

Date of Hearing: April 3, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 68 (Ting) – As Amended March 27, 2019

SUBJECT: Land use: accessory dwelling units

SUMMARY: Revises the law regarding accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs). Specifically, **this bill:**

- 1) Requires a local agency to ministerially approve, in an area zoned for housing, an application for a building permit to create any of the following:
 - a) On a lot with a proposed or existing single-family home, allow:
 - i. one ADU that is substantially within a proposed or existing structure or the same footprint as an existing structure; or
 - ii. one detached ADU that is substantially within a proposed or existing structure or the same footprint as an existing structure.
 - b) On a lot with a multi-family dwelling, allow:
 - i. Multiple ADUs within the livable space of an existing structure; and
 - ii. Two detached ADUs.
- 2) Provides that a local ADU ordinance cannot:
 - a) Limit ADUS to lots of a minimum size;
 - b) Set a maximum ADU size that does not allow an ADU of at least 800 square feet and 16 feet in height;
 - c) Require replacement parking when parking is demolished in the creation of an ADU;
 - d) Require that a setback be required for ADUs within existing structures and new ADUs located in the in the same location as existing structures, and no more than a four-foot side and rear yard setback for all other ADUs;
 - e) Allow more than 60 days to ministerially consider an ADU permit application;
 - f) Utilize another local ordinance, policy, or regulation as the basis for the *delay*, in addition to deny, of permitting an ADU;
 - g) Require that monitoring of owner-occupancy restrictions occurs more than once per year;

- h) Require correction of nonconforming zoning conditions as a condition of ministerial approval; and
 - i) Define owner-occupant to as anything less than the following:
 - i. An owner of the lot who occupies the primary dwelling or the ADU;
 - ii. A trust in which ownership of the lot is placed if at least one beneficiary of the trust occupies the primary dwelling or the ADU; and,
 - iii. An organization that owns the lot in order to provide long-term, deed-restricted affordable housing that is subject to a regulatory agreement with a local agency.
- 3) Provides that JADUs must be allowed to be constructed within new single-family residences.
- 4) Creates an enforcement mechanism as follows:
- a) Allows the Department of Housing and Community Development (HCD) to submit written findings to a local agency regarding compliance of their local ADU ordinance;
 - b) Provides that if HCD finds that the ordinance does not comply with statelaw, HCD must notify the local agency that the local agency is in violation and provide a maximum of 30 days to respond;
 - c) Requires the local agency to amend its ordinance accordingly or adopt a resolution with findings explaining the reason the local ordinance complies with State ADU law; and,
 - d) Provides that if the local agency does not amend its ordinance in response to HCD's findings or adopt a resolution with findings explaining the reason the ordinance complies with state law and address HCD's findings, HCD must notify the local agency and may notify the Attorney General that the local agency is in violation of the law.
- 4) Revises the definition of ADU to convey that such a unit can exist on a lot where a single-family will be situated.
- 5) Defines "nonconforming zoning condition" to mean a physical improvement on a property that does not conform with current zoning standards.
- 6) Provides that no reimbursement is required by this act 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 act, within the meaning of Section 17556 of the Government Code.

EXISTING LAW:

- 1) States that ADUs are an essential component of California’s housing supply (Government Code Section 65852.150).
- 2) Establishes requirements and standards for ADUs (Government Code Section 65852.2), including:
 - a) Requiring a local agency to ministerially approve, in an area zoned for housing, an application for a building permit to create one ADU and one JADU.
 - b) Providing that a local ADU ordinance may:
 - i. Impose requirements on minimum lot size, lot coverage, or floor area ratio;
 - ii. Set a maximum size of ADU at the size of an efficiency unit (240 square feet) and set a maximum ADU height;
 - iii. Require replacement parking when parking is demolished in the creation of an ADU;
 - iv. Require a setback for an ADU that is built within an existing garage, and require more than a five-foot setback for all other ADUs;
 - v. Allow up to 120 days to ministerially consider an ADU permit application;
 - vi. Utilize another local ordinance, policy, or regulation as the basis for the delay of permitting an ADU;
 - vii. Require that monitoring of owner-occupancy restrictions occurs more than once per year;
 - viii. Require correction of nonconforming zoning conditions as a condition of ministerial approval; and,
 - ix. Define owner-occupant to be limited to the owner of the lot who occupies the primary dwelling or the ADU.
- 3) Specifies that JADUs are allowed to be constructed within existing single-family residences (Government Code Section 65852.22).

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the Bill: According to the author, “ADUs and JADUs represent forms of housing production that can be rapidly increased without significant change to state laws. Existing law regarding Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) allow for too many barriers to their development, stunting a resource which could be part of the

solution to California’s housing crisis. Some of the barriers that continue to limit the full potential of ADUs in California are complex and costly permitting and construction processes.”

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 person, including separate access from the property’s primary unit. This includes permanent provisions for living, sleeping, eating, cooking, and sanitation. JADUs are ADUs that are no more than 500 square feet and exist within single-family homes and have cooking facilities including a sink and stove but are not required to have a bathroom.

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 approximate 30-fold increase as compared to the citywide average in the many years before the state law changed to reduce barriers to ADUs. Similarly, the city of Santa Rosa received 118 applications for ADUs in 2018, compared to 54 total from 2008-2016.

Relaxing ADU Standards: This bill makes major changes to the ADU statute to facilitate the development of more ADUs and addressed perceived barriers to ADUs, including the following:

- Increases the number of ADUs allowed to be constructed per lot by potentially allowing two ADUs on lots with single-family homes, and multiple ADUs on lots with multi-family dwellings;
- Enables ADUs and JADUs to be approved ministerially if there is an existing or proposed primary residence;
- Imposes requirements on minimum lot size to allow ADUs;
- Sets a maximum ADU dimensions that do not permit an ADU of 800 square feet, 16 feet in height, with four-foot side and rear yard setbacks;
- Requires replacement parking when parking is demolished in the creation of an ADU;
- Requires a setback for an ADU that is built within an existing structure or in the same footprint as an existing structure, and require more than a four-foot setback for all other ADUs;
- Allows no more than 60 days to ministerially consider an ADU permit application;
- Utilize another local ordinance, policy, or regulation as the basis for the delay of permitting an ADU;
- Requires that monitoring of owner-occupancy restrictions occurs more than once per year;
- Requires correction of nonconforming zoning conditions as a condition of ministerial approval; and
- Defines owner-occupant as:
 - An owner of the lot who occupies the primary dwelling or the ADU;

- A trust in which ownership of the lot is placed if at least one beneficiary of the trust occupies the primary dwelling or the ADU; and,
- An organization that owns the lot in order to provide long-term, deed-restricted affordable housing that is subject to a regulatory agreement with a local agency.

Owner occupancy restrictions: Existing law allows local jurisdictions to require owner occupancy for either the primary residence or the ADU. 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 at a lower rent than would otherwise have been charged. 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 evidence of an increase in home speculation from large corporations in those jurisdictions without this requirement. Finally, they cite the negative production implications of the owner-occupancy requirement. Owner-occupancy restrictions limit the sites on which ADUs could be built. They also create a disincentive for existing homeowners considering building an ADU, as it will limit the pool of potential future buyers. They also cite concerns that, were the owner to move out and the future owner want to rent the property, the ADU would be required to be demolished in order to comply with the law.

AB 881 (Bloom) (2019), which will also be heard in committee today, proposes to eliminate the ability for local jurisdictions to require owner occupancy for either the primary residence or ADU. To ensure consistency between the two bills, the Committee may wish to consider amending AB 68 to also remove the ability for local jurisdictions to require owner occupancy and the related language regarding the frequency of monitoring this restriction.

Approval process for ADUs: The intent of ADU policy is that ADUs are dwelling units that are accessory to the primary dwelling unit(s) on the property. Towards this end, the existing definition of ADUs states that ADUs must be built on the same parcel on which a dwelling is already situated. The bill refines the definition of ADUs to include dwellings built on parcels with proposed dwelling units. The intent of this change is to enable ADUs to be constructed at the same time as the primary residence. However, as currently written, the bill would enable an ADU to be constructed on a parcel on which there is no other dwelling unit, only a proposed dwelling unit. To help better align the intent of the existing and proposed law, the Committee may wish to consider requiring that an ADU cannot receive its certificate of occupancy before the primary residence(s) on the lot receives its certificate of occupancy.

As discussed above, this bill proposes to reduce the maximum period by which a local jurisdiction must ministerially consider an ADU or JADU permit application from 120 days after receiving the application to 60 days. Like other building and planning applications, it is not uncommon for applications for ADU and JADU permits to be submitted with incomplete or inaccurate information. While the reduced timeframe for review would help expedite the process, local jurisdictions should not be held accountable for processing incomplete applications. As such, the Committee may wish to consider specifying that the 60-day time period for considering an application begins when the jurisdiction receives a “complete” application.

Other issues: Existing law conveys that ADUs may be on a lot with a proposed primary dwelling unit. The bill further specifies ADUs may be constructed on lots with multi-family dwellings. However, the existing definition of ADU conveys that it is a dwelling unit on the same parcel as “the single-family dwelling.” The Committee may wish to consider revising the definition to clarify that ADUs can also be built on lots with multi-family dwellings.

Arguments in Support: According to UC Berkeley’s Urban Displacement Project, “Recent state efforts to incentivize the construction of ADUs have resulted in more communities and families building ADUs as a cost efficient way to address the affordable housing crisis. By further reducing barriers to ADU approval and construction, this legislation will help add tens of thousands of new units to California’s housing stock.” The California Association of Realtors notes that the bill “will help alleviate our housing shortage while capitalizing on limited land resources.”

Arguments in opposition: According to APA California, this and the multiple other ADU bills introduced this year would “make ADU ordinances more complicated rather than encouraging them and many jurisdictions that have already updated or are nearly done updating their ordinances.” They additionally cite concerns over allowing multiple ADUs in areas where the infrastructure might not be equipped to handle more housing units, reducing parking requirements, and reducing local discretion over owner–occupancy restrictions.

Committee Amendments: To address the issues raised above, the Committee may wish to consider the following amendments:

- Remove the ability for local jurisdictions to require owner occupancy for either the primary residence or ADU, and related language regarding the frequency of monitoring this restriction;
- Specify that the 60-day time period for considering an ADU or JADU application begins when the jurisdiction receives a complete application;
- Revise the definition of ADU to clarify that an ADU cannot receive its certificate of occupancy before the primary residence(s) on the lot; and
- Revise the definition of ADU to clarify that ADUs can also be built on lots with multi-family dwellings.

Related Legislation: The following bills related to ADUs have been introduced and are currently being considered by the legislature:

AB 69 (Ting) (2019): This bill would facilitate the creation of new Building Code standards for ADUs and other small homes. This bill is pending hearing in this committee.

AB 587 (Friedman) (2019): This bill would allow ADUs to be sold or conveyed separately from the primary residence where the house and ADU are built by a non-profit whose mission is to sell those units to low-income families, that both the primary house and the ADU are sold to low-income families, and that any subsequent sale also be to a low-income family. This bill was heard in this committee on March 27, 2019 and was passed out by a vote of 8-0. The bill is pending hearing at the Assembly Committee on Local Government.

AB 670 (Friedman) (2019): This bill would make it illegal for new or amended governing documents of common interest developments to prohibit the construction of ADUs or JADUs. This bill is pending hearing in this committee.

AB 671 (Friedman) (2019): This bill would require local jurisdictions to require in their Housing Elements a plan that incentivizes and promotes production of ADUs for very-low, low-, and moderate-income households. Requires the Department of Housing and Community Development to develop and post to its website a list of state programs that could help subsidize ADUs for very-low, low-, and moderate-income households. This bill is pending hearing in this committee.

AB 881 (Bloom) (2019): This bill would make several changes to further reduce barriers to production of ADUs. It would remove the ability for local jurisdictions to create owner occupancy requirements for ADUs. This bill is pending hearing in this committee.

SB 13 (Wieckowski) (2019): This bill would make several changes to further reduce barriers to production of ADUs. It would remove the ability for local jurisdictions to create owner occupancy requirements for ADUs. This bill is pending hearing in Senate Housing Committee.

Previous Legislation:

SB 1069 (Wieckowski), Chapter 720, Statutes of 2016: This bill 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: This bill requires 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.

Double referred: This bill was also referred to the Assembly Committee on Local Government where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

AARP California
ADU Task Force (East Bay)
Bay Area Council
BRIDGE Housing
Building Industry Association of the Bay Area
California Apartment Association
California Association of Realtors
California Community Builders
California Teamsters Public Affairs Council
Casita Coalition
cityLAB - UCLA
Community Legal Services in East Palo Alto
EAH Housing

Eden Housing
Facebook
Greenbelt Alliance
Habitat for Humanity California
Hello Housing
La-Mas
League of Women Voters of California
Non-Profit Housing Association of Northern California
North Bay Leadership Council
OpenScope Studio
PICO California
PrefabADU
Related California
San Francisco Housing Action Coalition
SV@Home
SPUR
Tent Makers
The Two Hundred
TMG Partners
Turner Center for Housing Innovation
UNITE HERE, AFL-CIO
Urban Displacement Project
Working Partnerships USA
Individuals - 7

Support If Amended

Habitat for Humanity East Bay/Silicon Valley
The San Francisco Foundation

Opposition

American Planning Association (oppose unless amended)

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