires a permit application for an ADU or a JADU to be considered within 60 days, rather than existing law that specifies 120 days, and creates a "deemed approved" standard which provides that if the local agency does not act within 60 days, the application is deemed approved.
 - 10) Provides that an ADU on a single-family lot, when assessed as new construction, be valued exclusively on the basis of the building permit value of the ADU ministerial permit and shall not trigger a reassessment of the value of the underlying land or other structures of the property. Provides that a JADU, when assessed as new construction, shall be valued exclusively on the basis of the building permit value of the JADU ministerial permit, and shall not trigger reassessment of the value of the underlying land or other structures on the property.
 - 11) Prohibits a local agency from imposing parking standards on two ADUs on a single-family lot in any of the following cases (existing law prohibits a local agency from imposing any parking standards in any of the following instances for a single ADU):
 - a) The ADU is within one-half mile of public transit;
 - b) The ADU is located within an architecturally and historically significant district;
 - c) The ADU is part of the proposed or existing primary single-family dwelling or accessory structure; and,
 - d) When there is a car share vehicle located within one block of the ADU.
 - 12) Prohibits a local agency from requiring off-street parking to replace parking spaces that are removed if a garage, carport, or covered parking structures are demolished with the construction of an ADU.
 - 13) Requires a local agency to ministerially approve an application for a building permit to create any of the following:

- a) One ADU and one junior ADU per lot with a single-family dwelling if all of the following apply:
 - i) The ADU or junior ADU is within the existing space of a single-family dwelling or accessory structure, including, but not limited to, reconstruction of an existing space with the same physical dimensions as the existing accessory structure;
 - ii) The space has exterior access from the existing single-family dwelling; and,
 - iii) The side and rear setbacks are sufficient for fire and life safety.
 - b) One detached new construction single story accessory dwelling of not more than 800 square feet and that does not exceed four-foot side and rear yard setbacks;
 - c) Multiple ADUs within the portions of existing multifamily dwelling structures that are used as livable space, including, but not limited to, a storage room, boiler room, passageway, attic, and garage; and,
 - d) No more than two ADUs that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.
- 14) Prohibits a local agency from placing limits on ADUs smaller than 800 square feet that are either attached to the rear of an existing or proposed primary dwelling structure or located in the rear yard of a dwelling structure.
 - 15) Provides that a local agency shall not require existing zoning nonconforming improvements to be corrected as a condition of granting the ministerial permit.
 - 16) Prohibits a local agency, school district, special district, or water corporation from levying any impact fees, connection fees, capacity charges, or any fees or charges on a permitted ADU.
 - 17) Deletes the authority for a local agency, special district or water corporation to require a new or separate utility connection directly between the ADU and utility.
 - 18) Requires HCD to submit written findings to a local agency that submits a copy of an ADU ordinance as to whether the ordinance complies with state law.
 - 19) Provides that if HCD finds that the local agency's ordinance does not comply with this section, HCD shall notify the local agency, and may notify the Attorney General (AG) that the local agency is in violation of the law.
 - 20) Requires the local agency to consider findings made by HCD and may make changes to comply with state law or adopt the ordinance without changes.
 - 21) Requires the local agency to make findings in its resolution that explain the reason why the legislative body believes the ordinance complies with this section, despite the finding of HCD.

- 22) Authorizes HCD to review, adopt, or repeal guidelines to implement uniform standards and criteria to supplement or clarify the ADU statute, and specifies that these guidelines adopted are not subject to provisions of law that specify the Administrative Regulations and Rulemaking procedures.
- 23) Requires HCD to create small home building standards to apply to ADUs, which shall be drafted to achieve the most cost-effective construction standards possible, similar or more cost effective than the standards in the 2007 edition of the California Building Standards Code. Requires these small building standards to be submitted to the California Building Standards Commission for consideration on or before January 1, 2020.
- 24) Requires, for JADUs, that if a local agency has not adopted a local ordinance, that local agency to apply the standards established in JADU law for approval if a permit to construct a JADU, unless and until the local agency adopts an ordinance that complies with JADU law.
- 25) Defines applicable terms.
- 26) States that no reimbursement is required by this act 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 act, within the meaning of Section 17556 of the Government Code.
- 27) Provides that changes made to the ADU statute shall not apply to a permit application for an ADU submitted prior to January 1, 2019.

EXISTING LAW:

- 1) Allows a local agency, by ordinance, to provide for the creation of ADUs in areas zoned to allow single-family or multifamily use. Provides that the ordinance shall do all of the following:
 - a) Designate areas where ADUs may be permitted. Specifies that the designation of areas may be based on criteria that may include, but are not limited to, the adequacy of water and sewer services and the impact of ADUs on traffic flow and public safety;
 - b) Impose standards on ADUs that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places. Allows a local agency to reduce or eliminate parking requirements for any ADU located within its jurisdiction;
 - c) Provide that ADUs do not exceed the allowable density for the lot upon which the ADU is located, and that ADUs are a residential use that is consistent with the existing general plan and zoning designation for the lot;
 - d) Require the ADUs to comply with all of the following:
 - i) The unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence;

- ii) The lot is zoned to allow single-family or multifamily use and includes a proposal for existing single-family dwelling;
 - iii) The ADU is either attached or located within the living area of the proposed or existing primary dwelling or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling;
 - iv) The total area of floorspace of an ADU shall not exceed 50% of the proposed or existing primary dwelling living area or 1,200 square feet;
 - v) The total area of floorspace for a detached ADU shall not exceed 1,200 square feet;
 - vi) No passageway shall be required in conjunction with the construction of an ADU;
 - vii) No setback shall be required for an existing garage that is converted to an ADU or to a portion of an ADU, and a setback of no more than five feet from the side and rear lot lines shall be required for an ADU that is constructed above a garage;
 - viii) Local building code requirements that apply to detached dwellings, as appropriate;
 - ix) Approval by the local health officer where a private sewage disposal system is being used, if required;
 - x) Parking requirements for ADUs shall not exceed one parking space per unit or per bedroom, whichever is less. Spaces may be provided as tandem parking on a driveway. Provides that offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible, as specified; and,
 - xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the ADU, including, but not limited to, covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile lifts, as specified.
- 2) Allows a local agency to amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an ADU if these provisions are consistent with specified limitations.
 - 3) Provides that an ADU that conforms to the above shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot.
 - 4) Requires, when a local agency that has not adopted an ordinance governing ADUs receives an application for a permit to create an ADU, the local agency to approve or disapprove the

application ministerially without discretionary review 120 days after receiving the application.

- 5) Requires a local agency to establish minimum and maximum unit size requirements for both attached and detached ADUs. Provides that no minimum or maximum size for an ADU, or size based upon a percentage of the proposed or existing primary dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. ADUs shall not be required to provide fire sprinklers if they are not required for the primary residence.
- 6) Prohibits, notwithstanding any other law, a local agency, whether or not it has adopted an ADU ordinance, from imposing parking standards for an ADU in the following instances:
 - a) The ADU is located within ½ mile of public transit;
 - b) The ADU is located within an architecturally and historically significant historic district;
 - c) The ADU is part of the proposed or existing primary residence or an accessory structure;
 - d) When on-street parking permits are required but not offered to the occupant of the ADU; or,
 - e) When there is a car share vehicle located within one block of the ADU.
- 7) Requires a local agency to ministerially approve an application for a building permit to create within a zone for single-family use one ADU unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Specifies that ADUs shall not be required to provide fire sprinklers if they are not required for the primary residence. Allows a city to require owner occupancy for either the primary or the ADU created through this process.
- 8) Provides for fees charged for the construction of ADUs, in accordance with specified provisions of existing law.
- 9) Allows a local agency, by ordinance, to provide for the creation of JADUs in single-family residential zones. Allows the ordinance to require a permit to be obtained for a JADU, and specifies the contents of the ordinance. Requires an application for a JADU permit to be considered ministerially within 120 days of submission of an application for a permit.
- 10) Requires local agencies to submit a copy of the ordinance adopted pursuant to 1), above, to HCD within 60 days after adoption. Allows HCD to review and comment on the ordinance.

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

COMMENTS:

- 1) **Bill Summary.** This bill significantly revises, restructures, and adds new requirements into both ADU and JADU law. The new requirements include the following:
- a) Requires ADUs and JADUs, when assessed as new construction, to be valued exclusively on the basis of the building permit value of the ADU/JADU ministerial permit, and provides that this shall not trigger a reassessment of the value of the underlying land or other structures on the property;
 - b) Prohibits an ADU from being subject to any impact fees, connection fees, capacity charges, or any other fees or charges levied by a local agency, school district, special district, or water corporation;
 - c) Establishes a “deemed approved” standard if the local agency does not act on the ADU application within 60 days. (Existing law requires ministerial approval of ADUs and JADUs within 120 days of receiving the application);
 - d) Allows an ADU and JADU on a single-family lot, and allows multiple ADUs on the property of multi-family buildings;
 - e) Places additional limitations on local agencies and their ability to limit ADUs based on certain square footage, floor area ratio, and height;
 - f) Deletes the authority for a local agency to designate areas where ADUs *may be permitted* based on criteria that can include, but not be limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety, and instead, allows a local agency to designate areas where ADUs *may be excluded* for fire and life safety purposes;
 - g) Requires the local agency to designate areas where ADUs may be excluded for fire and life safety purposes *based on clear findings that are supported by a preponderance of evidence*;
 - h) Prohibits parking to be required in certain high transit locations or when there is only one ADU on the property, and only allows parking to be required for *more* than two ADUs on a property;
 - i) Requires owner-occupancy of the primary unit, but allows specified exemptions; and,
 - j) Prohibits setback requirements for ADU conversions, and limits setbacks of other types of ADUs.

The bill also allows HCD to submit written findings as to whether the ordinance complies with ADU law, allows HCD to notify the AG if the ordinance is not in compliance, and allows HCD to create guidelines to implement uniform standards for the adoption of local ordinances. The bill also requires HCD to create small home building standards to apply to ADUs, which shall be drafted to achieve the most cost-effective construction standards possible, and requires these small building standards to be submitted to the California Building Standards Commission for consideration on or before January 1, 2020.

This bill is an author-sponsored measure.

- 2) **Author’s Statement.** According to the author, “ADUs have surged in popularity as a way to address California’s housing crisis as demand outpaces supply. AB 2890 will remove remaining barriers to the widespread adoption of ADUs as low-cost, energy efficient, affordable housing that can go from policy to permit in 12 months.”
- 3) **Background.** ADUs, also known as accessory apartments, accessory dwellings, mother-in-law units, or granny flats, are either attached or detached to the primary dwelling units, and are intended to provide complete independent living facilities for one or more persons. In 2002, AB 1866 (Wright), Chapter 1062, required local governments to use a ministerial process for approving ADUs, notwithstanding other laws that regulate the issuance of variances or special use permits. Through the provisions of AB 1866, a city or county could, by ordinance, require specific standards for ADUs, including parking, setbacks, lot coverage, and maximize size, and also designate areas where ADUs were allowed.

In 2016, there were two measures that made a number of changes to state law in order to ease some of the local barriers to the development of ADUs – AB 2299 (Bloom), Chapter 735, Statutes of 2016, and SB 1069 (Wieckowski), Chapter 720, Statutes of 2016.

These bills reorganized existing law to apply one standard for the ADU permit review process, regardless of whether a local government has adopted an ordinance or not, changed specified ADU building and parking standards, and placed limitations on utility connection fees and capacity charges for ADUs.

AB 494 (Bloom), Chapter 602, Statutes of 2017, and SB 229 (Wieckowski), Chapter 594, Statutes of 2017, also made changes to laws governing ADUs.

- 4) **Policy Considerations.** The Committee may wish to consider the following:
 - a) **Significant Re-Write of ADU Statute.** This bill contains an expansive re-write of ADU law, on the heels of significant changes in 2016 and 2017. The Committee may wish to take a more measured approach, and instead, focus on inserting clarifying policy changes within the existing ADU framework.

As a coalition of the California State Association of Counties, Urban Counties of California, Rural County Representatives of California, and the League of California Cities note in their joint opposition letter, “The last major changes to the state’s ADU law only became effective on January 1, 2017. Since that time, counties and cities have updated their ordinances to be consistent with state law by designating areas where ADUs are allowed and have imposed development standards consistent with the law. AB 2890 reverses the framework of the existing law...which would likely require every agency that updated their ordinance pursuant to last year’s bills to reopen revisions made in 2016 and 2017 – a costly and unnecessary burden.”

American Planning Association, California Chapter (APA California), writes that “It is understandable that cleanup or clarifications have been and may continue to be needed [to ADU law]. But we are very concerned that this bill, rather than being a clean-up measure, instead will place agreements that were just negotiated back on the table and make many substantial changes to the permitting process yet again. Importantly, it will

also disrupt compliance by local governments working hard to update their ADU ordinances to reflect the changes required in the 2016 and 2017 ADU laws.”

- b) **Removes Negotiated Fee Language Contained in SB 1069 (Wieckowski) and Places New Limits on Fees Charged by Local Agencies.** Stakeholders spent significant amounts of time to craft the fee language contained in SB 1069 (Wieckowski) of 2016. APA California writes that “the bill would eliminate local governments’ ability to charge impact fees, connection fees, capacity charges, or any fees levied by local governments, school districts, special districts or water corporations.”
 - c) **Preponderance of Evidence Standard.** The coalition of local government associations mentioned above also point to the insertion of the preponderance of evidence standard, which they feel will “merely invite litigation in which judges will be asked to second-guess decisions made through the democratic process.”
 - d) **Deemed Approved Standard and Expedited Timeframe.** Existing law specifies that a local government must ministerially approve an ADU within 120 days. This bill, however, changes this timeframe to 60 days, and requires the application to be deemed approved, should the local agency not act in that 60-day timeframe.
- 5) **Committee Amendments.** To address some of the issues above, the Committee may wish to ask the author to accept committee amendments that revert the ADU and JADU sections of law back to current law, and instead, draft a bill that contains the following modest policy changes:
- a) Allow HCD to submit written findings to the local agency as to whether the ordinance complies with the law. Require HCD to notify the local agency if it finds that the local agency’s ordinance does not comply. Allow HCD to notify the AG that the local agency is in violation of state law. Require the local agency to consider the findings made by HCD, and require the local agency to include findings in its resolution that explain the reason the legislative body believes the ordinance complies despite the findings. Allow HCD to review, adopt, amend or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references and standards set forth in ADU law.
 - b) Specify that if a local agency has not adopted a local ordinance pursuant to JADU law, it must apply the standards in JADU law for the approval of a permit to construct a JADU, unless and until the local agency adopts an ordinance.
 - c) Require HCD to create small home building standards to apply to ADUs, which shall be drafted to achieve the most cost-effective construction standards possible, similar or more cost effective than the standards in the 2007 edition of the California Building Standards Code. Require these small building standards to be submitted to the California Building Standards Commission for consideration on or before January 1, 2020.
 - d) Require permits to be issued for an ADU or JADU in 60 days, rather than 120 days, per existing law.
 - e) Prohibit a local agency from enacting an ordinance to apply lot coverage, lot size, or floor area ratio requirements of an ADU, and make conforming changes to ADU law.

- f) Provide that if a local agency has an owner occupancy requirement, that that requirement should not be monitored more than once annually, and provide the definition for what an owner occupant is, per the existing bill.
- g) Allow ministerial approval of the below:
 - i) A JADU (in addition to an ADU as already provided in exiting law);
 - ii) An ADU in existing space;
 - iii) An ADU that is a new construction of up to 800 square feet, no taller than 16 feet with at least 4 foot setbacks; and,
 - iv) ADUs in multi-family building areas that are not used as livable space as long as those spaces meet Building Codes (per the existing bill).
- h) Prohibit local agencies from requiring a correction of existing zoning nonconforming improvements as a condition of granting ministerial approval.
- i) Prohibit ministerially-approved ADUs from being used as short-term rentals.

All other provisions of the existing bill will be removed.

- 6) **Arguments in Support.** Supporters argue that the bill will reduce the cost of building ADUs by disallowing mitigation and capacity charges on ADUs, and requires that property taxes be assessed on single family ADUs using the same method as a building remodel so owners do not face major reassessments by creating an ADU. Supporters also argue that it is important to clarify that ADUs shall be regulated and treated as consistent with the existing residential use and not treated as a change of use or addition of density that would trigger other planning and regulatory requirements.
- 7) **Arguments in Opposition.** Opponents argue that the bill contains significant changes to existing provisions that were specifically negotiated in good faith with substantial changes to ADU law passed in 2016, and that local agencies have been working hard to comply with those changes. Opponents would appreciate the Legislature allowing cities and counties time to focus on implementation of existing ADU laws, adding only clarifications where needed.
- 8) **Double-referral.** The Housing and Community Development Committee will hear the bill on April 25, 2018.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council
Bridge Housing
California Association of REALTORS
California Forward Action Fund
Greenbelt Alliance
LeadingAge California
Lilypad Homes
Mas
Non-Profit Housing Association of Northern California
North Bay Leadership Council
SPUR
SV@Home
Turner Center for Housing Innovation
The Two Hundred
Individuals (3)

Opposition

American Planning Association, California Chapter
California Municipal Utilities Association (unless amended)
California Special Districts Association
California State Association of Counties
League of California Cities
Rural County Representatives of California
Urban Counties of California

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