

Date of Hearing: January 12, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 916 (Salas) – As Amended January 3, 2022

SUBJECT: Zoning: accessory dwelling units: bedroom addition.

SUMMARY: Restricts public hearings for certain projects and increases the maximum allowable height of accessory dwelling units (ADUs) to 18 feet on specified parcels. Specifically, **this bill:**

- 1) Prohibits local governments from adopting or enforcing an ordinance that requires a public hearing as a condition of approving a project that adds space for additional bedrooms or reconfigures existing space to increase the bedroom count within an existing house, condominium, or apartment.
- 2) Declares that ensuring adequate housing is a matter of statewide concern and therefore applies this bill's prohibition on public hearings to all cities, including charter cities.
- 3) Increases, from 16 feet to 18 feet, the maximum height of an ADU that a local government must approve if the project complies with all other existing conditions for ADUs in Planning and Zoning Law and the ADU is located on a parcel that has an existing multifamily and multistory dwelling.
- 4) Makes technical and clarifying changes related to the regulation of ADUs in Planning and Zoning Law.
- 5) Provides that no reimbursement is required by this bill, pursuant to Section 6 of Article XIII B of the California Constitution, 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 bill.

EXISTING LAW:

- 1) Planning and Zoning Law establishes standards related to the adoption of regulations of ADUs and junior ADUs (JADUs) by local governments. With respect to ADUs and JADUs, Planning and Zoning Law:
 - a) Provides that, if a local government adopts an ordinance regulating ADUs and JADUs, the ordinance must meet certain requirements.
 - b) Provides that a local ordinance that establishes minimum or maximum ADU size must allow an ADU of up to 850 square feet or up to 1,000 square feet if the ADU provides more than one bedroom. Provides that any other minimum or maximum size imposed by a local ordinance must allow for an ADU of at least 800 square feet and 16 feet in height, with four-foot side and rear yard setbacks.
 - c) Prohibits local governments from establishing certain owner occupancy requirements for ADUs and JADUs.

- d) Requires a local agency to mandate a minimum rental term of 30 days on ADU rentals.
- e) Defines the following terms:
 - i) “ADU” means an 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 ADU also includes the following:
 - (1) An efficiency unit.
 - (2) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
 - ii) “JADU” means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A JADU may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
- 2) Authorizes the California Building Standards Commission (BSC) to approve and adopt building standards. Every three years, BSC, in coordination with relevant state agencies, undertakes building standards rulemaking to revise and update the California Building Standards Code (Title 24 of the California Code of Regulations). These building codes serve as the basis for the design and construction of buildings in California.
- 3) Allows a city or county to make modifications to the California Building Standards Code if it makes express findings that such a modification or change is necessary because of local climatic, geological, or topographical conditions.

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

COMMENTS:

- 1) **Author’s Statement.** According to the author, “We are facing a housing crisis in California with both a lack of affordable housing and a pandemic of homelessness, especially for low- and moderate-income communities and communities of color. ADU’s enable the creation of easy-to-build housing on land that is already utilized for housing, thus bringing down the cost of creating new housing – an opportunity to build for the ‘missing middle.’ It is critical that we ensure that ADU creation is streamlined and that more bedrooms can be created in the state without getting held up by the public hearing process. Reallocating underutilized space for legal bedrooms, will increase density thus bringing down the average price per occupant in a dwelling.”
- 2) **Background.** California faces a severe housing shortage. In its most recent statewide housing assessment, HCD estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. Numerous tools and measures are necessary to address the state’s housing shortage. The Legislature has long identified ADUs, also known as second units, in-law apartments, or “granny flats,” as a valuable form of housing.

- 3) **Accessory Dwelling Units.** 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. For example, in the City of Los Angeles, since 2017 a total of 9,247 applications were 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) **Existing Height Constraints.** Under Planning and Zoning law, local governments are required to ministerially approve permit applications for ADUs that meet a suite of conditions specified in statute. With respect to the size and height of ADUs, local governments are prohibited from establishing requirements that preclude the development of an 800 square foot ADU that is at least 16 feet in height and meets specified setback requirements. This requirement generally ensures that ADUs will not exceed the height of the primary residence on the lot, or the height of the structures on adjacent lots.

The California Building Code generally requires a minimum ceiling height of at least 7 feet for habitable space in new residential developments, including ADUs. However, local governments are authorized to make local amendments to building standards that are equivalent or more restrictive than the state building standards. In practice, some local governments require a minimum ceiling height of more than 7 feet. For example, the City of Oakland applies the state standard of 7 feet of ceiling height to some residential construction but requires a ceiling height of 7 feet 6 inches for other residential structures.

The California Building Code coupled with the existing height standards in Planning and Zoning Law technically allow for an ADU to include two stories that are each seven feet high. This allows for an additional two feet of buildable height to accommodate floor joists, ductwork, insulation, and other necessary infrastructure. However if a local government adopts a local amendment to the building code requiring a greater interior ceiling height for habitable space (e.g. nine feet), the construction of a two story ADU is effectively precluded in that jurisdiction.

- 5) **Local Hearing Requirements.** Planning and Zoning Law prohibits local governments from requiring a public hearing as a condition of the approval of a proposed ADU or JADU that meets certain requirements established in statute. JADUs are developed through the reconfiguration and conversion of space within the existing footprint of a house. While reconfiguring existing space to create a JADU is not subject to a local hearing, according to supporters of the bill, existing code requirements in some jurisdictions can trigger a public hearing requirement if space in a home is reconfigured to add an extra bedroom. As a result, reconfiguring a home to add an extra bedroom within the existing footprint may be subject to more local oversight than reconfiguring a home to add an independent JADU or building an entirely independent and detached ADU on that lot.

- 6) **Bill Summary.** This bill will make two changes to law governing the permitting of ADUs and local hearing requirements:
- a) **Height Limits.** This bill will increase the potential building height of an ADU that a local government must permit ministerially from 16 feet to 18 feet if the ADU is proposed on a lot with an existing multistory multifamily development. ADUs that are proposed on a lot with a single-family dwelling, regardless of the height of the existing dwelling unit on the parcel ADU will remain capped at 16 feet.
 - b) **Local Hearings for Additional Bedrooms.** This bill expands the prohibition on local hearings that apply to ADUs and JADUs to projects that add space for additional bedrooms or reconfigure space in existing structures to increase the bedroom count within the house, condominium, apartment, or dwelling.
- 7) **Arguments in Support.** According to the California Rental Housing Association, “One simple, effective, and cost-efficient way to tackle the housing shortage crisis facing our state is to add more housing units or by increasing ADU production through a streamlined process and increased ministerial approval. This will enable the creation of increased density in the least expensive form possible and hence increase the housing stock which will help bring down the cost of housing. We believe that these are the types of solutions that our state must consider in order to provide Californians the relief that they desperately need.”
- 8) **Arguments in Opposition.** None on file.
- 9) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee, where it is set for hearing on January 12, 2022.
- 10) **Previous Legislation.** AB 881 (Bloom), Chapter 659, Statutes of 2019: Removed potential impediments to construction of ADUs in three ways: limited the criteria by which local jurisdictions can limit where ADUs are permitted; clarified that ADUs must be ministerially approved if constructed in existing garages; and eliminated for five years the potential for local governments to place owner-occupancy requirements on the units.

AB 68 (Ting), Chapter 655, Statutes of 2019: Made various changes to law related to the permitting of ADU and junior accessory dwelling units. Prohibited an ordinance from imposing a minimum lot size for an ADU.

SB 13 (Wieckowski), Chapter 653, Statutes of 2019: Made a number of changes to law governing ADUs, specifically: prohibited local ordinance from requiring an applicant for an ADU to be an owner occupant; eliminated impact fees on ADUs that are 750 square feet or less and capped fees on ADUs that are 750 square feet or less.

AB 2299 (Bloom), Chapter 735, Statutes of 2016: Required a local government to ministerially approve ADUs if the unit complies with certain parking requirements, the maximum allowable size of an attached ADU, and setback requirements.

REGISTERED SUPPORT / OPPOSITION:

Support

The California Rental Housing Association
California YIMBY

Opposition

None on file.

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