

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 881 (Bloom) – As Amended April 3, 2019

SUBJECT: Accessory dwelling units.

SUMMARY: Makes a number of changes to Accessory Dwelling Unit (ADU) law.

Specifically, **this bill:**

- 1) Limits the criteria by which a local agency can determine where ADUs may be permitted to the adequacy of water and sewer services and the impact of ADUs on traffic flow and public safety.
- 2) Removes the authority for local agencies to require that applicants for ADUs be owner occupants and removes the ability for cities to require owner occupancy for either the primary or the accessory dwelling unit.
- 3) Requires local agencies to ministerially approve ADUs on lots with multi-family residences and within existing garages.
- 4) Clarifies, for purposes of the prohibition on a local agency not imposing parking standards, that one-half mile is *walking distance* of public transit.
- 5) Defines “public transit” to mean a bus stop, bus line, light rail, street car, car share drop off or pick up, or heavy rail stop.
- 6) Defines “existing structure” to mean a structure that is accessory and incidental to a dwelling located on the same lot.
- 7) Provides that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
- 8) Provides that the Legislature finds and declares that Section 1 of this act amending Section 65852.2 of the Government Code addresses a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Section 1 of this act applies to all cities, including charter cities.

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.

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

COMMENTS:

- 1) **Bill Summary.** This bill makes several changes to ADU law, including clarifying that distance to public transit, for purposes of the prohibition on a local agency imposing parking requirements, is one-half (1/2) mile walking distance of public transit, clarifies that garages are structures that can be converted into ADUs, clarifies the definition of terms, and limits additional criteria that can be used to exclude ADUs, in terms of requirements for the local agency. The bill also eliminates, from ADU law, the ability of a city or county to impose an owner-occupancy requirement on either the ADU or the main property. This bill is sponsored by the author.
- 2) **Author's Statement.** According to the author, "California's housing shortage is well-documented and the state currently needs over 3 million new units to address existing housing need. Accessory dwelling units, also known as granny-flats or secondary units, are an innovative and affordable housing option for many Californians. Because they are relatively affordable to build and are constructed by homeowners themselves, they also create units without depleting limited affordable housing funds.

"The ADU permitting process was streamlined significantly in 2016 through AB 2299 and cities around California embraced ADUs, adopting ordinances that have resulted in thousands of new permits across the state. Unfortunately, ambiguities in ADU statute have resulted in some confusion and uncertainty that has created unnecessary barriers to the construction of these units. AB 881 provides much-needed updates and clarifications to ADU statute that will help facilitate the construction of more housing."

- 3) **Background.** ADUs are additional living quarters that are independent of the primary dwelling unit on the same lot. ADUs are either attached or detached to the primary dwelling unit, 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.

ADUs have been identified as an important piece of the solution to California's housing crisis. According to the Turner Center for Housing Innovation at UC Berkeley, the average cost to build an ADU is relatively inexpensive at \$156,000. Because of their size and lower cost to construct, the Turner Center found that 58% of ADUs are rented out at below market rate.

Over the past few years, the Legislature has passed a number of bills to ease zoning restrictions and expedite approval processes at the local level, which has contributed to the increased supply of ADUs throughout the state. For example, in the City of Los Angeles, since 2017 a total of 9,247 applications have been received for ADUs. This represents an approximately 30-fold increase as compared to the citywide average in the many years well

before the state law changed. Similarly, the City of Santa Rosa received 118 applications for ADUs in 2018, compared to 54 total from 2008-2016.

4) **Policy Considerations:**

- a) **Owner-Occupancy Requirements.** State law allows local jurisdictions to create their own ADU ordinances subject to certain requirements, or if no local ordinances exists, approval of ADUs are subject to state statute. Existing law allows a city to require owner occupancy for either the primary or the accessory dwelling unit created through this process. The local agency may even require that the applicant for the ADU permit to be an owner-occupant. This requirement pre-dates 2016's SB 1069 (Wieckowski) and AB 2299 (Bloom), the bills considered largely responsible for the sizable growth in ADU applications in the past two years. AB 881 would remove these owner-occupancy requirement.

Proponents for owner-occupancy requirements have articulated that this regulation helps ensure oversight of the ADU and increases the potential for it to be rented out affordably to family and friends. They have also cited concern that removing this requirement would lead to more speculative development of ADUs by large corporations.

Opponents of the owner-occupancy requirements have conveyed that ADUs should not be treated as a separate class from other forms of housing, for which such requirements do not exist. They argue that there is little to no evidence that these requirements have indeed reduced ADU rents or that this has led to an increase in home speculation. Finally, they site the negative implications of the owner-occupancy requirement. This includes the increased difficulty in transacting sales involving properties with ADUs, as the uniqueness of this requirement in the housing market creates onerous terms. They also cite concerns that, were the owner to move out, the ADU would be required to be demolished.

- 5) **Committee Amendments.** In order to assess the impacts of removing the ability for cities and counties to impose owner occupancy requirements, the Committee may wish to consider placing a five-year sunset on these provisions, from January 1, 2020, to January 1, 2025. This will also allow the Legislature to have some oversight over the issue and assess whether ADU applications have increased without owner occupancy requirements, and whether the concerns about speculative development have occurred in some jurisdictions.
- 6) **Arguments in Support.** Supporters argue that this bill helps increase the housing stock of ADUs and removes several barriers to ADU deployment.
- 7) **Arguments in Opposition.** The League of California Cities, oppose unless amended, writes that this bill would "incentivize operating the property as a commercial enterprise and could have the unintended effect of large-scale investors purchasing many single-family homes and adding ADUs, thus operating more like a property management company, not a homeowner seeking some additional income."
- 8) **Double-Referral.** This bill was heard by the Housing and Community Development Committee on April 3, 2019, and passed with a 7-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California Association of Realtors
California Building Industry Association
California YIMBY

Oppose

League of California Cities (unless amended)

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