

- 3) 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.
- 4) Requires a local agency to mandate a minimum of 30 days on ADU rentals.
- 5) Prohibits a local ordinance from requiring an applicant for an ADU to be an owner-occupant.
- 6) Provides for a tiered schedule of impact fees based on the size of the ADU, as specified.
- 7) Provides for a five-year amnesty period during which the owner of an ADU that violates any building standard, may correct the violation if the correction is not immediately necessary to protect public health and safety, as specified.
- 8) Requires the state Department of Housing and Community Development (HCD) to review each local ADU ordinance after it is adopted and to notify the local agency as to whether it complies with ADU law. Provides for a process for a local agency to respond and authorizes HCD to notify the Attorney General if an ADU ordinance continues to be non-compliant.
- 9) Authorizes a local agency to count an ADU for purposes of identifying adequate sites for its housing element.

This bill:

- 1) Requires ministerial approval of a permit to build, in a residential or mixed-use zone, multiple ADUs within existing mixed-use structures (in addition to existing multifamily structures), including commercial space, industrial space, retail space, or other vacant space, provided each unit complies with state building standards for dwellings.
- 2) Provides that any portion of a multifamily structure or mixed-use structure that is vacant space, must have been vacant for at least six months prior to applying for a permit to convert it to an ADU.

COMMENTS

- 1) *Author's statement.* “In a continued effort to address the state’s housing shortage, SB 778 would help streamline mixed-use commercial space conversion into ADUs. SB 778 clarifies that owners of mixed-use or multifamily buildings may turn commercial spaces into these extra units, also known as in-law units or granny flats, a valuable form of housing at below-market prices within existing neighborhoods. The clarification centers on AB 68, a 2019 law that requires local governments to ministerially approve the conversion of non-living spaces in mixed-use and multifamily buildings into ADUs. The law gives examples of non-living areas that would qualify, such as garages and boiler rooms, but does not expressly use the words “commercial or retail space.” Some jurisdictions have misinterpreted the law and failed to provide the streamlined approval as intended under AB 68. SB 778 closes that loophole by mandating the issuance of permits to create ADUs out of commercial space, industrial space, retail space, or any other vacant space if each unit complies with state building standards for dwellings. Clear guidance on an owner’s right to create additional residential living space in these is vital to fulfilling California’s stated goal to increase housing supply.”
- 2) *Background: ADUs.* 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.
- 3) *Encouraging ADU construction.* According to HCD, “ADUs are an innovative, affordable, effective option for adding much needed housing in California.” Despite state law requirements for each city in the state to have a ministerial process for approving second units, local regulations often impeded 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. A 2020 report by UC Berkeley’s Turner Center for Housing Innovation notes that ADU permits increased from almost 6,000 to almost 16,000 between 2018

and 2019.¹ 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 With localities across the state facing large regional housing needs allocations for the upcoming sixth housing element cycle, ADUs and JADUs represent a key tool in the housing production toolbox.

- 4) *ADUs in multifamily zones.* AB 68 (Ting, 2019), among other things, requires a local agency to ministerially approve, on a lot with a multifamily dwelling, multiple ADUs within existing multifamily dwelling structures that are not used as livable space, provided each unit complies with state building standards for dwellings. Non-livable space includes, but is not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages. According to the sponsor of this bill, the California Apartment Association, some jurisdictions have misinterpreted this language as limiting the requirement for ministerial approval to the explicit examples cited in the statute. In response, this bill clarifies that ministerial approval is also required for ADUs in commercial space, industrial space, retail space, or other vacant space in a multifamily structure or mixed-use structure. This bill also adds mixed-use structures to the provision. It also requires that such space must have been vacant for at least six months before the owner may submit an application to convert it to an ADU.
- 5) *Committee amendment.* When drafting a clarification to the 25% cap on ADUs within multifamily structures, a clause was inadvertently struck (page 8, lines 32-33):

(ii) A local agency shall allow ~~at least one accessory dwelling unit within an existing multifamily dwelling and shall allow~~ up to 25 percent of the existing multifamily dwelling units as accessory dwelling units.

The deleted language, which was included in AB 68, aimed to ensure that ADUs could be created within duplexes and triplexes. In a two-unit dwelling, adding one ADU would constitute 50% of the unit and in a three-unit dwelling, one ADU would constitute 33% of the unit – both exceeding the 25% cap. **To ensure that this provision is preserved, the author will accept amendments to reinstate the deleted language in this clause.**

¹ Karen Chapple, David Garcia, Eric Valchuis, Julian Tucker, *Reaching California’s ADU Potential: Progress to Date and the Need for ADU Finance* (UC Berkeley, Terner Center for Housing Innovation and Center for Community Innovation, August 2020).

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).

6) *Double referral*. This bill passed out of the Committee on Governance & Finance on a 5-0 vote on April 15, 2021.

RELATED LEGISLATION:

SB 765 (Stern, 2021) – repeals the existing prohibition on a city or county imposing a requirement of a setback for an ADU of more than four feet from the rear and side lot lines. *This bill was heard in Senate Housing Committee on April 15, 2021 for testimony only.*

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.

SB 1069 (Wieckowski, Chapter 720, Statutes of 2016) — required an ordinance for the creation of ADUs to include specified provisions regarding areas where ADUs may be located, standards, and lot density. Also revises requirements for the approval or disapproval of an ADU application when a local agency has not adopted an ordinance.

AB 2299 (Bloom, Chapter 735, Statutes of 2016) — required a local agency to provide by ordinance for the creation of second units in single-family and multifamily residential zones.

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

POSITIONS: (Communicated to the committee before noon on Friday, April 23, 2021.)

SUPPORT:

California Building Industry Association
California YIMBY

OPPOSITION:

None received

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