

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 831 (Wieckowski) – As Amended June 21, 2018

SENATE VOTE: 33-1

SUBJECT: Land use: accessory dwelling units.

SUMMARY: Revises, recasts, and expands the law governing accessory dwelling units (ADUs). Specifically, **this bill:**

- 1) Directs the Department of Housing and Community Development (HCD) to notify a city, county, or city and county of any violation of state statute governing ADUs and authorizes HCD to notify the Office of the Attorney General (AG) of any violation of state statute governing ADUs.
- 2) Provides that a local agency may designate areas where ADUs may be excluded for health and safety, including fire safety, based on clear findings that are supported by substantial evidence. The designation shall be based on clear criteria that may include the adequacy of water and sewer services and other health and safety issues.
- 3) Provides that a local agency may not implement standards for minimum lot size requirements for ADUs and shall allow for the construction of an ADU, unless the local agency makes specific findings that the construction of the ADU would adversely impact public health and safety, including fire safety.
- 4) Provides that the square footage of a proposed ADU shall not be considered when calculating an allowable floor-to-area ratio or lot coverage for the lot upon which the ADU is to be located.
- 5) 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 800-square foot ADU.
- 6) Provides that no setback shall be required for an existing living area or accessory structure that is converted to an ADU, and a setback of no more than three feet from the side and rear lines shall be required for an ADU that is not converted from an existing structure.
- 7) Provides that when a garage, carport, or covered parking structure is demolished in conjunction with an ADU or converted into an ADU, a local agency shall not require that those off-street parking spaces be replaced.
- 8) Reduces the application approval timeframe from 120 days to 60 days and provides that if a local agency has not acted upon the submitted application within 60 days, the application shall be deemed approved.
- 9) Provides that an agreement with a local agency to maintain owner occupancy as a condition for issuance of a building permit for an ADU shall be void as against public policy.

- 10) Provides that where a building official finds that a substandard ADU presents an imminent risk to the health and safety of the building's residents, upon request by an ADU owner, a building official, in consultation with local fire and code enforcement officials, shall approve a delay of not less than 10 years of any California Building Standards Code requirement that, in the judgment of the building official, is not necessary to protect public health and safety. The building official shall not approve a delay on or after January 1, 2029. This program shall remain in effect until January 1, 2039.
- 11) Creates a new section (Section 3), notwithstanding other sections of ADU law, for ministerial approval that provides that a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:
 - a) One ADU on a lot with a single dwelling if any of the following:
 - i) The ADU is substantially contained within the existing space of a single-family dwelling or ADU structure;
 - ii) The space has exterior access from the existing dwelling; and,
 - iii) The side and rear setbacks are sufficient for fire and safety.
 - b) One junior accessory dwelling unit (JADU) on a lot with a single-family dwelling if all of the following apply:
 - i) The JADU is contained within the existing space of a single-family dwelling or accessory structure;
 - ii) The space has exterior access from the existing dwelling; and,
 - iii) The side and rear setbacks are sufficient for fire and safety;
 - c) Multiple ADUs within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attic, or garages, if each unit complies with state building standards for dwellings; and,
 - d) Provides that not 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 height limits of 16 feet and three-foot rear yard and side setbacks.
- 12) Specifies in Section 3 that ADUs and JADUs shall not be considered by a local agency, special district, or water corporation to be a new residential use for the purposes of calculating fees for new development.
- 13) Permits HCD, after the adoption of an ADU ordinance, to submit findings to the local agency as to whether the ordinance complies with ADU law. If HCD finds that the local agency's ordinance does not substantially comply with ADU law, HCD shall notify the local agency and may notify the AG. The local agency shall consider findings made by HCD and may change the ordinance to comply with ADU law or adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the

reasons the local agency believes that the ordinance complies with this section despite HCD's findings.

- 14) Permits HCD to review, adopt, amend, or repeal guidelines to implement uniform standards and criteria that supplement or clarify the terms, references, and standards in ADU law, but exempts these Guidelines from the Administrative Procedures Act.

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: According to the Senate Appropriations Committee, this bill contains the following costs:

- HCD estimates ongoing costs of approximately \$325,000 annually for 2 PY of staff to provide technical assistance, review ordinances, and refer ordinances that violate state law to the Attorney General. (General Fund)

COMMENTS:

- 1) **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.

- 2) **Author’s Statement.** According to the author, “We face many challenges when it comes to providing affordable housing, but eliminating the barriers to accessory dwelling units (ADUs) is a common-sense, cost-effective approach that will allow homeowners to share empty rooms in their homes and property, add incomes to meet family budgets, and make good use of the property across California while easing the housing crisis. Multiple research and policy organizations have recognized accessory dwelling units (ADUs) as critical piece of this solution, including the McKinsey Global Institute, the Bay Area Council Economic Institute, President Obama’s White House and the Turner Center for Housing Innovation.

“ADUs are affordable by design, costing 50-90% less to build than conventional infill development and are built with no cost to the state. In 2016, Governor Brown signed SB 1069 (Wieckowski), Chapter 720, Statutes of 2016, which eliminated the most onerous barriers to the construction of accessory dwelling units (ADUs). As a result, there has been a proliferation of ADUs in California, with some jurisdictions seeing more than twenty-five times the amount of ADU permit applications in 2017 than the year prior. However, many homeowners continue to face barriers to constructing these units because of the barriers that still remain, such as excessive impact fees, owner occupancy requirements, and lot size minimums. SB 831 builds upon previous ADU legislation to eliminate the remaining onerous barriers to ADU construction and thus facilitate the development of housing that is affordable by design.”

- 3) **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.

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.”

- b) **10-Year Delay in Enforcement of Building Codes.** This bill contains language that provides that where a building official finds that a substandard ADU presents an imminent risk to the health and safety of the building’s residents, upon request by an ADU owner, a building official, in consultation with local fire and code enforcement officials, shall approve a delay of not less than 10 years of any California Building Standards Code requirement that, in the judgment of the building official, is not necessary to protect public health and safety. The building official shall not approve

a delay on or after January 1, 2029. This program shall remain in effect until January 1, 2039.

According to the California Building Officials (CALBO), in opposition, “This language, as written, is contradictory and broad in nature. Building officials, as designated enforcement officers, are charged with “enforcement authority for health, safety, and welfare requirements,” as stated in the CA Penal Code 829.5. Delaying an “imminent risk” for not less than 10 years would be in violation of this authority. Furthermore, the term imminent risk is not defined, and could be widely interpreted.

“Currently, building officials have the discretion to apply and interpret code requirements on a case-by-case basis. This allows local governments and jurisdictions to regulate the California Building Code (CBC) in the best manner possible in their unique region. This is in correlation with California’s diverse geography, and varied urban and rural regions throughout the state. Building officials also rely on the CBC as an enforcement tool. The CBC is updated on a triennial cycle, allowing it to include the most recent improvements to structural and life safety provisions. If an accessory dwelling unit were allowed to remain in a “substandard” condition for 10 years, it could possibly fall several code cycles out of compliance in addition to being a safety concern. Building officials also have the discretion as to which codes are applied to a dwelling, but the permitting process could be prolonged if the changes are delayed for 10 years.”

- c) **Conflicts with AB 2890 (Ting).** This Committee heard AB 2890 (Ting) on April 25, 2018. During that hearing, the author accepted significant amendments to narrow the scope of the bill, in order to meet approval by the majority of the Committee. Because of these significant amendments, AB 2890 passed on a 6-2 vote.

SB 831, however, contains many conflicts with AB 2890, as well as policies that were not dealt with in AB 2890. Some of the significant differences between the two bills are as follows:

- i) **Owner occupancy.** SB 831 eliminates the authorization to require owner occupancy of ADUs. In contrast, AB 2890 provides that if a local ADU ordinance imposes an owner occupancy restriction, it shall not be monitored more frequently than annually and requires if a local government has owner-occupancy restrictions, it must provide for specific exemptions.
- ii) **Short-term rentals.** SB 831 does not include any requirements about short term rentals of ADUs. Under the ministerial approval provisions, AB 2890 allows a local agency to require that a rental of an ADU shall be for a term longer than 30 days.
- iii) **Location.** SB 831 allows a local agency to designate areas where ADUs may not be constructed, though such exclusions may only be for health and safety (including fire safety) reasons. This provision was deleted from AB 2890 in this Committee.
- iv) **Setbacks.** SB 831 prohibits a setback requirement for an existing area or structure that is converted to an ADU, and limits any setback requirement to three feet for an ADU that is not converted from an existing structure. AB 2890 does not include these provisions.

- v) **Parking requirements.** SB 831 provides that when a garage, carport, or covered parking structure is demolished in conjunction with an ADU, or converted into an ADU, a local agency shall not require replacement of those off-street parking spaces. This provision was deleted from AB 2890 in this Committee.
- vi) **Substandard ADUs.** SB 831 provides that where a building official finds that a substandard ADU presents an imminent risk to health and safety, the official shall approve a delay of at least 10 years of state building standards code requirements that are not necessary to protect public health and safety (effectively establishing an amnesty). AB 2890 does not contain this requirement, and instead, addresses the problem by requiring HCD to create small home building standards for ADUs and submit them to the California Building Standards Commission by January 1, 2020.
- vii) **Absence of local JADU ordinance.** AB 2890 provides that if a local agency has not adopted a JADU ordinance, it shall apply the standards in existing law for approval of a permit to construct a JADU. SB 831 does not include this provision.
- viii) **Deemed approved standard.** While both SB 831 and AB 2890 require a local agency to approve or disapprove an application ministerially within 60 days (instead of existing law which specifies 120 days), SB 831 states that an application shall be “deemed approved” if the agency has not acted upon the submitted application within that time frame. AB 2890 does not contain a “deemed approved” standard.
- ix) **HCD Guidelines.** While both bills allow HCD to review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law, SB 831 allows HCD to do this without following the Administrative Procedures Act. AB 2890 does not contain that provision and thus rulemaking by HCD would need to follow provisions of existing law, allowing the public to have a meaningful opportunity to participate in the adoption of state regulations.
- x) **Ministerial Approval Provisions and Development Impact Fees (Section 3).** This bill takes provisions of existing law that require ministerial approval of certain ADUs and moves it into a new section of law (Section 3) that notwithstanding other ADU law, as well as expands the types of ADUs that must be ministerially approved. This new section does not contain language that requires that fees charged for the construction of ADUs shall be determined in accordance with Chapter 5 and Chapter 7 of the Government Code, otherwise known as the Mitigation Fee Act. It is unclear whether this is intentional or an unintended drafting mistake.

The requirement that fees charged for the construction of ADUs be determined in accordance with the Mitigation Fee Act was reinserted into Section 2 of the bill in the most recent amendments.

- 4) **Arguments in Support.** Supporters argue that this bill will incentivize the production of ADUs by eliminating barriers and will have a favorable impact on the number of units available in California.

- 5) **Arguments in Opposition.** Opponents argue that the regulation of development standards is a core function of cities' land use authority and that this bill greatly imposes upon this function.
- 6) **Double-Referral.** This bill was heard in the Housing and Community Development Committee on June 20, 2018, and passed on a 6-1 vote.

REGISTERED SUPPORT / OPPOSITION (Letters listed below were submitted to prior versions of the bill, unless otherwise indicated*):

Support

Bay Area Council [SPONSOR]
AARP California (*based on June 21, 2018 version)
Abundant Housing LA
ADU Builder. Inc.
Basis Studio
Bridge Housing Corporation
Build
California Apartment Association
California Association of Realtors
California Building Industry Association
California Chamber of Commerce
California Community Builders
California Forward Action Fund (*based on June 21, 2018 version)
California Housing Consortium
California Renters Legal Advocacy and Education Fund
California YIMBY
Corporation For Supportive Housing
Cover
Crest Backyard Homes
Habitat for Humanity California
Hacienda
Half Moon Bay Brewing
Heller Manus Architects
HKS Architects
Housing Trust Silicon Valley
Inn At Mavericks
La Mas
Los Angeles Business Council
Mavericks Event Center
McKinsey & Company
Non-Profit Housing Association Of Northern California
North Bay Leadership Council
Pacific Standard
Postmates Inc.
Resources for Community Development
Revisions Resources

Support (continued)

Rise Together
San Diego County Apartment Association
San Francisco Bay Area Rapid Transit District (BART)
San Francisco Chamber Of Commerce
San Francisco Housing Action Coalition
San Mateo County Economic Development Association
Shorenstein Properties
Silicon Valley Leadership Group
Southwest California Legislative Council
SPUR
SV Angel
SV@Home
Turner Center for Housing Innovation
The Fairmont San Francisco
Tim Lewis Communities
TMG Partners
Wareham Development
Webcor
Working Partnerships USA (if amended)

Concerns

California Special Districts Association (*based on June 21, 2018 version)

Opposition

American Planning Association, California Chapter (*based on June 21, 2018 version)
California Association of School Business Officials
California Building Officials
California Coalition For Adequate School Housing
California Contract Cities Association
California State Association of Counties (*based on June 21, 2018 version)
Cities of Camarillo, Coronado, Fullerton, Glendora, Hawthorne, Huntington Beach, Lake Forest, Lakewood, Long Beach, Murrieta, Rancho Cucamonga, San Marcos, Santa Clarita, Thousand Oak, and Vista
Del Norte County Board of Supervisors
League of California Cities (*based on June 21, 2018 version)
Marin County Council of Mayors and Councilmembers, Legislative Committee
Regional Water Authority
Rural County Representatives of California (*based on June 21, 2018 version)
San Diego County Water Authority
Union Sanitary District
Urban Counties Of California (*based on June 21, 2018 version)

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