

Date of Hearing: June 19, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 13 (Wieckowski) – As Amended May 17, 2019

SENATE VOTE: 34-2

SUBJECT: Accessory dwelling units

SUMMARY: Makes a number of changes to law governing accessory dwelling units (ADUs). Specifically, **this bill:**

- 1) Deletes the requirement for an ADU ordinance to apply only in areas where housing is a permissible use.
- 2) Expands the area in which an ADU can be built to include attached garages, storage areas, and accessory structures.
- 3) 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.
- 4) Reduces the application approval timeframe to 60 days for an ADU and provides that if a local agency has not acted upon the submitted application within 60 days, the application shall be deemed approved.
- 5) Removes the authority for a local ordinance to require an applicant for an ADU to be an owner occupant and prohibits a local agency from requiring owner occupancy as a condition for issuing a building permit for an ADU.
- 6) Provides that a local ADU ordinance cannot establish a maximum ADU size less than 850 square feet for an ADU with one or less bedrooms, or up to 1,000 square feet if the ADU provides more than one bedroom.
- 7) Specifies that, in measuring one-half mile from public transit for purposes of applying parking requirements, the traversability of this distance is accounted for.
- 8) Provides for a tiered schedule of impact fees based on the size of the ADU as follows:
 - a) Zero fees for an ADU of less than 750 square feet; and
 - b) Twenty-five percent of impact fees charged for a new single-family dwelling for an ADU of 750 square feet or more.
- 9) Requires the Department of Housing and Community Development (HCD), after a local ADU ordinance is adopted, to submit findings to the local agency as to whether it complies with ADU law. If HCD finds it does not, HCD shall notify the local agency and may notify the Attorney General. The local agency shall consider HCD's findings and may either change the ordinance to comply or make findings as to why the ordinance complies despite HCD's findings.

- 10) Authorizes HCD to review, adopt, amend, supplement, or repeal guidelines to implement uniform standards and criteria that supplement or clarify the terms, references, and standards in ADU law.
- 11) Authorizes, explicitly, a local agency to count an ADU for purposes of identifying adequate sites for its housing element.
- 12) Requires a local agency, upon request of the owner of an ADU, to delay enforcement for five years of a violation of any building standard, if correction is not necessary to protect health and safety.

EXISTING LAW:

- 1) Provides that if a locality adopts an ADU ordinance in areas zoned for single-family or multifamily, it must do all of the following:
 - a) Designate areas where ADUs may be permitted.
 - b) Impose certain standards on ADUs such as parking and size requirements.
 - c) Prohibit an ADU from exceeding the allowable density for the lot.
 - d) Require ADUs to comply with certain requirements such as setbacks.
- 2) Requires ministerial approval of an ADU permit within 120 days.
- 3) Allows a locality to establish minimum and maximum unit sizes for both attached and detached ADUs.
- 4) Restricts the parking standards a locality may impose on an ADU.
- 5) Allows a local agency to require that an applicant be an owner-occupant or that the property be used for rentals of terms longer than 30 days.
- 6) Provides that an ADU shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.
- 7) Requires a local agency to submit a copy of its ADU ordinance to HCD within 60 days of adopting it and authorizes HCD to review and comment on the ordinance.

(Government Code Section 65852.2)

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the Bill: 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 a 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 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.”

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 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.

Relation to Other ADU Bills: This bill makes major changes to the ADU statute to facilitate the development of more ADUs and address perceived barriers to ADUs. The amendments proposed in this bill are the same as or similar to those that are proposed in other ADU bills that have been heard in this Committee this year – particularly AB 68 (Ting) and AB 881 (Bloom). This includes:

- Removes the authority for a local ordinance to require an applicant for an ADU to be an owner occupant;
- Allows ADUs to be built in the non-habitable part of existing or proposed dwelling units, such as storage areas;
- Bans the requirement of off-street replacement parking when parking is demolished in the creation of an ADU;
- Allows no more than 60 days to ministerially consider and approve an ADU permit from the time of application;
- Precludes local ordinances from establishing a maximum ADU size of less than 850 square feet for an ADU with one or less bedrooms, or up to 1,000 square feet if the ADU provides more than one bedroom;
- Creates an enforcement mechanism over local ordinances that do not comply with state law, allowing HCD to notify the Attorney General; and
- Authorizes HCD to provide guidelines to help implement uniform standards for ADU law.

Impact fees. Local governments may 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 water corporations. 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 twenty-five percent of impact fees for new single-family dwellings. This change would have the benefit of making it less expensive and thus 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, that can use general fund dollars to backfill costs, 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 prohibits a local government from charging an ADU of less than 750 square feet any impact fees. There is no justification made for this methodology. Nor does the bill 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 percent 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. The study is required to be published by June 30, 2019.

Given the issues raised with the bill's proposed fee structure, and the imminent publication of HCD's fee study, the committee may wish to consider if the issue of fees requires more discussion and refinement.

Zoning and ADUs: Existing law requires that applications ADUs be ministerially approved on lots that permit residential uses that has an existing or proposed residential unit. The bill proposes to eliminate the requirement that the site be zoned for housing. Most developable land in California is zoned for housing, but other areas are zoned exclusively for non-residential uses such as retail, office, and industrial. In those areas, there are occasionally residential uses that were built legally but are now not in conformance with the zoning. Those units may be mutually incongruous with their surroundings, such as units in industrial areas that have to deal with, and potentially register complaints about, the inherent operations of those uses. While it may in some circumstances be beneficial to add units in those locations, such additions should be deliberated. As such, the Committee may wish to consider amending the legislation to eliminate the change that allows ADUs to be approved ministerially in zoning that does not otherwise permit new housing, and instead to clarify that an ADU can be built on a lot that is zoned to allow housing and includes housing. Because there is only a limited number of housing already located in such areas, it is not anticipated that this change would demonstrably change the overall amount of ADUs that could be built in the state.

ADU Approval Process: As discussed above, this bill proposes to reduce the maximum period by which a local jurisdiction must ministerially consider an ADU 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 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.

Amnesty. According to a 2016 report by McKinsey and Company entitled *A Tool Kit to Close California's Housing Gap: 3.5 Million Homes by 2025*, one way to encourage homeowners to add ADUs is to create an amnesty path for ADUs that are not properly permitted. Often, the reason that these are not properly permitted is that they were not permissible until the change in state law came into effect in 2017. According to the report, as many as eight percent of ADUs in San Francisco are illegal. The report concludes that legitimizing these units would boost building compliance and raise property tax revenue.

This bill creates a ten-year amnesty program for substandard ADUs. This bill grants an ADU owner with a non-compliant ADU a five-year delay to make the necessary changes to bring the ADU up to code before enforcement would occur. The delay applies to changes that, in the judgement of the local building official, and in consultation with fire and code enforcement officials, is not necessary to protect the health and safety of the building residents.

While the bill's amnesty program is designed to help older, illegal ADUs become properly permitted, it would also afford this amnesty to newly built ADUs. Such amnesty should not be necessary for newly constructed ADUs. As such, the Committee should consider amending the bill to only apply this amnesty to ADUs constructed before January 1, 2020, to better reflect the period before state law made ADUs broadly permissible.

Arguments in Support: According to the UC Berkeley Turner Center for Housing Innovation, “the adoption and expansion of accessory dwelling unit (ADU) policies has proven to be an effective means of creating low-cost, low-impact housing for the state of California. By largely limiting the amount of fees that can be levied on ADUs, SB 13 will greatly ease a significant barrier to ADU production across the state. Past research by the Turner Center reveals that fees—which can comprise up to half the total cost to build an ADU—are a significant deciding factor for homeowners considering building an ADU.”

Arguments in opposition: According to the League of California Cities, SB 13 “completely disregards the Mitigation Fee Act (MFA), which strictly regulates how local agencies impose impact fees. Under the MFA, impact fees must be limited to the particular service and can only cover the cost of providing that service. Arbitrarily capping these fees would result in an inability to provide the public improvements and public services necessary to meet the needs of the residents living in the newly constructed ADU.”

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

- Remove the ability for ADUs to be built ministerially on lots that do not otherwise permit residential zoning, and instead clarify that an ADU can be built on a lot that is zoned to allow housing and includes housing;
- Specify that the 60-day time period for considering an ADU application begins when the jurisdiction receives a “complete” application;
- Apply the five-year amnesty program only to ADUs constructed before January 1, 2020.

Related Legislation:

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 the Senate Committee on Housing.*

AB 69 (Ting)(2019): This bill revises ADU law in relation to HCD determination of compliance of local ADU ordinances and requires HCD to propose building standards for ADUs and small homes. *This bill is pending hearing in the Senate Committee on Housing.*

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 was approved by the Senate Housing Committee 8-0 and is pending hearing in the Senate Judiciary 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 the Senate Housing Committee.*

Prior Legislation

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

AB 2890 (Ting, 2018) would have made a number of changes to ADU law. This bill died on the suspense file of the Senate Appropriations Committee.

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

Association of Bay Area Governments
Bay Area Council
Bay Area Regional Health Inequities Initiative
California Apartment Association
California Association of Realtors
California Building Industry Association
California Chamber of Commerce
California Forward Action Fund
California State Retirees
California YIMBY
Casita Coalition
Eden Housing
La-Mas
Long Beach Conservation Corps
Los Angeles Conservation Corps
Maxable
Metropolitan Transportation Commission
Non-Profit Housing Association of Northern California
Oakland Chamber of Commerce
PrefabADU
San Francisco Housing Action Coalition
San Jose Conservation Corps & Charter School
Santa Cruz YIMBY
Silicon Valley @ Home
South Bay YIMBY
Southern California Rental Housing Association
SPUR
Terner Center for Housing Innovation at the University of California, Berkeley

The Norris Group
Urban Conservation Corps Inland Empire

Opposition

Auburn Area Recreation and Park District
California Fire Chiefs Association
California Special Districts Association
City of Beaumont
City of Camarillo
City of Downey
City of El Segundo,
City of San Dimas
City of San Marcos
City of San Marcos
City of Thousand Oaks
Coalinga-Huron Recreation and Park District
Cosumnes Community Services District
Desert Water Agency
Dublin San Ramon Services District
East Contra Costa Fire Protection District
El Dorado Irrigation District
Fire Districts Association of California
Hayward Area Recreation and Park District
Leucadia Wastewater District
Mckinleyville Community Services District
Menlo Park Fire Protection District
Mt. View Sanitary District
Oceano Community Services District
Ojai Valley Sanitary District
San Ramon Valley Fire Protection District
Santa Margarita Water District
Santa Maria Public Airport District
Solano County Board of Supervisors
Templeton Community Services District
Town of Discovery Bay Community Services District
Individual(s) - 1

Oppose Unless Amended

American Planning Association, California Chapter
Association of California Water Agencies
California Association of Sanitation Agencies
California Municipal Utilities Association
California State Association of Counties
City of Burbank
City of Garden Grove
City of Los Alamitos
City of Rancho Cucamonga

City of Torrance
City of Vista
League of California Cities
Urban Counties of California
Ventura Council of Governments

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