

Date of Hearing: July 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 13 (Wieckowski) – As Amended July 1, 2019

SENATE VOTE: 34-2

SUBJECT: Accessory dwelling units.

SUMMARY: Makes a number of changes to accessory dwelling unit (ADU) law. Specifically, **this bill:**

- 1) Requires the Department of Housing and Community Development (HCD) to notify the city, county, or city and county, and allows HCD to also notify the office of the Attorney General that the city, county, or city and county if that city or county has taken an action in violation of ADU law.
- 2) Defines the following terms:
 - a) “Accessory structure” as a structure that is accessory and incidental to a dwelling located on the same lot;
 - b) “Efficiency unit” as it is defined in Section 17958.1 of the Health and Safety Code;
 - c) “Public transit” as a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
- 3) Prohibits a local agency from requiring the replacement of off-street parking spaces when a garage, carport, or covered parking structure is demolished in conjunction with an ADU or is converted to an ADU.
- 4) Expands the area in which an ADU can be built to include attached garages, storage areas, and accessory structures.
- 5) Specifies that ADUs are not required to provide fire sprinklers if they are not required for the primary residence.
- 6) Reduces the application approval timeframe to 60 days for an ADU and stipulates that if a local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.
- 7) Prohibits a local agency from establishing a maximum square footage requirement less than 850 square feet for an ADU or less than 1,000 square feet for an ADU that provides more than one bedroom.
- 8) Specifies that a local agency shall not impose parking standards for an ADU if the ADU is located within a *traversable distance* of ½ mile of public transit.

- 9) Prohibits a local agency from requiring owner occupancy for either the primary unit or the ADU. Prohibits a local agency from requiring owner occupancy as a condition for issuing a building permit for an ADU. Specifies that an agreement with a local agency to maintain owner occupancy as a condition of issuance of a building permit for an ADU shall be void and unenforceable.
- 10) Prohibits a local agency, special district, or water corporation from imposing any impact fee (except any connection fee or capacity charge) on the development of an ADU if that fee, in the aggregate, exceeds the following:
 - a) An ADU less than 750 square feet will be charged zero impact fees; and,
 - b) An ADU 750 square feet or more shall be charged 25% of the impact fees otherwise charged for a new single-family unit on the same lot.
- 11) Revises the basis for how a connection fee or capacity charge can be charged in proportion to the burden to the proposed ADU using either square footage or the number of its drainage fixture unit values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, as specified.
- 12) Allows HCD, after an ordinance is adopted, to submit written findings to the local agency as to whether the ordinance complies with current law, as follows:
 - a) Requires, if HCD finds that the ordinance is out of compliance, HCD to notify the local agency and may notify the office of the Attorney General that the local agency is in violation of state law; and,
 - b) Requires the local agency to consider findings made by HCD. Allows the local agency to either change the ordinance to comply with ADU law or include findings in its resolution adopting the ordinance that explain the reasons the local agency believes the ordinance complies despite HCD's findings.
- 13) Allows HCD to review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards in ADU law.
- 14) Allows a local agency to count an ADU for the purposes of identifying adequate sites for its housing element, subject to authorization by HCD and compliance with Planning and Zoning law.
- 15) Requires a local agency, upon request of the owner of an ADU built before January 1, 2020, to delay enforcement of an ADU building standard, subject to 16), below.
- 16) Establishes an amnesty program for ADUs built before January 1, 2020, as follows:
 - a) Requires an enforcement agency, until January 1, 2030, that issues an owner of an ADU a notice to correct a building standard, to include a statement that the owner of the unit has a right to request a delay in enforcement;
 - b) Allows the owner of an ADU that receives a notice to correct violations or abate nuisances to submit an application to the enforcement agency requesting the enforcement

be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety;

- c) Requires the enforcement agency to grant an application, until January 1, 2035, if it determines that correcting the violation is not necessary to protect health and safety. Requires the enforcement agency to consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal, as specified;
- d) Prohibits the enforcement agency from approving any applications on or after January 1, 2030. Specifies that any delay approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was initially approved; and,
- e) Sunsets these provisions as of January 1, 2035.

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) 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.
- 3) 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.
- 4) 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.
- 5) 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.
- 6) 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) **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 (based on Turner Center's report from December 2017). 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 the years 2008-2016.

- 2) **Bill Summary.** This bill makes a number of changes to ADU law. In addition to some more minor provisions, this bill:
 - a) Eliminates the ability of a local agency to impose owner occupancy requirements on either the main house or the ADU, and also provides that an agreement with a local agency to maintain owner occupancy as a condition of issuance of a building permit shall be void and unenforceable;
 - b) Eliminates impact fees, in the aggregate, for an ADU less than 750 square feet, and reduces the impact fees for an ADU larger than 750 square feet to 25% of the impact fees otherwise charged for a new single-family dwelling on the same lot;

- c) Requires HCD to notify the city and/or county and allows HCD to also notify the office of the Attorney General that the city and/or county if HCD finds that the housing element or an amendment to this element, or any action or failure to act as prescribed, does not substantially comply with ADU law; and,
- d) Requires a local agency, upon request of the owner of an ADU, to delay enforcement of an ADU building standard for a specified amount of time.

This bill is author-sponsored.

- 3) **Author's Statement.** According to the author, "California is in a severe housing crisis. The largest driver for this crisis is a lack of supply. One significant step to increase the supply of affordable housing is to build more ADUs. ADUs are inherently affordable: they cost less to build than a regular unit, are financed and managed by a homeowner, and require no public subsidy. Under existing law, any property owner has the ability to construct an ADU on their property should they meet certain zoning and building requirements. However, a significant number of homeowners interested in building ADUs on their property are prevented from constructing these units due to prohibitively high impact fees and other barriers. SB 13 takes into consideration that the impact of an ADU on a neighborhood's infrastructure and services is inherently different from the impact created by single family homes or multifamily buildings. SB 13 also addresses other barriers such as lowering the application approval time to 60 days, creating an avenue to get unpermitted ADUs up to code, and enhancing an enforcement mechanism that would allow the California Department of Housing and Community Development to ensure local agencies are following the law on ADUs. SB 13 is an important step in resolving the housing crisis by reducing excessive impact fees and other barriers for ADUs and allowing Californians to build affordable housing in their backyards."
- 4) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Owner-Occupancy Requirements.** State law allows local jurisdictions to create their own ADU ordinances subject to certain requirements, or if no local ordinance exists, approval of ADUs are subject to state statute. Existing law allows a city to require owner occupancy for either the primary or the ADU created through this process. The local agency may even require that the applicant for the ADU permit 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.

Proponents for retaining a local agency's ability to impose owner-occupancy 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 owner occupancy 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, which 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.

SB 13 removes the ability of a local agency to impose owner-occupancy requirements, and makes void and unenforceable an agreement with a local agency to maintain owner occupancy, if it is a condition of issuance of a building permit for an ADU. The Committee may wish to consider whether it is prudent to undo owner occupancy restrictions retroactively, and how that might work with deed-restricted properties in which the owner-occupancy restrictions were recorded as part of the title.

- b) **Impact Fees.** Local governments can charge impact fees to a development to mitigate the impact of new development on local infrastructure, such as sewers, roads, parks, and schools. The Mitigation Fee Act, passed in 1989, requires cities to identify the purpose of a fee, the use of the fee, and show that there is a “reasonable” nexus between the fee amount and the impact of the project. Local agencies also charge fees to fund open space and parks, school fees, water and sewer fees, and project-specific fees through negotiated development agreements. The passage of Proposition 13 and the loss of property tax revenues have fueled cities’ dependence on fees to fund infrastructure and services.

For several reasons, the impact fees on new ADUs vary greatly by local jurisdiction. While the demands for infrastructure from new development are often similar, nexus studies are often art as much as science, and can reach very different conclusions about the infrastructure burden of new development. Additionally, many local governments do not charge fees based on the nexus (which sets the upper bound of what is legally allowed), but on the ability of a development to pay, which will reflect both the varying market conditions between jurisdictions and the local appetite to facilitate new development. Finally, a new ADU likely will be subject to fees from multiple different sources, including special districts, schools, and the city or county. Fees from these different sources are often calculated in isolation and by different government entities. This can result in ADU fees from multiple sources that are individually economically feasible, but cumulatively prohibitive.

This bill would eliminate impact fees for ADUs of less than 750 square feet. ADUs that are 750 square feet or larger would be charged 25% of impact fees for new single-family dwellings. This change would have the benefit of making it less expensive and therefore easier to build ADUs. However, there would be commensurate strain to local infrastructure, creating concerns about safety, and reduction of quality of life. This policy would also penalize local agencies that “right-size” their impact fees based on actual costs, ability-to-pay, and unit size. In addition, this bill does not differentiate between impact fees charged by cities and counties and special districts that must pass through unmet costs to ratepayers. As a result, it incentivizes jurisdictions and special districts to raise their fees and rates for all housing units to compensate.

This bill also does not distinguish that some impact fees are charged on a per unit basis, whereas some are charged per square feet. Where impact fees are charged on a per unit basis, there is strong justification for reducing the fees for ADUs, which are substantially smaller than typical homes. However, when fees are charged on a per square foot basis,

the smaller size of the ADUs itself brings down the cost of fees (for example, a 500 square foot ADU would pay 25% of the fees of a 2,000 square foot single-family home).

The challenge of determining the “appropriate” amount of impact fees has been the source of much discussion in the Legislature in the last several years. To help understand the current landscape of fees and provide recommendations for policy changes, AB 879 (Grayson, 2017) directed HCD to complete a study to evaluate the reasonableness of local fees charged to new developments, including findings and recommendations regarding potential amendments to the Mitigation Fee Act to substantially reduce fees for residential development. This study was to be completed by June 30, 2019.

- 5) **City of Santa Rosa.** The author uses the City of Santa Rosa as an example of a jurisdiction that has successfully lowered ADU fees and has based some of the bill’s contents on policies adopted by Santa Rosa.

The City proactively reduced development impact fees, including both capital facilities fees and parks fees. For units up to 750 square feet, no impact fees are assessed. For up to 950 square feet, the impact fees are 25%, and for up to 1200 square feet, the impact fees are 50%.

The City also specifies that no new or separate utility connection, or related connection fee or capacity charge will be required for ADUs that are internal conversions of existing space within a single-family residence or an accessory structure, or new ADUs (detached or attached) that are 750 square feet or smaller.

Santa Rosa requires either the main residence on the site or the ADU to be occupied by the property owner. Prior to occupancy of an ADU or JADU, the property owner is required to file with the County Recorder a deed restriction which addresses owner occupancy of one of the units on site. In lieu of the owner-occupancy restriction, the property owner may execute an affordability contract with the City’s Department of Housing and Community Services, requiring the rental of one of the units on the property to low income households at restricted rents.

- 6) **Committee Amendments.** The Committee may wish to consider the following amendments:

a) **Alignment of Owner Occupancy Provisions with AB 881 (Bloom).** To be consistent with the policy adopted in AB 881, the Committee may wish to consider placing a five-year sunset on SB 13’s provisions, from January 1, 2020, to January 1, 2025, and to also delete the language that provides that an agreement on owner occupancy shall be void and unenforceable, if it was a condition of issuance of a building permit.

b) **Impact Fees.** The Committee may wish to make the following changes to provisions of SB 13 dealing with impact fees:

i) Retain the provisions prohibiting any impact fees to be charged for ADUs under 750 square feet and strike the provisions related to impact fees being charged at 25% for anything over 750 square feet; and,

ii) Insert language giving direction to local agencies that for any impact fees charged for an ADU above 750 square feet, that those fees must be charged proportionately in relation to the square footage of the primary dwelling unit.

7) **Related Legislation.** There are several other ADU bills pending in the current session:

AB 68 (Ting) would make several changes to further reduce barriers to production of ADUs. It would expand the definition of owner-occupancy to include members of trusts as well as units owned by a non-profit and deed restricted for affordability. It would increase enforcement capacity against local jurisdictions regarding their ADU ordinances.

AB 881 (Bloom) would make several changes to further reduce barriers to production of ADUs. It would remove the ability for local jurisdictions to impose owner occupancy requirements for ADUs for a period of five years.

AB 671 (Friedman) would require a city or county's housing element to include a plan that incentivizes and promotes the creation of affordable ADUs

8) **Prior Legislation:**

SB 831 (Wieckowski, 2018) would have made a number of changes to ADU law. This bill failed passage in the Assembly Local Government Committee.

AB 2890 (Ting, 2018) would have made a number of changes to ADU law. After being approved in Senate policy committees, the bill was referred to Senate Rules Committee, where it was held.

SB 1069 (Wieckowski), Chapter 720, Statutes of 2016, made several changes to reduce the barriers to the development of ADUs and expanded capacity for their development, including changes to parking, fees, fire requirements, and process.

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.

8) **Arguments in Support.** According to the California Chamber of Commerce, "Constructing ADUs is the only widely supported approach to expeditiously bringing thousands of low-cost housing units on the market. ADUs provide lower cost and low-carbon footprint homes in existing neighborhoods consistent with architectural traditions. Studies demonstrate that ADUs cost less to build and rent for less than new market rate housing, making ADUs affordable by design. ADUs are great for low- and middle-income renters, small families, and align with California climate change goals by lowering greenhouse gas emissions through smaller footprint housing units and reduced single occupancy vehicle miles traveled."

9) **Arguments in Opposition.** In their joint letter, the Fire Districts Association of California, the California Fire Chiefs Association, and the California Special District Association argue, "Special districts provide millions of Californians with essential local services, such as fire protection, parks and recreation, flood control, libraries, and more...Given that revenue for local governments is tightly restricted by the California Constitution, fees are one of the few ways that special districts can offset for the indirect costs of growth. It is irresponsible to promote growth with no plan to address the impact of that growth or mechanism to fund the needs of the new residents. If legislation succeeds in spurring development of ADUs by

prohibiting fees, the families inhabiting the new ADUs and their neighbors would suffer from inadequate public safety, parks, and other fundamental services. We would be trading one crisis for another.”

10) **Double-Referral.** This bill was heard in the Housing and Community Development Committee on June 19, 2019, and passed with a 6-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

ADU Task Force East Bay
Association of Bay Area Governments (ABAG) (if amended)
Bay Area Council
Bay Area Regional Health Inequities Initiative (BARHII)
California Apartment Association
California Association of Realtors
California Building Industry Association (CBIA)
California Building Officials (CalBO) (if amended)
California Chamber of Commerce
California Forward Action Fund
California State Retirees (CSR)
California YIMBY
Casita Coalition
Conservation Corps of Long Beach (CCLB)
Eden Housing
LA-Más
Los Angeles Business Council (LABC)
Los Angeles Conservation Corps (LACC)
Maxable Space, LLC
Metropolitan Transportation Commission (MTC) (if amended)
Non-Profit Housing Association of Northern California (NPH)
Oakland Chamber of Commerce
PrefabADU
San Francisco Housing Action Coalition
San Jose Conservation Corps & Charter School
Santa Cruz YIMBY
South Bay YIMBY
Southern California Mountains Foundation
Southern California Rental Housing Association
SPUR (SAN Francisco Bay Area Planning and Urban Research Association)
SV @ Home
Terner Center for Housing Innovation at the University of California, Berkeley
The Norris Group
United Dwelling
Urban Conservation Corps of the Inland Empire

Opposition

American Planning Association, California Chapter (unless amended)
Auburn Area Recreation and Park District (ARD)
California Fire Chiefs Association
California Special Districts Association (CSDA)
California State Association of Counties (CSAC) (unless amended)
Cities of: Anaheim, Beaumont, Burbank (unless amended), Camarillo, Chino Hills, Cupertino,
Downey (unless amended), El Segundo, Garden Grove, Los Alamitos (unless amended),
Morgan Hill (unless amended), Rancho Cucamonga (unless amended), San Dimas, San
Marcos, Santa Clarita, Thousand Oaks, Torrance (unless amended), Vista (unless amended)
Coalinga-Huron Recreation and Park District
Cosumnes Community Services District
Discovery Bay Community Services District
East Contra Costa Fire Protection District
Fire Districts Association of California
Georgetown Divide Recreation District
Hayward Area Recreation and Park District
League of California Cities (unless amended)
McKinleyville Community Services District
Meeks Bay Fire Protection District
Menlo Park Fire Protection District
Oceano Community Services District
San Ramon Valley Fire Protection District
Santa Maria Public Airport District
Santa Margarita Water District
Solano County Board of Supervisors
Templeton Community Services District
Urban Counties of California (UCC) (unless amended)
Ventura Council of Governments

Analysis Prepared by: Debbie Michel / Itzel Vasquez-Rodriguez / L. GOV. / (916) 319-3958