

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2890 (Ting) – As Amended April 12, 2018

SUBJECT: Land use: accessory dwelling units

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

- 1) Provides that a local ADU ordinance shall not impose more than those standards specified by the statute and makes the following changes to existing standards:
 - a) Prohibits parking requirements if one or two ADUs are proposed on a lot in any of the circumstances as specified under existing law. This parking may be reduced or eliminated by the local agency.
 - b) Authorizes required parking spaces to be provided as tandem parking, nonconforming parking configurations, within a driveway, or within setback locations without a requirement that any parking space be covered or within a structure. This may be limited by specific findings by the local agency that tandem parking or other nonconforming parking configurations or parking in setback locations is not feasible based upon specific site or regional topographical or fire and life safety conditions.
 - c) Requires the lot where the ADU is located to have a proposed or existing single-family or multifamily primary dwelling structure.
 - d) Requires the ADU to be attached or located within the living area of, attached to or located within, or detached from the proposed or existing single-family or multifamily dwelling structure.
 - e) Limits the total area of floorspace of an ADU and if also on the same lot, a JADU, to not exceed 50% of the proposed or existing living area of the primary dwelling structure or 1,200 square feet, whichever is greater.
 - f) Provides that minimum lot size, total floor area ratio, and lot coverage standards shall not be applied to an ADU in an existing structure or a new construction, single story rear yard ADU, unless the unit exceeds 16 feet or exceeds 5-foot side and rear yard setbacks.
 - g) Provides that no setback shall be required for an existing living area or accessory structure converted to 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 or attached to a garage or that is constructed in a rear or side yard area.
 - h) Limit ADUs that are in excess of 16 feet in height.
- 2) Provides that a local ADU ordinance may do the following:

- a) Designate areas within the jurisdiction of the local agency where ADUs may be excluded only for the purposes of fire and life safety, based on clear findings that are supported by a preponderance of the evidence.
 - b) Require an applicant for an ADU permit to be an owner-occupant. If an owner occupancy restriction exists, it shall not be monitored more frequently than annually, as specified. An owner-occupant includes the following:
 - i) An owner of the lot who occupies either the primary dwelling or the ADU, regardless of whether ownership of the lot is held in trust on behalf of the owner.
 - ii) A trust in which ownership of the lot is evidenced if at least one beneficiary of the trust is an occupant of either the primary dwelling or the ADU.
 - iii) An organization or person that owns the lot and leases the primary dwelling or ADU at a below market rent pursuant to a regulatory agreement with the local agency.
 - c) Require any rental of the property to be for a term longer than 30 days and be subject to additional short-term rental standards.
 - d) Require approval by the local health officer where a private sewage system is being used.
- 3) Requires a local agency to ministerially approve an application for a building permit to create any of the following:
- a) One ADU and one JADU per lot with a single family dwelling if all of the following apply:
 - i) The ADU or JADU is within the existing space of a single-family dwelling or accessory structure.
 - ii) The space has exterior access from the existing single-family dwelling.
 - iii) The side and rear setbacks are sufficient for fire and life safety.
 - b) One new construction single-story ADU of not more than 800 square feet and has a minimum four-foot side and rear yard setback and is no taller than 16 feet.
 - c) Multiple ADUs within the portions of existing multifamily dwelling structures that are not used as a livable space, including but not limited to, a storage room, boiler room, passageway, attic, or garage.
 - d) No 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 a height limit of 16 feet and four-foot rear yard and side setbacks.

- 4) 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.
- 5) States that this bill establishes the maximum standards that local agencies shall use to evaluate a proposed ADU where a residential dwelling is authorized. No additional standards other than those provided in this bill shall be utilized or imposed.
- 6) Provides that an ADU, when assessed as new construction, shall not trigger a reassessment of the value of the underlying land or other structures on the property.
- 7) Prohibits an ADU from being considered by a local agency, school district, or water corporation to be a new residential use for the purpose of calculating fees. An ADU shall not be subject to impact fees, connection fees, capacity charges, or any other fees levied by a local agency, school district, or water corporation.
- 8) Prohibits a local agency from implementing standards for minimum lot size requirements for ADUs and requires the agency to allow for the construction of an ADU on any lot that allows for construction of a single-family or multi-family dwelling structure, unless specific findings are made by the local agency that the construction of the unit would adversely impact public safety.
- 9) Provides that HCD may notify the Attorney General (AG) if a local government has taken an action in violation of ADU law.
- 10) 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.
- 11) 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.
- 12) Requires HCD to create small home building standards to apply to ADUs, which shall be drafted to achieve the most cost-efficient construction standards possible, similar or more cost-effective than standards in the 2007 edition of the California Building Standards Code. These small building standards shall be submitted to the Building Standards Commission for consideration on or before January 1, 2020.
- 13) Provides that if a local agency has not adopted a local ordinance governing JADUs, the local agency shall apply the state standards under existing law for the approval of a permit for a JADU.
- 14) Provides that a JADU, when assessed as new construction, shall not trigger a reassessment of the value of the underlying land or other structures on that property.

EXISTING LAW:

- 1) Authorizes a local agency to provide for the creation of ADU in areas zoned to allow single-family and residential multifamily use.
- 2) Requires an ADU ordinance to do all of the following:
 - a) Designate areas within the jurisdiction of the local agency where ADUs may be permitted that may be based on the adequacy of water and sewer services and the impact of ADUs on traffic flow and public safety.
 - b) Impose standards that include: parking, height, setback, lot coverage, landscape, architectural review and maximum size of unit, and standards that prevent adverse impacts on any property listed in the California Register of Historic Places;
 - c) Allows a local agency to reduce or eliminate parking requirements for any ADU located within its jurisdiction.
 - d) Provide that the ADU units do not exceed the allowable density for the lot on which it is located and that ADUs are a residential use that is consistent with the existing general plan and zoning designation or the lot.
 - e) Require ADU units to comply with all of the following:
 - i. The unit may be rented separately from the primary residence but not sold or otherwise conveyed separately;
 - ii. The lot is zoned to allow single-family or multifamily use and includes a proposed or existing single family dwelling;
 - iii. The ADU is either attached or within the living area of the existing or proposed primary dwelling or detached and on the same lot of the existing or proposed primary dwelling;
 - iv. The total floor space of an attached ADU shall not exceed 50% of the proposed or existing primary dwelling or 1,200 square feet;
 - v. The total floor space of 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 built over a garage; and
 - viii. Local building code requirements that apply to detached dwellings, as appropriate.
 - f) Require approval by the local health officer where a private sewage disposal system is being used, if that approval is required.

- g) Parking spaces shall not exceed one parking space per unit or per bedroom whichever is less.
 - h) Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless the local agency makes specific findings that parking in setback areas or tandem parking is not feasible based on specific site or regional topographical or fire and life safety concerns.
- 3) When a garage, carport, or covered parking structure is demolished as part of the construction or conversion of an ADU and the local agency requires that those off-street parking spaces be replaced, the replacement spaces may be located on the same lot as the ADU as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.
 - 4) A local ordinance for ADUs cannot be considered in the application of any local ordinance, policy, or program to limit residential growth.
 - 5) After July 1, 2003, when a local agency receives an application for a permit for an ADU, the application is required be considered ministerially or without discretion within 120 days of receiving the application.
 - 6) Allows a local agency to charge a fee to reimburse it for costs that it incurs as a result of amendments during the 2001-02 Regular Session of the Legislature, including the cost of adopting or amending any ADU ordinance.
 - 7) Requires ADU ordinances to provide for a ministerial process for approving ADUs and prohibits those ordinances from including any discretionary process provisions, or requirements for those units except as otherwise provided for in existing law.

FISCAL EFFECT: Unknown

COMMENTS:

What are ADUs and JADUs? ADUs are additional living quarters on single-family lots that are independent of the primary dwelling unit. Also known as accessory apartments, accessory dwellings, mother-in-law units, or granny flats, ADUs are either attached or detached to the primary dwelling unit, and provide complete independent living facilities for one or more person. This includes permanent provisions for living, sleeping, eating, cooking, and sanitation.

JADUs are no more than 500 square feet and are bedrooms in a single-family home that have an entrance into the unit from the main home and an entrance to the outside from the junior accessory dwelling unit. These units have cooking facilities including a sink and stove but are not required to have a bathroom.

Background: Since 2015, the Legislature has passed multiple bills to encourage the construction of ADUs by reducing local barriers to permitting and making it easier for individual homeowners to add them. The push to encourage ADUs is fueled by the state's lack of affordable housing. According to the Turner Center for Housing Innovation at UC Berkeley, well over three quarters of all land in San Francisco and Los Angeles is made up of neighborhoods where 60% of the housing stock is single-family homes. A Turner Center report found that 58% of homeowners

rent their ADU out at below market rate and 29% were family or friends of the owner. According to a Terner Center survey, the average cost to build an ADU is relatively inexpensive at \$156,000. Los Angeles, San Francisco, Oakland, and Santa Cruz have all seen an increase in ADUs since changes in the law eased restrictions. Los Angeles alone increased the number of ADUs from 90 in 2015 to 1,980 in 2017.

Past bills to encourage ADUs have focused on reduced parking standards, a set time-line for approving a (120 days) of permit, and requiring ministerial approval.

This bill would make additional change to the ADU statute, including the following:

- Allow two ADUs on existing single-family lots, including rear yard cottages and JADUs.
- Allow multiple ADUs on the property of multi-family buildings.
- Allow for limits and requirements for fire, life, and public safety purposes at the discretion of local building and fire officials.
- Allow parking to be required only for more than one ADU, and not at all in certain high transit locations or when there is only one ADU on the property.
- Reduce the cost to build ADUs by removing mitigation, capacity, and connection fees.
- Require owner-occupancy of the primary unit, but create an exemption for trusts for seniors and disabled persons, and for nonprofits.
- Jurisdictions cannot impose a height limit of less than 16 feet (but the owner can choose to build under that limit).
- Jurisdictions cannot require the size of the ADU be less than 800 feet (but the owner can decide to build a unit that is less than 800 feet).
- ADUs can be a max of 50% of the primary unit or 1,200 square feet, whichever is greater.
- ADUs are exempt from floor to area ratio (FAR).
- Require the creation of a small home building code, but in the meantime allow for ADUs to follow the 2007 building code, because Title 24 requirements in the 2016 building code are too restrictive to the building of ADUs, which are already energy efficient due to being small.
- No setback requirements for conversions and no more than 5 feet for above/attached to garage.
- ADU application will be deemed approved after 120 days.
- Tax assessment will only evaluate new construction and will not trigger a reassessment of the land.
- Allow HCD to submit written findings as to whether the ordinance complies with existing law. HCD may notify the AG if the ordinance is not in compliance. HCD may create guidelines to implement uniform standards for the adoption of local ordinances

This bill also rewrites the existing statute in a way that makes it more confusing including the use of double negative that is hard to decipher. The committee may wish to consider requesting the author to commit to returning the statute to the existing structure.

Fees: Local governments can charge a variety of fees to a development. Cities charge service fees to pay for staff time for processing a development application, reviewing plans, permit approvals, and inspections. Impact fees are imposed to pay for the cost of the infrastructure needed to support the development. 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" relationship 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. This bill would eliminate all fees on ADUs – school fees, impact fees, connection fees, capacity charges, or any other fees levied by a local agency, school district, or water corporation. The current ADU statute includes language that was negotiated with utilities, that requires a connection fee for an ADU be proportionate to the burden of the proposed ADU upon the water or sewer system, based upon either the ADU's size or the number of its plumbing fixtures. The fee cannot exceed the reasonable cost of providing this service.

Last year, as part of a package of housing bills passed by the Legislature, AB 879 (Grayson) Chapter 879, Statutes of 2017, required HCD to complete a study to evaluate the reasonableness of local fees charged to new developments and make recommendations for potential amendments to the Mitigation Fee Act to substantially reduce fees for residential development. The study must be completed by June 30, 2019. The committee may wish to consider if this bill responds to the underlying issue or if further information is needed to develop a comprehensive response.

Arguments in opposition: Opponents are concerned with the elimination of the ability of agencies, special districts and water corporations to assess connection fees or capacity charges on ADUs. Local agencies have authority under the California Constitution to impose fees for water and sewer connections and must ensure that water rates, charges and fees do not exceed the reasonable costs of providing services. Local agencies may not waive, discount, or establish different rates that pass on costs to the general customer base or to other fee payers. Provisions in existing ADU law were negotiated with past authors and this bill undoes those negotiated changes. In addition, there are concerns that local governments are in the process of completing or just completed updates to their ADU ordinances based on the previous two years of legislation, and these additional changes will require further updates.

Multiple bills: The committee may wish to consider that this bill has similar or exactly the same provisions as SB 1469 (Skinner) and SB 831 (Wieckowski). Both bills are moving through the process in the Senate. To avoid confusion, the committee may wish to ask the authors to consolidate the policy changes into one vehicle so the Legislature can have a clear debate on the topic of ADUs.

Committee amendments:

Due to timing constraints the amendments below cannot be taken in this committee. Should the committee wish to request the author take them, the amendments would need to be taken in the next committee.

- The bill revises and reorganizes the ADU statute in a confusing way, the committee may wish to revert to the existing statutory structure.

- This bill directs the assessor to base the value of the ADU or JADU exclusively on the building permit value of the ADU. This provision should be deleted, as it is unconstitutional.
- If HCD determines that a local ordinance does not comply with statute, the bill does not provide a process or timeline for the local government to change the ordinance before HCD is permitted to report the violation to the AG.
- The committee may wish to consider deleting the elimination of all fees on ADUs, and ask the author to work on a narrower approach.

Related legislation:

SB 1469 (Skinner) is almost identical to this bill. *It is pending in the Senate Transportation and Housing Committee.*

SB 831 (Wieckowski) has many of the provisions of this bill. *It is pending in Senate Governance and Finance Committee.*

Double-Referred: If AB 2890 passes out of this committee, the bill will be referred to the Committee on Local Government

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council
 BRIDGE Housing
 California Association of REALTORS
 California Forward Action Fund
 California YIMBY
 Greenbelt Alliance
 Karen Chapple, Professor, City and Regional Planning, University of California, Berkeley
 Lilypad Homes
 MÁS
 Non-Profit Housing Association of Northern California
 North Bay Leadership Council
 SPUR
 SV@Home
 The Two Hundred
 Turner Center for Housing Innovation
 Working Partnerships USA
 Individual (s) - 1

Opposition

American Planning Association California Chapter
 Association of California School Administrators
 Association of California Water Agencies (unless amended)
 California Association of School Business Officials

California Association of Suburban Schools
California Municipal Utilities Association (unless amended)
California School Board Association
California Special Districts Association
California State Association of Counties
California's Coalition for Adequate School Housing
League of California Cities
Riverside County Office of Education
Rural County Representatives of California
San Diego Unified School District
Small School Districts' Association
Urban Counties of California

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