

2019 Legislative Update Accessory Dwelling Units

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American Planning Association
California Chapter



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Today's Speakers

Moderated by

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More Questions?

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Chaptered ADU Bills

- **SB 13**, Wieckowski. Accessory dwelling units. (*only Section 3 re: delayed enforcement*)
- **AB 68**, Ting. Land Use: accessory dwelling units. (*only Section 2 re: Junior ADUs*)
- **AB 881**, Bloom. Accessory dwelling units. (*Section 1.5 re: ADUs*)*
- **AB 670**, Friedman. Common interest developments: accessory dwelling units.
- **AB 587**, Friedman. Accessory dwelling units: sale or separate conveyance.
- **AB 671**, Friedman. Accessory dwelling units: incentives.

All of the above become Operative January 1, 2020!

**Note Section 1.5 of AB 881 sunsets January 1, 2025 and is replaced by Section 2.5 of AB 881 at that time.*

At the highest level . . .

- A jurisdiction's ability to regulate ADUs and Junior ADUs is expressly limited
- Most existing local ADU ordinances will not be entirely consistent with new requirements until they are amended
- Conflicting local provisions are “null and void,” in which case Gov. Code Sec. 65852.2(a) governs
- Amended ordinances must be sent to HCD within 60 days after adoption
 - HCD may submit written findings re: compliance with Gov. Code Sec. 65852.2
 - If HCD finds local ordinance is inconsistent, local agency shall either (1) amend the ordinance; or (2) adopt (readopt?) the ordinance without changes including findings explaining Gov. Code Sec. 65852.2 compliance
- ADU ordinance updates are exempt from CEQA (PRC Sec. 21080.17)

Review and Approval Process

- Permits for ADUs and Junior ADUs **must be reviewed ministerially**; no discretionary review or hearings are permitted
 - Ordinances may not conflict with provisions of Gov. Code Sec. 65852.2(a) through (d)
 - Ordinance must allow ADUs and Junior ADUs specified in Gov. Code Sec. 65852.2(e)
- Time to act on permit application:
 - **60 days from complete application** if there is an existing dwelling unit (or units) on the lot [current law provides for 120 days]
 - **Concurrent with application to build new single-family dwelling**, but ADU or Junior ADU permit may only be reviewed ministerially
- If complete application not acted on within 60 days, it shall be “deemed approved” if the local agency has not adopted a compliant ADU ordinance

General ADU Standards

- Must allow ADUs in areas zoned to allow residential uses
 - May only restrict location based on: adequacy of water and sewer; impact of ADU on traffic flow; and public safety
 - [Current law permits local jurisdictions to designate areas for ADUs]
- Owner-occupancy requirements are **not** permitted
 - This provision sunsets in 2025, but units built between 2020 and 2025 remain exempt
 - *Probably* only applies prospectively
- Jurisdictions **may** prohibit rentals of less than 30 days in all ADUs and **must** prohibit short-term rentals in ADUs created under Gov. Code Sec. 65852.2(e)
- Jurisdictions **may** allow the separate sale or conveyance of an ADU from a primary residence if it was constructed by a qualified nonprofit organization under AB 587

Additions and New Detached ADUs

- Expressly allowed to regulate parking, height, setback, landscape, architectural review, maximum unit size, and to require standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources
 - Prohibited from enforcing minimum lot size requirements
 - Lot coverage requirements still allowed
- Setbacks
 - No setback for conversions of existing structures
 - No more than 4' side and rear-yard setbacks for all other ADUs
- Minimum and maximum size requirements permitted:
 - Minimum size must allow efficiency units (150 square feet)
 - Maximum must be at least 850 square feet or 1,000 square feet for ADUs with 2+ bedrooms
 - Standards must be waived to permit at least 800 square foot ADU, 16 feet in height with 4' side and rear-yard setbacks

Parking

- Maximum of **1 space per bedroom or per ADU**, whichever is less (i.e., no parking required for an efficiency or studio ADU)
- **Must allow tandem parking** and parking in setbacks, unless specific site conditions, regional topography, or fire and life safety issues make this infeasible
- If existing parking area is converted to an ADU, **no replacement parking** may be required
- **No parking** may be required for ADUs:
 - Within ½-mile walking distance of public transit (including bus stops)
 - Within an architecturally and historically significant district
 - That are part of the existing primary residence or a converted accessory structure
 - In areas where on-street parking permits are required but not offered to ADU occupants
 - Within one block of car share vehicles

Mandatory ADU Approval on Single Family Lots

Regardless of any other provisions, **must** approve building permits in any residential or mixed-use zone to create **any** of the following:

- One ADU or Junior ADU with existing or proposed single family unit
 - Expansion up to 150 square feet of existing space permitted
 - Exterior access required
 - Setbacks sufficient for fire safety

- One detached ADU on lots with an existing or proposed single family unit
 - Not more than 800 square feet
 - 16 foot height limit
 - 4' side and rear yard setbacks
 - May be combined with a Junior ADU

Mandatory ADU Approval on Multifamily Lots

Regardless of any other provisions, **must** approve building permits in any residential or mixed-use zone to create **any** of the following:

- Multiple ADUs within existing multifamily building
 - Conversion of space not used as livable space
 - Examples: storage rooms, boiler roomers, garages, etc. – but must meet building code standards
 - Must allow 25% of existing units in building or one unit, whichever is greater
- Not more than two ADUs on lots with existing multifamily units
 - Detached from existing multifamily building
 - 16 foot height limit
 - 4' side and rear yard setbacks

Additional Limits on Mandatory ADUs

- Jurisdiction may not require correction of nonconforming zoning conditions as condition of approval
- No fire sprinklers may be required unless they are required in the primary residence
- Must require rental term of longer than 30 days
- May require percolation test (within 5 years, or 10 years if test has been recertified) as condition to add an ADU to onsite water treatment system
- Ordinances permitting ADUs in multifamily buildings that were adopted before July 1, 2018 may enforce design, development, and historic standards on ADUs in multifamily buildings

Fees

➤ Impact Fees

- ADU less than 750 square feet: none permitted
- ADU 750 square feet or more: charged proportionately in relation to the primary dwelling unit square feet

➤ Connection Fees and Capacity Charges

- ADU or Junior ADU developed under Gov. Code Sec. 65852.2(e)(1)(A): no connection fee or capacity charge, and no direct connection between ADU and utility unless in conjunction with a new single-family home
- All other ADUs: connection fee or capacity charge “proportionate to the burden” of the ADU and may require new or separate utility connections

➤ Cost Recovery Fees

- Local agency may charge fees to reimburse for costs incurred to implement Gov. Code Sec. 65852.2(a)(3) (60 day ministerial review process), including costs to adopt or amend ADU ordinance

Other ADU Changes

- For ADUs built before January 1, 2020 (or later in jurisdictions with noncompliant ordinance), owner may request delayed enforcement of building standards for five years
 - No delays granted after January 1, 2030
 - No delays granted if violation needed to protect health and safety
- Junior ADU standards relaxed
- AB 670 voids CC&Rs that prohibits or unreasonably restricts ADUs or JADUs
- AB 671 requires a local government to include a plan in their housing element to incentivize and promote the creation of ADUs that can be offered at an affordable rent for very-low, low and moderate-income households
 - Jurisdictions may count ADUs in Housing Element
 - HCD to provide guidelines

Pop Quiz!

SERIOUSLY

Question 1

Cities used to have 120 days to approve ADUs.

Starting January 1st, how many days do cities have to act on a complete application?

Question 2

A building owner has a 200 unit apartment with 300 parking spaces in a garage and near a bus stop. She proposes the following:

- Removing 100 parking spots (so 200 remain) and converting them to 50 ADUs.
- She would not make up the parking anywhere.
- Her proposal meets building standards.

Is the City obligated to approve building permits for the 50 ADUs?

Question 3

When can cities use discretionary review for approving ADUs?

Question 4

Can cities allow neighbors to appeal an ADU approval if the ADU meets all objective criteria?

Question 5

Generally, cities must allow ADUs in all zones that allow single or multifamily housing, but cities have a small amount of discretion.

What can cities use to regulate where ADUs are located?

Check all that apply.

Question 6

If a city wants to set a maximum size for an ADU, what is the smallest size they can set it?

Question 7

A homeowner wants to build a 14 foot high, 500 square foot ADU in their backyard (with 5 foot setbacks all around). It violates the City's lot coverage, FAR, and architectural standards.

Does the City need to approve a building permit for the ADU?

Topics for Ordinances

Limit areas based on traffic/water/sewer/public safety

Ban all short term rentals (or just some short term rentals)

Allow nonprofits to form TICs

Apply standards

- Objective design review/landscaping
- Usable open space
- Lot coverage (for ADUs over 800 sf)
- Daylight / shadows
- Allow larger ADU size than 850/1000
- Historic preservation

Parking

- Reduce to 0 - 1 for all ADUs
- Limit off-street parking (as part of a neighborhood parking permit system)

Require owner occupancy post 2025

Be more permissive than state law in other respects (e.g. setbacks)

Next Steps for Planners

- ✓ Talk to Planning Commission, Council and Public
- ✓ Update Ordinance
- ✓ Update procedures and educate staff
- ✓ Decide what you will do post January 1st



HCD ADU Efforts: 3 Main Areas

Technical Assistance

Funding

Accountability





Technical Assistance (TA)

- TA notice of recent ADU legislation to be provided to Planning Directors, other interested parties and is to be available on the HCD website
 - Summary of changes affected with recent legislation
 - Changes to ADU law – with strike-outs and underlines
 - To be available soon
- The ADU TA handbook will be updated and made available on the HCD ADU webpage
 - To include model ordinances
 - Expanded FAQs and other resources
- Review of draft ADU ordinances submitted to HCD, as requested
- **Best Practices**
 - Currently available on SB 2 map
 - Coordination with UC Berkeley



ADU Funding

- SB 2, LEAP and REAP Planning Grant Programs
 - ADU ordinances are eligible
- AB 101 – Authorizes HCD to make grants to local agencies or nonprofit associations to construct ADUs and JADUs
- Other
 - CalHFA – Clovis pilot project
 - HCD will continue to evaluate opportunities on a program (HOME, LHTF)



Accountability

- ✓ Recent Changes to Law
- ✓ Status of HCD Enforcement Program
- ✓ Future Consideration



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