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

Bill No: SB 897 **Hearing Date:** 3/24/2022
Author: Wieckowski
Version: 3/14/2022 Amended
Urgency: No **Fiscal:** Yes
Consultant: Mehgie Tabar

SUBJECT: Accessory dwelling units: junior accessory dwelling units

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

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 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.
- 3) Requires a local agency to mandate a minimum of 30 days on ADU rentals.

- 4) Prohibits a local ordinance from requiring an applicant for an ADU to be an owner-occupant.
- 5) Provides for a tiered schedule of impact fees based on the size of the ADU, as specified.
- 6) 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.
- 7) 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.
- 8) Authorizes a local agency to count an ADU for purposes of identifying adequate sites for its housing element.

This bill:

- 1) Clarifies the following:
 - a) Standards imposed on ADUs must be objective.
 - b) A permitting agency must act by specifically approving or denying an application for an ADU or JADU within 60 days from receiving.
 - c) Any requirement for a zoning clearance or separate zoning review for either an attached or detached dwellings will be constructed in compliance with all other local building standards.
- 2) Codifies that the construction of an ADU does not constitute an occupancy change under local building code or trigger a requirement for fire sprinklers to be installed in the proposed or existing primary dwelling.
- 3) Requires that a demolition permit for a detached garage that will be replaced with an ADU be reviewed and issued at the same time as the ADU application. Provides that a written notice or posted placard for the demolition of a detached garage that is to be replaced with an ADU is not required unless the property is located within an architecturally and historically significant historic district.
- 4) Increases the height limit allowance for ADUs to 25 feet.

- 5) Prohibits a local agency from imposing parking standards for an ADU when a permit application for an ADU is submitted with a permit application to create a new dwelling on the same lot.
- 6) Requires a local agency to reduce the number of required parking spaces for the multifamily dwelling unit by two for each proposed ADU when an ADU application is submitted with a permit application for new multifamily units.
- 7) Removes the 2025 sunset date, which prohibits a local agency from imposing an owner-occupant requirement so that there is no owner occupancy requirement for ADUs.
- 8) Requires that a local agency shall not deny a permit for a constructed, unpermitted ADU due to the correction of nonconforming zoning conditions or unpermitted structures that are not affected by the construction of the ADU.
- 9) Authorizes a delay in building standard enforcement for an ADU also applies to a violation of any provision of any building standard that applies to the primary dwelling of that ADU, provided that correcting the violation is not necessary to protect healthy and safety.
- 10) Establishes the California Accessory Dwelling Unit Fund, a grant program for the purpose of funding the construction and maintenance of ADUs and JADUs, in the State Treasury.

COMMENTS:

- 1) *Author's statement.* "California was and continues to be in an ongoing housing crisis since I introduced my first ADU bill in 2016. While California has seen a significant increase in the amount of ADU building permit applications and ADU construction since that time, the lack of housing, and in particular affordable housing, is one of the most significant drivers of institutional and generational poverty cycles and will not be resolved until more housing can be developed. Eliminating any unnecessary barriers to ADU construction is a cost-effective approach that will allow homeowners to make better use of their property. ADU's can provide additional rental availability in their communities and create more financial stability for themselves. Additionally, ADU's provide housing options for those homeowners who want to age in place as well as providing flexible living space for their family, friends, or caregivers.

SB 897 builds upon previous ADU legislation by addressing some of the remaining barriers to ADU construction and supporting the development of housing that is more affordable by design.”

- 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. 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 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.

The cost of constructing an ADU, however, can still be high. According to the State Treasurer’s Office, many lower income homeowners, as well as homeowners who have not yet built up significant equity in their homes, are struggling to obtain loans to construct ADUs.

- 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.”¹ Since 2013, the number of permitted ADUs increased from 799 to 12,813 in 2020, for a total of almost 44,000 ADUs permitted statewide². With localities 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) *Current state funding for ADUs.* Currently, only one state program, under the California Housing Finance Agency (CalHFA), provides funding for ADU construction. Under this program, ADU grants are provided up to \$40,000 to reimburse pre-development and non-reoccurring closing costs associated with the construction of an ADU. Pre-development costs include site preparation, architectural designs, permits, soil tests, impact fees, property survey, and energy reports. As the program takes shape, CalHFA is looking to increase the incentive and also streamline eligibility requirements while maintaining the program’s social equity focus. These updates reduce complexity, provide consistency with homeownership programs, and remove barriers to ADU production for low-moderate income homeowners. Given the high demand for more housing, more state funding opportunities for ADUs are necessary. This bill proposes to create the California ADU Fund to support the construction and maintenance of both ADUs and JADUs.
- 6) *Allowable ADU height limit.* Existing law states that ADUs are subject to a height limit of 16 feet. A 16-foot height limit does not allow for an ADU to be

¹ 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).

² [Housing Element Implementation and APR Dashboard | California Department of Housing and Community Development](#)

two full stories without some creative workarounds and increased costs, such as going below grade and having a flat roof. To encourage the production of more ADUs and eliminate barriers to development, this bill would change the allowable ADU height limit to 25 feet. The committee has learned of privacy concerns regarding neighboring parcels. The author has committed to seeking agreement from this committee should any amendments impact its jurisdiction.

- 7) *Change of occupancy requirements.* According to the California Building Standards Code, a Change of Occupancy is required whenever a building (or portion of a building) moves from one occupancy category to another. In other words, even if no changes are made to a building but the use of a space is changing, a change of occupancy is required. For the construction of ADUs and JADUs, an occupancy change requirement could result in increased costs and/or development time, potentially impacting the financial viability of the ADU. This bill codifies that the construction of an ADU does not constitute an occupancy change under local building code or trigger a requirement for fire sprinklers to be installed in the proposed or existing primary dwelling.
- 8) *Elimination of owner occupancy requirement.* Existing law prohibits, until 2025, a local ordinance from imposing an owner-occupant requirement for either the primary dwelling or the ADU. These covenants can preclude the lender from occupying the property if lenders must foreclose on the property. For example, if a property owner agrees to such a covenant, the owner could already be in violation of their deed of trust on the property. These covenants could also negatively impact the resale value of properties with ADUs if a prospective buyer does not desire to occupy the residence after purchase. This bill removes the authority for local agencies to require ADU applicants to be owner occupants and eliminates existing law authority for local agencies to require owner occupancy for either the ADU or the primary dwelling.
- 9) *Amnesty.* According to a 2016 report by McKinsey and Company entitled *A Tool Kit to Close California's Housing Gap: 3.5 Million Homes by 2025*, one way to encourage homeowners to add ADUs is to create an amnesty path for ADUs that are not properly permitted. According to the report, as many as 8% of ADUs in San Francisco are illegal. The report concludes that legitimizing these units would boost building compliance and raise property tax revenue.

This bill would prohibit a local agency from denying a permit for a constructed, but unpermitted, accessory dwelling unit because the unit is in violation of building standards or state or local standards applicable to accessory dwelling units, unless the local agency makes a finding that correcting the violation is

necessary to protect the health and safety of the public or occupants of the structure.

- 10) *Opposition Concerns.* The California Building Officials (CALBO), writing in opposition to this bill, has expressed concerns with the safety implications of prohibiting an occupancy change for an ADU conversion and the ability of their members to enforce the safety standards established in the California Building Code.

Other written opposition received came from local organizations and community associations concerned about local control and opposing the increased height limit for ADUs.

- 11) *Double-referral.* This bill is double-referred to the Governance and 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 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 69 (Ting, 2019) — would have revised ADU law in relation to HCD determination of compliance of local ADU ordinances and requires HCD to propose building standards for ADUs and small homes. *This bill was vetoed by the Governor.*

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.

AB 1074 (Diep, 2019) — would have authorized, upon voter approval, the issuance of \$500 million in general obligation bonds to finance an Accessory Dwelling Unit Construction Program under HCD. *This bill died in the Assembly Housing and Community Development Committee.*

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 Thursday, March 17, 2022.)

SUPPORT:

Bay Area Council (Sponsor)
AARP
All Home
Apartment Association of Greater Los Angeles
California Building Industry Association
California YIMBY
CalRHA
Civicwell
Housing Action Coalition
Midpen Housing Corporation
San Francisco Bay Area Planning and Research Association (SPUR)
Silicon Valley @ Home
Terner Center for Housing Innovation At the University of California, Berkeley
The Two Hundred

OPPOSITION:

California Building Officials
Catalysts for Local Control
Community Associations Institute - California Legislative Action Committee
Hills2000 - Friends of The Hills

Mission Street Neighbors
1 Individual

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