

Date of Hearing: April 3, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 881 (Bloom) – As Introduced February 20, 2019

SUBJECT: Accessory dwelling units

SUMMARY: Revises the law regarding accessory dwelling units (ADUs). 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) Requires local agencies to ministerially approve ADUs on lots with multi-family residences and within existing garages.
- 3) 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.
- 4) Specifies that, in measuring one-half mile from public transit for purposes of applying parking requirements, the traversability and walkability of this distance is accounted for.
- 5) Adds a definition of “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) Adds a definition of “existing structure” to mean a structure that was constructed before conversion to an ADU and is not a new structure.
- 7) Removes a requirement that ADUs shall not be required to provide fire sprinklers if they are not required for the primary residence.
- 8) 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.
- 9) 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) 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) A local agency may designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria. Such criteria may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.
 - b) A local agency shall ministerially approve an application for a building permit to create within a zone for single-family use one ADU 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.
 - c) A local agency may require an applicant for an ADU be an owner-occupant.
 - d) A city may require owner occupancy for either the primary or the accessory dwelling unit.
 - e) A local agency may require owner occupancy for either the primary or the accessory dwelling unit created through this process.
 - f) A local agency shall not impose parking standards for an ADU if the ADU is located within one-half mile of public transit.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the Bill: According to the author, “Although the ADU permitting process has been significantly streamlined as a result (of previous legislation), there continue to be ambiguities in the ADU statute that can slow or block the construction of these units. This has resulted in many ADU permits being significantly delayed or blocked. There are a number of specific deficiencies in existing law that this bill seeks to remedy.”

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.

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.

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 ADU 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. The proposed bill would remove this 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.

Staff Comments: The production of ADUs is an important strategy in the effort to reduce the overall cost of housing in California. This bill would remove potential impediments to their construction in three ways: by limiting the criteria by which local jurisdictions can limit where ADUs are permitted; by clarifying that ADUs must be ministerially approved if constructed in existing garages; and by eliminating the potential for local agencies to place owner-occupancy requirements on the units.

This bill proposed to amend current law that bans local jurisdictions from imposing parking standards within from one-half mile of public transit. The proposed bill intends to convey that distance alone is an insufficient measure of transit accessibility by clarifying that this distance needs to be "traversable or walkable." However, "traversable" and "walkable" are terms that are difficult to implement, as they mean very different things to differ people. As such, the Committee may consider revising this to utilize "walking distance" instead as a more definitive measure of how far the ADU is from transit.

The bill strikes language that the "Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence." This language is important for ensuring that ADUs can be built affordably. While this language appears twice in the existing Code, each could be construed as having slightly different meaning. As such, the Committee may wish to consider reinstating this language into the bill.

The proposed definition of “existing structure” does not add substantial meaning to law. As such, the Committee may wish to consider deleting the proposed definition of “existing structure.” By contrast, the term “accessory structure” is utilized in several places in this section, but not defined. As such, the Committee may wish to consider adding a definition of “accessory structure.”

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

- Replacing “one-half traversable or walkable mile of public transit” with “one-half mile walking distance of public transit.”
- Reinstating that “Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.”
- Adding a definition of “accessory structure” akin to that in Section 202 of the California Residential Code.
- Deleting the proposed definition of “existing structure.”

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

AB 68 (Ting) (2019): This bill 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. This bill is pending hearing in this committee.

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): 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.

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

California Apartment Association
California Association of Realtors
California YIMBY

Support if amended

California Building Industry Association

Opposition

None on file

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