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## SENATE COMMITTEE ON HOUSING

Senator Scott Wiener, Chair

2019 - 2020 Regular

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<b>Bill No:</b>	AB 68	<b>Hearing Date:</b>	6/18/2019
<b>Author:</b>	Ting		
<b>Version:</b>	6/12/2019 Amended		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Erin Riches		

**SUBJECT:** Land use: accessory dwelling units

**DIGEST:** This bill makes a number of changes to existing law governing accessory dwelling units (ADUs).

### ANALYSIS:

#### *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 the Department of Housing and Community Development (HCD) within 60 days of adopting it and authorizes HCD to review and comment on the ordinance.

**This bill:**

- 1) Requires a local agency to ministerially approve, in an area zoned for residential or mixed-use, an application for a building permit to create an ADU and a JADU as follows:
  - a) The ADU or JADU that is within a proposed or existing structure, or the same footprint as the existing structure, provided the space has exterior access from the proposed or existing structure and the side and rear setbacks are sufficient for fire and safety.
  - b) One detached ADU that is within a proposed or existing structure or the same footprint as the existing structure, along with one JADU, that may be subject to a size limit of 800 square feet, a height limit of 16 feet, and side and rear yard setbacks of four feet.
- 2) Requires a local agency to ministerially approve, on a lot with a multifamily dwelling:
  - a) Multiple ADUs within the existing structures that are not used as livable space, if each unit complies with state building standards for dwellings.
  - b) Two detached ADUs that are subject to a height limit of 16 feet and rear and side yard setbacks of four feet.
- 3) Prohibits a local ADU ordinance from:
  - a) Imposing standards on ADUs that include requirements on lot coverage or minimum lot size.
  - b) Setting a maximum ADU size that does not allow an ADU of at least 800 square feet and 16 feet in height.
  - c) Requiring replacement parking when a garage, carport, or covered parking structure is demolished in the creation of an ADU, or is converted to an ADU.
  - d) Requiring a setback for ADUs within existing structures, and new ADUs located in the same location and footprint as existing structures, and no more than a four-foot side and rear yard setback.
  - e) Allowing more than 60 days to ministerially approve an ADU or JADU permit application if there is an existing single-family or multifamily dwelling on the lot, as specified.

- f) Requiring, as a condition for ministerial approval of an application for creation of an ADU or JADU, correction of nonconforming conditions, defined as a physical improvement on a property that does not conform with current zoning standards.
- 4) Provides that the total floor area of an attached ADU cannot exceed 50% of the existing primary dwelling.
- 5) Caps the number of ADUs that must be ministerially approved within an existing multifamily dwelling at one ADU and up to 25% of existing units thereafter.
- 6) Allows a local agency to require as part of the application for a permit to create an ADU connected to an onsite water treatment system, a percolation test completed within the last five years, as specified.
- 7) Provides that JADUs must be allowed to be constructed within proposed single-family residences and eliminates certain requirements relating to interior entry to the main living area, waste lines, and electrical service minimums.
- 8) Requires a local agency to require rental of an ADU to be for a term longer than 30 days.
- 9) Allows HCD, if it finds a local ADU ordinance is not compliant with ADU law, to provide the local agency up to 30 days to respond to the findings. If the local agency does not either amend its ordinance to comply with HCD's findings, or adopt a resolution explaining why it disputes HCD's findings, HCD may notify the Attorney General, that the locality is in violation of state law.

## COMMENTS

- 1) *Purpose of the bill.* The author states that ADUs have surged in popularity as a way to address California's housing crisis as demand outpaces supply. This bill will remove the remaining barriers to the widespread adoption of ADUs as low-cost, energy-efficient, affordable housing that can go from policy to permit in 12 months.
- 2) *ADUs and JADUs.* ADUs, also known as accessory apartments, accessory dwellings, mother-in-law units, or granny flats, are additional living spaces on single-family lots that have a separate kitchen, bathroom, and exterior access independent of the primary residence. These spaces can either be attached to, or detached from, the primary residence. Local ADU ordinances must meet

specified parameters outlined in existing state law. Local governments may also adopt ordinances for JADUs, which 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 JADU. The JADU must have cooking facilities, including a sink and stove, but is not required to have a bathroom. HCD notes that “ADUs are an innovative, affordable, effective option for adding much-needed housing in California.”

- 3) *Relaxing ADU requirements.* According to a UC Berkeley study, *Yes in My Backyard: Mobilizing the Market for Secondary Units*, second units are a means to accommodate future growth and encourage infill development in developed neighborhoods. Despite existing state law, which requires each city in the state to have a ministerial process for approving second units, the study found that local regulations often impede development. The study, which evaluated five adjacent cities in the East Bay, concluded that there is a substantial market of interested homeowners; cities could reduce parking requirements without contributing to parking issues; second units could accommodate future growth and affordable housing; and that scaling up second unit strategy could mean economic and fiscal benefits for cities. This bill relaxes several requirements to the construction and permitting of ADUs.
- 4) *Trying again.* This bill is similar to AB 2890 (Ting) of 2018, which died in the Senate last year. Unlike AB 2890, however, this bill requires a local agency to mandate minimum 30-day rental for ADUs. In addition, this bill, unlike AB 2890, does not include a requirement for HCD to create small home building standards; those provisions are included in a separate bill (AB 69, Ting, 2019).
- 5) *Key provisions.* Major provisions of this bill include:
  - a) *Ministerial approval requirements.* Existing law requires a local agency to ministerially approve an application for one ADU per single-family lot if the unit is contained within the existing space of the single-family dwelling or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. This bill instead requires ministerial approval of one ADU and one JADU per lot that is within an existing structure, as specified; one detached ADU within a proposed or existing structure or the same footprint as the existing structure, along with one JADU, as specified; multiple ADUs within existing multifamily structures; or two detached ADUs on a multifamily lot, as specified.
  - b) *Size of ADUs.* Existing law requires an ADU ordinance that provides for minimum and maximum ADU size, to allow for at least an efficiency unit

- (150 square feet). This bill instead provides for an ADU of at least 800 square feet and at least 16 feet high.
- c) *Zoning*. Existing law applies ministerial approval requirements to ADUs in single-family zones. This bill instead requires ministerial approval in residential and mixed-use zones.
  - d) *Owner occupancy requirements*. Existing law allows a local ADU ordinance to require owner occupancy for either the primary dwelling or the ADU. This bill preserves that authority.
  - e) *Impact fees*. Existing law 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. This bill does not directly address impact fees.
  - f) *Parking requirements*. Existing law allows a local agency to require replacement parking when a garage, carport, or covered parking structure is demolished in the construction of an ADU, or converted to an ADU. This bill eliminates that authority.
  - g) *HCD oversight*. Existing law requires a local agency to submit its ADU ordinance to HCD for review and allows HCD to provide comments. This bill strengthens oversight over local ADU ordinances by allowing HCD to submit findings to the local agency if it finds the ordinance does not substantially comply with ADU statute. This bill also allows HCD to notify the Attorney General if it finds the ordinance is not compliant and the local agency chooses not to amend it into compliance.
- 6) *Other ADU bills*. Multiple ADU bills have been introduced again this year. The two bills that overlap the most with this bill are AB 881 (Bloom) and SB 13 (Wieckowski). A comparison of major provisions among the three bills is below:

	<b>AB 68 (Ting)</b> (6/12/19)	<b>AB 881 (Bloom)</b> (4/11/19)	<b>SB 13 (Wieckowski)</b> (5/17/19)
<b>Ministerial approval</b>	Requires ministerial approval of a permit for one ADU and one JADU per lot; one detached, new, single-story ADU that may be combined with a JADU; multiple ADUs within existing structures; up to two detached ADUs on a lot.	Requires ministerial approval of a permit for an ADU within an existing structure, as specified.	Requires ministerial approval of a permit for one ADU per lot, as specified.
<b>Size requirements</b>	Requires an ADU ordinance that establishes minimum or maximum size to allow at least an 800 sq. ft. ADU and at least a 16-foot high ADU		Requires an ADU ordinance that establishes minimum or maximum size to allow at least an 850 sq. ft. ADU or 1,000 sq. ft. if more than one bedroom
<b>Owner occupancy requirement</b>		Prohibits owner occupancy requirement until Jan. 1, 2025	Prohibits owner occupancy requirement
<b>Impact fees</b>			Provides for a tiered structure of fees based on size of ADU
<b>Parking requirements related to demolition of off-street parking</b>	Prohibits requirement of replacement parking when a garage, carport, or covered parking structure is demolished for, or converted to, an ADU.		Prohibits requirement of replacement parking when a garage, carport, or covered parking structure is demolished for, or converted to, an ADU.
<b>Prohibition on parking requirements near ½ mile of transit</b>		Specifies that the ½ mile shall be measured in walking distance and defines public transit as a bus stop, bus line, light rail, street car, car share drop off or pickup, or heavy rail stop	

7) *Opposition concerns.* A number of cities, along with the League of California Cities, writing in opposition to this bill, cite the following concerns:

- a) This bill circumvents local ordinances that may exclude ADUs for criteria based on health and safety.

- b) By prohibiting a locality from requiring a property owner to live in the main house or one of the accessory structures, this bill could incentivize large-scale investors to purchase many single-family homes and add ADUs.
- c) By prohibiting a city from requiring replacement parking when a garage, carport, or covered parking structure is converted to an ADU, this bill will exacerbate parking conflicts.

8) *Triple referral.* This bill has also been referred to the Committee on Environmental Quality (second) and the Committee on Governance and Finance (third).

**RELATED LEGISLATION:**

**SB 13 (Wieckowski, 2019)**— makes a number of changes to law governing ADUs. *This bill is in Assembly Local Government Committee.*

**AB 881 (Bloom, 2019)**— makes a number of changes to law governing ADUs. *This bill will also be heard in this committee today.*

**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.*

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: Yes

**POSITIONS:** (Communicated to the committee before noon on Wednesday, June 12, 2019.)

**SUPPORT:**

California YIMBY (Sponsor)  
AARP California  
ADU Task Force East Bay  
Association Of Bay Area Governments  
Bay Area Council  
Bay Area Housing Advocacy Coalition  
Bay Area Regional Health Inequities Initiative  
Bridge Housing Corporation  
Building Industry Association Of The Bay Area  
California Apartment Association

California Association Of Realtors  
California Community Builders  
California Forward Action Fund  
California Teamsters Public Affairs Council  
cityLAB - UCLA  
Community Legal Services In East Palo Alto  
EAH Housing  
Eden Housing  
Emerald Fund  
Facebook, Inc.  
Greenbelt Alliance  
Habitat For Humanity California  
Hamilton Families  
Hello Housing  
Inspired Independence  
League Of Women Voters Of California  
Metropolitan Transportation Commission  
MidPen Housing Corporation  
Non-Profit Housing Association Of Northern California  
Pico California  
Related California  
San Francisco Housing Action Coalition  
Silicon Valley At Home  
Silicon Valley Community Foundation  
SPUR  
Tent Makers  
Terner Center For Housing Innovation At The University Of California, Berkeley  
The Casita Coalition  
The Two Hundred  
TMG Partners  
United Dwelling  
Urban Displacement Project, UC-Berkeley  
Valley Industry And Commerce Association  
Working Partnerships USA  
12 Individuals

**OPPOSITION:**

Camarillo; City Of  
Cities Association of Santa Clara County  
League Of California Cities



Los Alamitos; City Of  
Manhattan Beach; City Of  
Marin County Council of Mayors and Council Members  
Novato; City Of  
Rancho Cucamonga; City Of  
San Dimas; City Of  
San Marcos; City Of  
Santa Clarita; City Of  
South Bay Cities Council Of Governments

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