Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Juan Carrillo, Chair
AB 2533 (Juan Carrillo) – As Amended March 21, 2024

SUBJECT: Accessory dwelling units: junior accessory dwelling units: unpermitted developments

SUMMARY: Extends the Accessory Dwelling Unit (ADU) amnesty law to unpermitted ADUs and junior accessory dwelling units (JADUs) built before 2020. Provides a process for homeowners to follow to permit their unpermitted ADUs and provides financial assistance to lower- and moderate-income households seeking to permit their unpermitted ADUs and JADUs. Specifically, **this bill**:

1) Prohibits a local agency from denying a permit for an unpermitted ADU or unpermitted JADU that was constructed before January 1, 2020, as specified.

2) Allows a local agency to deny a permit for an ADU or JADU if the local agency makes a finding that correcting the violation is necessary to comply with the health and safety standards, as specified.

3) Requires a local agency to inform the public about the options to permit their ADU including posting on their website a checklist of health and safety standards that the units would need to meet and informing homeowners that they may obtain a confidential third-party inspection from a licensed contractor to determine the unit's existing condition or potential scope of improvements necessary to meet health and safety standards.

4) Provides that a homeowner applying for a previously unpermitted ADU or JADU constructed before January 1, 2020, shall not be required to pay impact fees or connection fees or capacity charges to obtain a permit if they provide written evidence that their household is low- or moderate-income, as defined.

5) Provides that, upon receiving an application to permit a previously unpermitted ADU or JADU constructed before January 1, 2020, an inspector from the local agency may inspect the unit for compliance with health and safety standards and provide recommendations to comply with health and safety standards necessary to obtain a permit. If the inspector finds noncompliance with health and safety standards, the local agency shall not penalize an applicant for having the unpermitted ADU or JADU and shall approve necessary permits to correct noncompliance with health and safety standards.

6) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

EXISTING LAW:

1) Defines "accessory dwelling unit" to mean 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 shall 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. An accessory dwelling unit also includes efficiency units and manufactured homes, as specified. [Government Code (GOV) § 66313)

2) Prohibits a local agency, special district, or water corporation from imposing impact fees, as specified, on ADUs less than 750 square feet. Requires that impact fees charges for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit. Impact fees do not include any connection fee or capacity charge charged by a local agency, special district, or water corporation. (GOV § 66324)

3) Prohibits a local agency, special district, or water corporation from requiring the applicant of an attached ADU, conversion of an existing structure, or JADU to install a new or separate utility connection directly between the ADU and the utility or impose a related connection fee or capacity charge, unless the ADU was constructed with a new single-family dwelling or upon separate conveyance of the ADU, as specified. (GOV § 66324)

4) Allows a local agency, special district or water corporation to require a new or separate utility connection directly between the ADU and the utility, if the ADU is a new detached structure. Allows the local agency, special district or water corporation to charge a connection fee or capacity charge. If a connection fee or capacity charge is imposed, then the fee or charge shall be proportionate to the burden imposed by the new ADU. (GOV § 66324)

5) Delays the enforcement of building standards at the request of the owner on ADUs built prior to January 1, 2020 or if the ADU was built on or after January 1, 2020 in a jurisdiction that at the time had a noncompliant ADU ordinance, but the ordinance is compliant at the time the request is made. However, the ADU is still subject to health and safety standards, as specified. (GOV § 66331)

6) Prohibits a local agency from denying a permit for an ADU constructed prior to January 1, 2018 because the ADU was in violation of building standards, as specified, or the ADU does not comply with state law or local ordinance. Allows a local agency to deny a permit to an ADU that is deemed substandard and that would put the health and safety of the occupants at risk. (GOV § 66332).

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

COMMENTS:

1) **Bill Summary**. The bill would expand and extend the provision in current law to permit unpermitted ADUs built before 2018, to also include unpermitted ADUs and JADUs built prior to 2020. The bill prohibits a local agency from denying a permit to unpermitted ADUs and JADUs built prior to 2020, unless the structure poses a threat to health and safety. The bill prohibits an owner of an unpermitted ADU or JADU from having to pay impact fees, connection fees, or capacity charges if their household can prove they are lower- or moderate-income. The bill also requires local agencies to post a checklist that provides the conditions necessary to comply with health and safety standards and that inform homeowners that they may seek a third-party code inspection from a licensed contractor prior to the application. The bill allows the local agency to inspect the unit for compliance with health and safety standards and requires the approval of permits necessary to correct

noncompliance. This bill is sponsored by Casita Coalition and Bay Area Council.

2) **Author's Statement**. According to the author, "ADUs are an important asset for middle and low-income homeowners to build generational resources and for multigenerational families to care for each other. These units are providing critically needed homes for renters amidst a housing crisis and steady supplemental income for owners at risk of displacement. While no one solution will solve the housing crisis, AB 2533 intends to support and empower cost-burdened homeowners by providing a pathway to legalize their unpermitted ADUs, so they may safely house family or community members."

3) **Accessory Dwellings.** ADUs are additional living quarters that are independent of the primary residence on the same lot. ADUs are either attached to or detached from, 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.

   Over the past few years, the Legislature has passed a number of bills to ease zoning restrictions and expedite approval processes for ADUs at the local level, which has contributed to the increased supply of ADUs throughout the state.

4) **Mitigation Fee Act.** When approving development projects, counties and cities can require the applicants to mitigate the project's effects by paying fees—known as mitigation fees, impact fees, or developer fees. The California courts have upheld impact fees for sidewalks, parks, school construction, and many other public purposes.

   When establishing, increasing, or imposing a fee as a condition of approving a development project, the Mitigation Fee Act requires local officials to:
   a) Identify the fee's purpose.
   b) Identify the fee's use, including the public facilities to be financed.
   c) Determine a reasonable relationship between the fee's use and the development.
   d) Determine a reasonable relationship between the public facility's need and the development.

   When imposing a fee as a condition of approving a development project, the Mitigation Fee Act also requires local officials to determine a reasonable relationship between the fee's amount and the cost of the public facility. In its 1987 Nollan decision, the U.S. Supreme Court said there must be an "essential nexus" between a project's impacts and the conditions for approval. In the 1994 Dolan decision, the U.S. Supreme Court said that conditions on development must have a "rough proportionality" to a project's impacts.

   In the 1996 Ehrlich decision, the California Supreme Court distinguished between "legislatively enacted" conditions that apply to all projects and "ad hoc" conditions imposed on a project-by- project basis. Ehrlich applied the "essential nexus" test from Nollan and the "rough proportionality" test from Dolan to "ad hoc' conditions. The Court did not apply the Nollan and Dolan tests to the conditions that were "legislatively enacted." In other words, local officials have generally faced greater scrutiny when they impose conditions on a project-by-project basis. As a result of these decisions and the Mitigation Fee Act, local agencies have conducted nexus studies to ensure any proposed impact fees meet these legal tests for most impact fees. Other requirements in the Mitigation Fee Act ensure that impact

fees are appropriately levied and spent.

On April 12 of this year, the United States Supreme Court decided Sheetz v. County of El Dorado, California. The case involved the takings clause of the Fifth Amendment to the U.S. Constitution. An El Dorado County resident challenged the county's legislatively enacted traffic impact mitigation fee, arguing the county should only charge him based on the impact associated with his specific parcel. The main question was whether or not the same standards of "essential nexus" and "rough proportionality" apply to legislatively enacted fees as they do to ad-hoc fees.

In the Sheetz decision, the Court stated, "A legislative exception to the Nollan/Dolan test 'conflicts with the rest of our takings jurisprudence,' which does not otherwise distinguish between legislation and other official acts. Knick v. Township of Scott, 588 U. S. 180, 185 (2019)." The Court also proclaimed that, "...as we have explained, a legislative exception to the ordinary takings rules finds no support in constitutional text, history, or precedent. We do not address the parties' other disputes over the validity of the traffic impact fee, including whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development. The California Court of Appeal did not consider this point—or any of the parties' other nuanced arguments—because it proceeded from the erroneous premise that legislative permit conditions are categorically exempt from the requirements of Nollan and Dolan. Whether the parties' other arguments are preserved and how they bear on Sheetz's legal challenge are for the state courts to consider in the first instance."

In addition, Justice Kavanaugh filed a concurring opinion, in which Justices Kagan and Jackson joined saying that, "I join the Court's opinion. I write separately to underscore that the Court has not previously decided—and today explicitly declines to decide—whether 'a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development.' Ante, at 10–11. Importantly, therefore, today's decision does not address or prohibit the common government practice of imposing permit conditions, such as impact fees, on new developments through reasonable formulas or schedules that assess the impact of classes of development rather than the impact of specific parcels of property. Moreover, as is apparent from the fact that today's decision expressly leaves the question open, no prior decision of this Court has addressed or prohibited that longstanding government practice."

5) **Connection and Capacity Charges**. Connection fees and capacity charges are one-time fees assessed on new customers that reflect the reasonable cost of providing service, typically for water or sewer systems. A local agency assesses a connection fee when it physically connects a structure to the water or sewer system, which pays for the physical facilities necessary to make a water connection or sewer connection, such as meters, meter boxes, pipelines, and the estimated reasonable cost of labor and materials for their installation of those facilities. A local agency assesses a capacity charge on the customer to cover the proportional cost of maintaining or constructing system wide infrastructure necessary to meet the additional water or sewer demand for new users of the system. The Mitigation Fee Act governs connection fees and capacity charges, but state law provides separate provisions related to their oversight and accounting.

6) **Previous Legislation**. SB 477 (Senate Committee on Housing), Chapter 7, Statutes of 2024, reorganized ADU and JADU law.

   AB 976 (Ting), Chapter 751, Statutes of 2023, prohibits a local agency from imposing owner occupancy requirements on properties with an ADU.

   AB 1033 (Ting), Chapter 752, Statutes of 2023, allowed an ADU to be separately conveyed from the primary residence

   SB 897 (Wieckowski), Chapter 664, Statutes of 2022, created a process for the permitting of unpermitted ADUs.

   AB 587 (Friedman), Chapter 657, Statutes of 2019, allowed an ADU to be sold or conveyed separately from the primary residence to a qualified buyer under specified circumstances.

   AB 68 (Ting), Chapter 655, Statutes of 2019, AB 881 (Bloom), Chapter 659, Statutes of 2019, and SB 13 (Wieckowski), Chapter 653, Statutes of 2019: Collectively, these bills made changes to ADU and JADU laws, including narrowing the criteria by which local jurisdictions can limit where ADUs are permitted, clarifying that ADUs must be ministerially approved if constructed in existing garages, eliminating for five years the potential for local agencies to place owner-occupancy requirements on the units, prohibiting an ordinance from imposing a minimum lot size for an ADU, and eliminating impact fees on ADUs that are 750 square feet or less and capping fees on ADUs that are 750 square feet or more to 25 percent

   AB 2299 (Bloom), Chapter 735, Statutes of 2016; and SB 1069 (Wieckowski), Chapter 720, Statutes of 2016 provided legislative intent re ADUs and provided requirements and authorizations for the entitlement of ADUs.

   AB 2406 (Thurmond), Chapter 755, Statutes of 2016 established JADU law.

   AB 2604 (Torrico), Chapter 246, Statutes of 2008, authorized a local agency to defer the collection of one of more fees up to the close of escrow.

   AB 641 (Torrico), Chapter 603, Statues of 2007, prohibited local governments from requiring the payment of local developer fees before the developer has received a certificate of occupancy, pursuant to a specified exemption, for any housing development in which at least 49 percent of the units are affordable to low or very low income households.

7) **Double-Referral.** This bill is double referred to the Committee on Housing and Community Development.

8) **Arguments in Support**. Casita Coalition writes in support of the bill, "Unpermitted or informal ADUs are widespread in neighborhoods throughout California, providing badly needed homes for renters and income for vulnerable owners at risk of displacement. Recent legislation began the work of establishing a process, but did not go far enough to address the serious challenges that homeowners face in formalizing their ADUs and junior ADUs. Existing law fails to specify the standards that local agencies must use for safety inspections and permitting–resulting too often in a default to much more rigorous Building Code standards–putting the cost of legalization out of reach for the exact homeowners the amnesty

program was designed to help–those who most rely on rental income to maintain their own housing stability. To improve safety of units while also reducing the risk of displacement for housing insecure tenants and homeowners, the costs and the uncertainties of the process must be reduced."

"AB 2533 improves current law by specifying the sections of California Housing Code that must be applied for safety inspections and permitting, and further provides clear relief for lower resourced homeowners who cannot afford costly impact fees, connection and capacity charges. The bill will also require public information to be posted about the amnesty program, the standards that units will be required to meet, and will inform homeowners and potential applicants about the option for a third-party confidential assessment of their unpermitted unit. This component of the bill is critical to improve transparency, predictability of the process, and prevent homeowners from beginning a legalization process without adequate information about potential costs"

9) **Arguments in Opposition**. None on file.

REGISTERED SUPPORT / OPPOSITION:

Support
Bay Area Council
California Yimby
Casita Coalition

Opposition

None on file.

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