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

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**Bill No:** SB 765 **Hearing Date:** 4/15/2021  
**Author:** Stern  
**Version:** 2/19/2021  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Erin Riches

**SUBJECT:** Accessory dwelling units: setbacks

**DIGEST:** This bill repeals the existing prohibition on a city or county imposing a requirement of a setback for an accessory dwelling unit (ADU) of more than four feet from the rear and side lot lines.

**ANALYSIS:**

*Existing law:*

- 1) Provides that a local ADU ordinance that establishes minimum or maximum ADU size must allow an ADU of up to 850 square feet, or up to 1,000 square feet if the ADU provides more than one bedroom. Provides that any other minimum or maximum size imposed by a local ordinance must allow for an ADU of at least 800 square feet and 16 feet in height, with four-foot side and rear yard setbacks.
- 2) 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.

- 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) Allows a city or county to establish rear and side yard setback requirements for ADUs, except:
  - a) An applicant for an ADU may request an alternative rear and side yard setback requirement based on specific site topographical conditions if the city's or county's setback requirements make construction of the ADU infeasible. Authorizes a city or county to approve the request upon making a finding that the alternative setback is necessary to make construction feasible and the alternative setback adjusts the requirement only to the extent necessary to accommodate the ADU.

- b) A city's or county's rear and side setback requirements may not exceed those in effect on January 1, 2020.
- c) If the city or county did not have an ADU ordinance in effect on January 1, 2020, the rear and side yard setback shall be four feet.

## COMMENTS

- 1) *Author's statement.* "SB 765 gives local governments the option to return to setback regulations they had established prior to the state law mandating the four-foot setback that took effect in 2020. For local jurisdictions that did not have a setback regulation in place, they will be bound by the four-foot setback rule in current law. This will restore to local jurisdictions the authority to do proper planning to achieve an optimal, safe, and aesthetically balanced ADU location. Under SB 765, if a local jurisdiction's setback requirements make the building of an ADU infeasible, the applicant will be eligible for an alternate setback."
- 2) *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 the state Department of Housing and Community Development (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.<sup>1</sup> 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.”<sup>2</sup> 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) *Setbacks.* AB 68 (Ting, 2019) prohibits local governments from requiring a setback (*e.g.*, the amount an ADU must be set back from the property line) of more than four feet. This was intended to address concerns that many localities were setting setbacks of up to 30 feet, making it difficult or even impossible to construct an ADU on a smaller lot. This bill effectively eliminates the setback requirement by allowing an alternative setback if the current requirement “makes construction of an ADU infeasible.” While this bill does not hand unlimited authority to cities and counties to impose alternative setbacks, it does reopen a contentious issue that was resolved in legislation that went into effect just last year. This bill effectively undermines ADU statute and potentially makes it more difficult to construct much needed housing.
- 5) *Opposition concerns.* Opponents state that larger setbacks reduce affordability by not only increasing the amount of land a person must have in order to build a home, but also by allowing local agencies to thwart production by rendering development functionally illegal. Due in large part to overly restrictive setback requirements, ADUs for a long time were an option only available to very wealthy families in large homes on even larger lots. By proposing to repeal this critical aspect of recently enacted ADU law, opponents state that this bill would once again enable local agencies to require large setbacks in order to prevent ADU development.
- 6) *Double referral.* This bill has also been referred to the Governance & Finance Committee.

## **RELATED LEGISLATION:**

**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

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<sup>1</sup> 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).

<sup>2</sup> 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).

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)** — made several changes to ADU law.

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

**POSITIONS:** (Communicated to the committee before noon on Friday, April 9, 2021.)

**SUPPORT:**

- Albany Neighbors United
- Betterment of California
- California Alliance of Local Electeds
- California Cities for Local Control
- Catalysts
- City of Agoura Hills
- City of Beverly Hills
- City of Bradbury
- City of Buellton
- City of Carson
- City of Del Mar
- City of Encinitas
- City of Hidden Hills
- City of King
- City of Lafayette
- City of Laguna Beach
- City of Palo Alto
- City of Rolling Hills
- City of Solana Beach
- Community Catalysts
- County of Sacramento
- Las Virgenes-Malibu Council of Governments

Latino Alliance for Community Engagement  
League of California Cities  
Livable California  
Mission Street Neighbors  
Montecito Association  
San Gabriel Valley Council of Governments  
Temecula Valley Neighborhood Coalition  
Town of Colma  
5 Individuals

**OPPOSITION:**

ADU Task Force East Bay  
California Apartment Association  
California YIMBY  
CityLab - UCLA  
Hello Housing  
Helping Hand Worldwide Advocates for Seniors  
Inspired ADUs  
Napa Sonoma ADU Center  
Northern Neighbors  
Peninsula for Everyone  
People for Housing Orange County  
Progress Noe Valley  
Rachel Ginis Consulting  
San Francisco Bay Area Planning and Urban Research Association (SPUR)  
San Francisco YIMBY  
Santa Cruz YIMBY  
Smallworks Studios and Laneway Housing  
South Bay YIMBY  
Sustainable Systems Research Foundation  
Symbium  
Tent Makers  
The Casita Coalition  
The Two Hundred  
Urban Environmentalists  
Ventura County YIMBY  
YIMBY Action  
548 Individuals

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