

Date of Hearing: June 20, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 831 (Wieckowski) – As Amended May 25, 2018

SENATE VOTE: 33-1

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) 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 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 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) Prohibits an ADU from being considered by a local agency, special district, or water corporation to be a new residential use for the purpose of calculating fees charged for new development, except as follows:
- a) A local agency, special district, or water corporation may require a new or separate utility connection direction between the ADU and the utility. The connection may be subject to a connection fee, capacity charge, or equivalent charge for new service that is proportionate to the burden of the proposed ADU, based either on size or the number of its plumbing fixtures, upon the water or sewer system. The fee or charge shall not exceed the reasonable cost of providing this service.
 - b) Fees charged by a school district shall be limited to no more than \$3,000 per ADU.
- 11) 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.
- 12) 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 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.
- 13) 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.

- 14) Provides 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.
- 15) 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.
- 16) 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.

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. 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. 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 Turner 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.

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.

Existing law requires a utility 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. Existing law, under the ministerial approval provisions, prohibits an ADU from being considered a new residential use for purposes of calculating fees charged for new development. SB 831 expands this prohibition to other types of development fees. This bill would also restrict school fees to no more than \$3000 per ADU.

Owner occupancy requirements: Existing law allows local governments to set restrictions around owner occupancy. This bill would prohibit the local governments from requiring owner

occupancy as a condition for issuance of a building permit for an ADU. The author has identified instances where lenders are unwilling to lend to owners to build an ADU when there is a covenant that restricts occupancy of the primary home to owner-occupancy. If a foreclosure occurs lenders would be unable to take possession of the property without violating the covenant restricting the property to owner occupancy. Lenders also have indicated that a restrictive covenant reduces the value of the property as investment by limiting the pool of potential buyers. AB 2890 (Ting) which was also heard and passed out of this committee allows for local governments to impose owner-occupancy restrictions but provides for several caveats. An owner can occupy either the primary dwelling or the ADU, an owner-occupant can include a trust in which at least one person is disabled and her or she occupies the primary dwelling or ADU, an organization that owns the lot in order to provide long-term, deed restricted affordable housing subject to a regulatory agreement with a local agency. The committee may wish to either delete the owner-occupancy restrictions in this bill or require them to conform them to AB 2890 (Ting) to give local government some discretion.

Duplicative and overlapping bills: There are two bills still moving through the Legislature process that make changes to the ADU statute – this bill and AB 2890 (Ting). This bill has many of the same provisions as AB 2890 (Ting) when it was heard in this committee in April. Some of those provisions were amended or deleted by this committee and Assembly Local Government Committee.

- a) *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.
- b) *Short-term rentals.* 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. SB 831 does not include this requirement.
- c) *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 the Assembly Local Government Committee.
- d) *Fees.* Existing law, under the ministerial approval provisions, prohibits an ADU from being considered a new residential use for purposes of calculating fees charged for new development. SB 831 expands this prohibition to other types of development fees. All new restrictions on fees were deleted from AB 2890 in the Assembly Local Government Committee.
- e) *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.
- f) *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 the Assembly Local Government Committee.

- g) *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 requires HCD to create small home building standards for ADUs and submit them to the California Building Standards Commission by January 1, 2020.
- h) *Local government violations.* SB 831 authorizes HCD to notify the AG if a local agency has taken an action in violation of ADU law. AB 2890 does not include such an authorization.
- i) *Absence of local JADU ordinance.* AB 2890 bill 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.

Arguments in support: Supporters see ADUs as a significant source of new affordable housing and part of the solution to the state's housing crisis. Further they argue that fees represent a barrier to homeowner's ability to build an ADU. Supporters argue that the many changes in this bill will make it easier to bill ADUs and increase the stock of naturally affordable housing.

Arguments in opposition: Opponents are opposed to the elimination of fees on ADUs which are needed to pay for services required by a new ADU that cannot be passed on to other fee payers. Fees were negotiated in SB 1069 (Wieckowski) included compromise language that allows for utility and hookup fees based on concerns raised at the time. In addition, opponents argue against new and substantial changes to ADU law when local governments are implementing changes from bills passed in the last few years. Those changes have led to an increase in the number of ADUs approved at the local level.

Staff comments: When AB 2890 was heard in this committee, members raised concerns with further limiting fees on ADUs and the impact in particular limiting schools fees would have on local communities. The committee may wish to reinstate existing law on how fees on ADUs are calculated.

This bill would remove any discretion on the part of local governments to impose owner-occupancy restrictions. The committee may wish to instead reflect the compromise language that was worked out for AB 2890 which continues to provide local governments discretion on owner-occupancy restrictions with some exceptions.

Committee amendments:

- 1) Delete the provisions in the bill further limiting fees that local governments can charge for ADUs.
- 2) Amend the bill to reflect the language in AB 2890 (Ting) regarding owner-occupancy restrictions.

Related legislation:

AB 2890 (Ting) Makes a variety of changes to ADU and JADU law and that either overlap or are duplicative of the changes in this bill. *This bill was referred to the Senate Committee on Transportation and Housing and the Committee on Governance and Finance.*

SB 1469 (Skinner, 2018) — would have placed additional restrictions on the conditions that local governments may impose on ADUs and JADUs, as specified and would have required HCD to develop small home building standards by January 1, 2020. *This bill was held on the suspense file in the Senate Appropriations Committee.*

Previous legislation:

AB 72 (Santiago, Chapter 370, Statutes of 2017) — gave HCD authority to find a city's or city's and county's housing element out of substantial compliance if it determines that the city or county acts or fails to act in compliance with its housing element, and allows HCD to refer violations of law to the Attorney General.

AB 494 (Bloom, Chapter 602, Statutes of 2017) — made technical, clarifying changes to ADU law.

SB 229 (Wieckowski, Chapter 594, Statutes of 2017) — made several changes to ADU law.

AB 2299 (Bloom, Chapter 735, Statutes of 2016) — made several changes to the ADU law.

SB 1069 (Wieckowski, chapter 720, Statutes of 2016) —made several changes to ADU law.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council (sponsors)
AARP California
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
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
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
SPUR
SV Angel
SV@Home
Turner Center for Housing Innovation
The Fairmont San Francisco
Tim Lewis Communities
TMG Partners
Wareham Development
Webcor

Opposition

American Planning Association, California Chapter
California Association of Community Managers
California Association of School Business Officials
California Building Officials
California Coalition For Adequate School Housing
California Contract Cities Association
California State Association of Counties
City of Camarillo

City of Coronado
City of Glendora
City of Hawthorne
City of Lake Forest
City of Lakewood
City of Long Beach
City of Murrieta
City of San Marcos
City of Santa Clarita
City of Thousand Oaks
City of Vista
Community Associations Institute of California
County of Del Norte County Board of Supervisors
East Orange County Water District
Lake Forest II Master Homeowners Association
League of California Cities
Marin County Council of Mayors and Councilmembers
Regional Water Authority
Rural County Representatives of California
San Diego County Water Authority
Union Sanitary District
Urban Counties Of California

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085