
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2021 - 2022 Regular

Bill No: AB 916 **Hearing Date:** 6/13/2022
Author: Salas
Version: 5/11/2022
Urgency: No **Fiscal:** Yes
Consultant: Mehgie Tabar

SUBJECT: Zoning: accessory dwelling units: bedroom addition

DIGEST: This bill makes changes to existing law governing accessory dwelling units (ADUs) to allow for additional residential square footage on existing residential properties.

ANALYSIS:

Existing law:

- 1) Requires a local agency to ministerially approve, within 60 days, in an area zoned for residential or mixed-use, an application for a building permit to create an ADU and a Junior Accessory Dwelling Unit (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, within 60 days, 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.

This bill:

- 1) Prohibits a city or county from adopting or enforcing an ordinance requiring a public hearing for adding space for additional bedrooms or reconfiguring existing space to increase the bedroom count within an existing residential unit.
- 2) Increases the height limit allowance for ADUs to 18 feet on a lot that has an existing multifamily and multistory dwelling.

COMMENTS:

- 1) *Author's statement.* “We are facing a housing crisis in California with both a lack of affordable housing and a pandemic of homelessness, especially for low- and moderate-income communities and communities of color. ADU’s enable the creation of easy-to-build housing on land that is already utilized for housing, thus bringing down the cost of creating new housing – an opportunity to build for the “missing middle”. It is critical that we ensure that ADU creation is streamlined and that more bedrooms can be created in the state without being held up by the public hearing process. Reallocating underutilized space for legal bedrooms, will increase density thus bringing down the average price per occupant in a dwelling. Furthermore, by repurposing habitable space in a manner that is more efficient will reduce the cost of creating more housing.”
- 2) *Housing crisis.* California’s housing crisis is a half century in the making. Decades of underproduction underscored by exclusionary policies have left housing supply far behind need and costs soaring. California currently has 13 of the 14 least affordable metropolitan areas for homeownership in the nation; it also has the second highest rate of renter households paying more than 30% of their income for housing at 52%. According to the 2022 Statewide Housing Plan, published by HCD, California must plan for more than 2.5 million homes over the next eight-year cycle, and no less than one million of those homes must meet the needs of lower-income households.¹ This represents more than double the housing planned for in the last eight-year cycle. The lack of housing supply is the primary factor underlying California’s housing crisis.

During the 1990’s, California averaged only 110,000 new housing units per year. During the early 2000’s, production increased significantly, reaching a peak of 212,000 units in 2004 before plummeting to historic lows during the

¹ 2022 Statewide Housing Plan: [A Home for Every Californian \(arcgis.com\)](https://arcgis.com)

recession. Unfortunately, the downward trend continues; the fact is that California has under-produced housing every single year since 1989.

As a result, millions of Californians, who are disproportionately lower income and people of color, must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation—one in three households in the state doesn't earn enough money to meet their basic needs.

- 3) *Background: ADUs and JADUs.* According to HCD, “ADUs are an innovative, affordable, effective option for adding much needed housing in California.” ADUs, also known as accessory apartments, accessory dwellings, mother-in-law units, or granny flats, are additional living spaces on single-family or multifamily 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.

- 4) *Encouraging ADU construction.* 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 state law requirements for each city in the state to have a ministerial process for approving second units, local regulations often impede development. In response, several bills, including SB 1069 (Wieckowski, 2016), SB 13 (Wieckowski, 2019) and AB 68 (Ting, 2019), have relaxed multiple requirements for the construction and permitting of ADUs and JADUs.

According to a 2020 UCLA Working Paper, “state ADU and JADU legislation has created the market-feasible potential for nearly 1.5 million new units.”²

Since 2013, the number of permitted ADUs increased from 799 to 12,813 in 2020, for a total of almost 44,000 ADUs permitted statewide³. With localities

² Monkkonen, Paavo, Carlton, Ian, Macfarlane, Kate, *One to Four: The Market Potential of Fourplexes in California's Single-Family Neighborhoods* (UCLA Working Paper Series, July 2020).

³ [Housing Element Implementation and APR Dashboard | California Department of Housing and Community Development](#)

across the state facing large regional housing needs allocations for the sixth housing element cycle, ADUs and JADUs represent a key tool in the housing production toolbox.

- 5) *Allowable ADU height limit.* Currently, state law requires that jurisdictions cannot set a height limit of less than 16 feet for newly constructed ADUs. At that height, it is impossible to have two stories with ceilings of at least eight feet in height—a best practice for residential units—without creative and expensive workarounds. This bill would raise the minimum height limit for ADUs by two feet, up to 18 feet, on lots that have an existing multifamily and multistory dwelling. This additional two feet would better enable two stories, and thus facilitate an extra habitable floor of the ADU.
- 6) *Maximizing space.* Another way to facilitate more housing is to maximize the utilization of existing space within residential units. This approach has gained heightened importance during the COVID-19 pandemic, due to both health concerns and the need for social distancing, as well as the increased time spent at home.

This bill would facilitate the improved utilization of existing space by prohibiting public hearings in the instance where the space within existing units is reconfigured to add bedrooms. This prohibition would not affect other requirements – such as bedroom-based impact fees and parking requirements, nor with the requirement to comply with building standards. However, it would remove bureaucratic and time hurdles from making changes within an existing unit.

- 7) *Another ADU bill?* Earlier this year, this committee heard SB 897 (Wieckowski), another bill that makes changes to the law governing ADUs. The primary overlap between this bill and SB 897 are in the provisions relating to ADU height:
 - a) SB 897 increases allowable ADU height to 25 feet if the ADU is within one-half mile walking distance of a major transit stop or a high-quality transit corridor or if the accessory dwelling unit is attached to a primary dwelling
 - b) This bill, AB 916, would allow a height limitation of 18 feet for an accessory dwelling unit on a lot that has an existing dwelling

A third bill making changes to ADU law, AB 2221 (Quirk-Silva), will also be heard in this committee. *Moving forward, the authors may wish to*

consider working out any statutory differences through chaptering amendments.

- 8) *Committee concerns.* The height limitation provision in AB 916 is extremely limited and only applies to a multifamily and multistory dwelling. **To ensure that the height provision applies to single-family lots and aligns with the height provisions outlined in SB 897, the author may wish to amend the bill to specify that the height limitation applies to an ADU on a lot that has an existing multifamily or single-family dwelling.**
- 9) *Double-referral.* This bill is double-referred to the Governance and Finance Committee.

RELATED LEGISLATION:

SB 897 (Wieckowski, 2022) — makes a number of changes to law governing ADUs, including, among other things: clarifying that standards imposed on ADUs must be objective, codifying that the construction of an ADU does not constitute an occupancy change, increasing the height limit allowance for ADUs to 25 feet if it is within 1/2 mile walking distance of a major transit stop or a high-quality transit corridor or is attached to a primary dwelling, authorizing a delay in building standard enforcement for an ADU, and establishing the California Accessory Dwelling Unit Fund. *This bill is pending in the Assembly Committee on Housing and Community Development.*

AB 2221 (Quirk-Silva, 2021) — clarifies and expands requirements for approval of ADUs and JADUs. *This bill is pending in this Committee.*

SB 13 (Wieckowski, Chapter 653, Statutes of 2019) — made a number of changes to law governing ADUs, including, among other things: limiting impact fees for ADUs, as specified; providing a five-year amnesty period for owners to correct building code violations on existing ADUs; reducing the approval period for ADUs from 120 days to 60 days; requiring local governments to allow ADUs of at least 850 square feet (1,000 square feet if more than one bedroom); and prohibiting owner occupancy requirements on either the ADU or the primary dwelling.

AB 68 (Ting, Chapter 655, Statutes of 2019) — made a number of changes to law governing ADUs, including, among other things: requiring ministerial approval of multiple ADUs or JADUs on a lot, or both, as specified; requiring a 30-day minimum on ADU rentals; revising allowable setback requirements; and reducing the approval period for ADUs from 120 days to 60 days.

AB 587 (Friedman, Chapter 657, Statutes of 2019) – allowed for an ADU to be sold or conveyed separately from the primary residence to a qualified buyer under specified circumstances.

AB 881 (Bloom, Chapter 659, Statutes of 2019) — made several changes to ADU law.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, June 8, 2022.)

SUPPORT:

California Rental Housing Association (Sponsor)
Apartment Association of Greater Los Angeles
Apartment Association of Orange County
Berkeley Property Owner's Association
California Apartment Association
California Association of Realtors
California YIMBY
City of Santa Monica
City of Santa Rosa
East Bay Rental Housing Association
Nor Cal Rental Property Association
North Valley Property Owners Association
San Francisco Bay Area Planning & Urban Research Association (SPUR)
Santa Barbara Rental Property Association
Small Property Owners of San Francisco
Southern California Rental Housing Association

OPPOSITION:

City of Santa Clarita
San Francisco Land Use Coalition
South Bay Cities Council of Governments
1 Individual