



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
[www.Hayward-CA.gov](http://www.Hayward-CA.gov)

## Agenda City Council

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**Tuesday, October 19, 2021**

**5:30 PM**

**Virtual Participation**

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### **SPECIAL JOINT WORK SESSION OF THE CITY COUNCIL AND PLANNING COMMISSION**

COVID-19 Notice: Consistent with Government Code Section 54953(e)(1), the City Council and Planning Commission Work Session includes teleconference participation.

*How to observe the Meeting:*

1. Comcast TV Channel 15
2. Live stream <https://hayward.legistar.com/Calendar.aspx>
3. YouTube Live stream: <https://www.youtube.com/user/cityofhayward>

*How to submit written Public Comment:*

1. Use eComment on the City's Meeting & Agenda Center webpage at: <https://hayward.legistar.com/Calendar.aspx>. eComments are directly sent to the iLegislate application used by City Council and City staff. Comments received before 3:00 p.m. the day of the meeting will be exported into a report, distributed to the City Council and staff, and published on the City's Meeting & Agenda Center under Documents Received After Published Agenda.

2. Send an email to [List-Mayor-Council@hayward-ca.gov](mailto:List-Mayor-Council@hayward-ca.gov) by 3:00 p.m. the day of the meeting. Please identify the Agenda Item Number in the subject line of your email. Emails will be compiled into one file, distributed to the City Council and staff, and published on the City's Meeting & Agenda Center under Documents Received After Published Agenda. Documents received after 3:00 p.m. through the adjournment of the meeting will be included as part of the meeting record and published the following day.

*How to provide live Public Comment during the City Council Meeting:*

Complete the online speaker card at the Council Chamber entrance or click the link below:  
<https://hayward.zoom.us/j/84461287766?pwd=NmlyWGIPd1lERkMvOVZNeGVPMENldz09>

Meeting ID: 844 6128 7766

Passcode: Cc&Pc@5:30

or

Dial: + 1 669 900 6833 or +1 253 215 8782

Meeting ID: 844 6128 7766

Password: 7082393368

A Guide to attend virtual meetings is provided at this link: <https://bit.ly/3jmaUxa>

**CALL TO ORDER: Mayor Halliday****Pledge of Allegiance: Council Member Zermeño****ROLL CALL****PUBLIC COMMENTS**

*The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda. The Council welcomes comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, items will be taken under consideration and may be referred to staff.*

**WORK SESSION OF THE CITY COUNCIL AND PLANNING COMMISSION**

*Work Session items are non-action items. Although the Council may discuss or direct staff to follow up on these items, no formal action will be taken. Any formal action will be placed on the agenda at a subsequent meeting in the action sections of the agenda.*

1. Joint Housing Element Work Session: Housing Element Update and Residential Objective Standards Project (Report from Assistant City Manager/Development Services Director Ott)

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II Recent Housing and Land Use Legislation](#)

**ADJOURNMENT**

Adjourn to City Council Meeting

**PUBLIC COMMENT RULES**

*Any member of the public desiring to address the Council shall limit their remarks to three (3) minutes unless less or further time has been granted by the Presiding Officer or in accordance with the section under Public Hearings. The Presiding Officer has the discretion to shorten or lengthen the maximum time members may speak. Speakers will be asked for their name before speaking and are expected to honor the allotted time.*

**PLEASE TAKE NOTICE**

*That if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing.*

**PLEASE TAKE FURTHER NOTICE**

*That the City Council adopted Resolution No. 87-181 C.S., which imposes the 90-day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.*

*\*\*\*Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. Written comments submitted to the Council in connection with agenda items will be posted on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. \*\*\**

*Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.*

*Assistance will be provided to those requiring language assistance. To ensure that interpreters are available at the meeting, interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400.*

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**File #:** WS 21-039

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**DATE:** October 19, 2021

**TO:** Mayor, City Council, and Planning Commission

**FROM:** Assistant City Manager/Development Services Director

**SUBJECT**

Joint Housing Element Work Session: Housing Element Update and Residential Objective Standards Project

**RECOMMENDATION**

That the Council and Planning Commission provide feedback and guidance on the Housing Element update and the Residential Objective Standards Project.

**SUMMARY**

City staff is moving forward with two key housing projects in light of an evolving State legislative landscape. These key projects, which are included in the City's Strategic Roadmap and Incentives for Housing Production Plan, include development of an updated Housing Element, as well as the Residential Objective Standards Project. These projects will align Hayward's goals and expectations for future development with the State's goal to address the housing crisis.

The Housing Element Update will integrate housing goals with equity, outreach to groups typically marginalized through these processes, developing and proposing programs that affirmatively further fair housing, and align climate and environmental justice.

Another key project is the development of Residential Objective Standards for residential and mixed-use development to give the community, developers, staff, and decision makers more certainty about what future development will look like as the City moves forward with these streamlined processes. This project will further address concerns previously expressed by the Council, Planning Commission, and community regarding a desire for more detailed standards related to architectural design and neighborhood context.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Recent Housing and Land Use Legislation



**DATE:** October 19, 2021

**TO:** Mayor, City Council, and Planning Commission

**FROM:** Assistant City Manager/Development Services Director

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Another key project is the development of Residential Objective Standards for residential and mixed-use development to give the community, developers, staff, and decision makers more certainty about what future development will look like as the City moves forward with these streamlined processes. This project will further address concerns previously expressed by the Council, Planning Commission, and community regarding a desire for more detailed standards related to architectural design and neighborhood context.

### **BACKGROUND**

In recent years, the California legislature has adopted and amended several housing and land use laws to address the state's housing crisis. Specifically, the State Department of Housing and Community Development (HCD) found that California needs an estimated 1.8 million new homes by 2025 to meet projected demand; yet on average, only 80,000 new homes are built

per year.<sup>1</sup> The Housing Action Plan developed by the State includes several strategies to achieve these targets including streamlining housing construction, lowering per unit costs, developing production incentives for jurisdictions meeting housing goals, defining accountability and enforcement to strengthen local compliance with housing laws, and creating dedicated funding sources for housing.

Since 2017, the State legislature has adopted numerous housing bills to achieve the goals and strategies outlined in the Housing Action Plan. While the legislature has adopted dozens of bills over the past few years, a few have significantly changed typical planning and approval processes. Specifically, Senate Bill (SB) 35, SB 330, and SB 8 are aimed at streamlining land use entitlements. Streamlining is generally used to limit and define local control and discretion thus providing developers with more certainty in timing and outcomes for residential and mixed-use developments.

- SB 35 (2017) streamlines housing development approvals on infill sites that comply with “objective standards,” meet minimum affordability requirements, are not environmentally sensitive, and if the developer pays prevailing wage and uses a “skilled and trained workforce” for projects over a certain threshold.
- SB 330 (2019) requires cities to approve housing development projects that comply with all applicable objective standards, and freezes impact and other fees in place when a pre-application is filed and deemed complete.
- SB 8 (2021) builds upon SB 330 by expanding the definition of a “housing development project” to include single family dwelling units.

Other legislation includes updates to Accessory Dwelling Unit (ADU) and Density Bonus law and adoption of SB 9 and SB 10, are aimed at allowing a greater number and variety of housing types.

- ADU laws (updated 2016-2021) allows for development of accessory dwelling units on single-family and multi-family zoned properties.
- Density Bonus Law (AB 1763, 2019) allows for an 80% density bonus if 100% of the units are deed restricted for lower income households, and provides an unlimited density bonus if the housing development is located within one-half mile of a major transit stop.
- SB 9 (2021) requires ministerial approval for urban lot splits and two-unit developments on single family properties that meet certain criteria.
- SB 10 (2021) allows cities to upzone multifamily parcels within a certain proximity to high frequency transit to permit up to ten residential units and bypasses the CEQA process for the zone change.

More information about new housing and land use legislation is outlined within Attachment II.

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<sup>1</sup> California’s Housing Future: Challenges and Opportunities Final Statewide Housing Assessment 2025 prepared by California Department of Housing and Community Development. [https://www.hcd.ca.gov/policy-research/plans-reports/docs/sha\\_final\\_combined.pdf](https://www.hcd.ca.gov/policy-research/plans-reports/docs/sha_final_combined.pdf)

City staff is moving forward with a couple of key housing projects in light of this changing legislative landscape. These key projects, which are included in the City's Strategic Roadmap and Incentives for Housing Production Plan, include development of an updated Housing Element and the Residential Objective Standards Project. These projects will align Hayward's goals and expectations for future development with the State's goal to address the housing crisis.

The Housing Element Update will integrate housing goals with equity, outreach to groups typically marginalized through these processes, developing and proposing programs that affirmatively further fair housing, and align climate and environmental justice.

Another key project is the development of Residential Objective Standards for residential and mixed-use development to give the community, developers, staff, and decision makers more certainty about what future development will look like as we move forward with these streamlined processes. This project will further address concerns previously expressed by the Council, Planning Commission, and community regarding a desire for more detailed standards related to architectural design and neighborhood context.

## **DISCUSSION**

### *Housing Element Update*

At its core, a Housing Element is an opportunity for a community conversation about how to address local housing challenges and find solutions. The Housing Element addresses a range of housing issues such as affordability, design, housing types, density, and location, and establishes goals, policies, and programs to address existing and projected housing needs. State law does not require that jurisdictions *build* or *finance* new housing, but they must *plan* for it by identifying sufficient sites, analyzing housing development constraints, and identifying programs and policies that will address the community's needs. It is in the community's Housing Element that local governments make decisions about where safe, accessible, and diverse housing could be developed to offer a mix of housing opportunities for a variety of household incomes. The Housing Element must identify how the city will meet its share of the region's housing need, called the Regional Housing Needs Allocation (RHNA).

Hayward's Housing Element Update is being combined with updates of the Safety Element, the Climate Action Plan, and programs and policies related to Environmental Justice because issues of housing, environmental justice, safety and hazard planning, and climate change are inextricably linked. Further, conducting outreach and planning for all of these efforts simultaneously will result in a more comprehensive and holistic approach to these issues, as well as efficiencies related to outreach, environmental analysis, and adoption and implementation efforts. While there will be other future opportunities to provide feedback on the Climate Action Plan and related General Plan Amendments, this work session will focus on the Housing Element Update.

Housing Element Update. Per State law, every jurisdiction shall update their Housing Element every eight years in conjunction with the RHNA allocation. The last Housing Element was

adopted on December 2, 2014<sup>2</sup>, and the updated Housing Element for the 2023-2031 cycle will be due January 31, 2023. The Housing Element typically includes:

- Housing Needs Assessment: Examine demographic, employment, and housing trends and conditions and identify existing and projected housing needs of the community, with attention paid to special housing needs (e.g., large families, persons with disabilities).
- Evaluation of Past Performance: Review the prior Housing Element to measure progress in implementing policies and programs.
- Housing Sites Inventory: Identify locations of available sites for housing development or redevelopment to ensure there is enough land zoned for housing to meet the future need at all income levels.
- Community Engagement: Implement a robust community engagement program, reaching out to all economic segments of the community plus traditionally underrepresented groups.
- Constraints Analysis: Analyze and recommend remedies for existing and potential governmental and nongovernmental barriers to housing development.
- Policies and Programs: Establish policies and programs to be carried out during the 2023-2031 planning period to fulfill the identified housing needs.

Regional Housing Needs Allocation. Every eight years, HCD projects the housing need for the state as a whole, which is referred to as the RHNA. To determine this calculation, HCD uses demographic population information from the California Department of Finance and develops a formula to calculate a figure for each region/Council of Governments based on projected growth. In more recent cycles, the State tied the housing allocation to transportation funding to promote sustainability goals such as reducing Vehicle Miles Traveled (VMT) between jobs and housing.

In this cycle, the Bay Area was allocated 441,176 units (a 234% increase over the last cycle allocation) with about 26% allocated to Very Low Income, 15% to Low, 16% to Moderate and 43% to Above Moderate-income households. The Association of Bay Area Government's (ABAG) Housing Methodology Committee released a Draft Regional Housing Allocation Plan<sup>3</sup> in May 2021. Hayward's draft allocation is 4,624 units, approximately 18% higher than the 2015-2023 allocation. ABAG is slated to adopt the allocations in Fall 2021, after the Board holds public hearings on various appeals.<sup>4</sup>

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<sup>2</sup> Hayward 2015-2023 Housing Element. Adopted December 2, 2014. <https://www.hayward-ca.gov/sites/default/files/Housing%20Element%20FINAL%20Adopted.pdf>

<sup>3</sup> Draft Regional Housing Allocation Plan 2023-2031. [https://abag.ca.gov/sites/default/files/documents/2021-05/ABAG\\_2023-2031\\_Draft\\_RHNA\\_Plan.pdf](https://abag.ca.gov/sites/default/files/documents/2021-05/ABAG_2023-2031_Draft_RHNA_Plan.pdf)

<sup>4</sup> ABAG 2023-2031 Appeals Process. <https://abag.ca.gov/our-work/housing/rhna-regional-housing-needs-allocation/2023-2031-rhna-appeals-process>



	Very Low Income (<50% of Area Median Income)	Low Income (50-80% of Area Median Income)	Moderate Income (80-120% of Area Median Income)	Above Moderate Income (>120% of Area Median Income)	Total
2015-2023 Allocation	851	480	608	1,981	3,920
2023-2031 Allocation	1,075	617	817	2,115	4,624

In this recent allocation, the ABAG Housing Methodology Committee recommended higher numbers of housing units be funneled to High Opportunity and High Jobs Areas. High Opportunity Areas are considered those that have good schools, parks, and services like grocery stores. These are places where typically you see very high-income households and it is hard for lower income households to take advantage of the opportunities that accrue just by living in the area. High Jobs Areas (San Francisco, San Jose, Oakland, Fremont, and others) are areas where there are high numbers of jobs so adding housing at various income levels in these communities would reduce VMT for workers.

Housing Element Update Timeline. On May 28, 2021, the City released a Request for Proposals (RFP) for the Update. On July 20, 2021, the Council adopted Resolution No. 21-158 awarding the Housing Element contract to Rincon Consultants. Next steps include development of the Community Outreach and Engagement Plan and kicking off that outreach in October 2021, which will extend through the entire project. An updated Housing Element is required to be reviewed by HCD and adopted by the Council by January 2023.

The purpose of this update is to provide the Planning Commission and Council with background on the Housing Element, RHNA, and related statutory requirements and timeframes. Further, the community outreach and engagement process for this Update is identified as a Diversity, Equity, and Inclusion (DEI) project for the Development Services Department. To ensure that staff and the consultant develop a robust and equitable outreach plan, staff is seeking the following feedback from the Council and Planning Commission:

- In terms of outreach, what community, advocacy, and interest groups do you suggest that staff reaches out to in particular to achieve broad equitable outreach?
- Are there any specific locations or events that you recommend staff visit to ensure that we achieve broad equitable outreach?
- One of the early outreach efforts will be a survey to understand community concerns. Are there any specific topics or questions that you would like staff to include on such a survey?

*Residential Objective Standards Project*

In 2019, the City of Hayward was awarded a Senate Bill (SB) 2 Planning Grant by HCD for various housing related activities. A portion of these grant funds are earmarked for the

development of more detailed objective residential standards. Additionally, the grant funds for this project will also cover zoning amendments to ensure General Plan and Zoning Ordinance consistency for parcels that are zoned for single family uses but have underlying General Plan designations that require higher densities.

As defined by the Housing Crisis Act, a development standard is considered to be objective if it involves no “personal or subjective judgement by a public official.” Due to the recent changes in State housing law outlined above, residential projects that meet certain requirements, including consistency with applicable objective standards, must be approved. The Hayward Municipal Code (HMC) already includes some basic objective standards for residential zoning districts, including height limits, setback minimums, and lot coverage maximums. More recently adopted portions of the HMC, such as sections governing the Downtown Specific Plan area and the Mission Boulevard corridor, provide much more extensive objective standards for residential development, including standards related to allowable frontage and building types, façade articulation, and architectural elements. By adopting more detailed objective residential standards for all residential zoning districts, the City can help ensure that future housing development is attractively designed in a manner consistent with the community’s goals and objectives. Additionally, more detailed objective standards will provide developers with greater certainty as to what is expected during the development review process.

Currently, staff is drafting a RFP to seek a qualified consultant to assist in this project. Staff intends to release the RFP later this fall with the desire to select a consultant before the end of the year. To assist with the development of the RFP, staff is requesting specific feedback from the Council and Planning Commission on the following:

- What qualities of residential development should the objective standards address (e.g., massing, relationship to surrounding development, frontage types, windows/privacy, landscaping, colors/materials, or parking)?
- What stakeholders should be engaged as part of this project?
- What outreach strategies should be utilized for this project?

## **STRATEGIC ROADMAP**

This agenda item supports the Strategic Priority of Preserve, Protect and Produce Housing for All. Specifically, this item relates to the implementation of the following project (s):

Project 4, Part 4d: Implement housing incentives and production work plan in accordance to state housing limits; Develop an Overlay Zoning District to allow RS zoned properties (single family residential) to develop into a variety of housing types at densities permitted under the applicable General Plan designation.

Project 9: Update the Housing Element Plan

## **NEXT STEPS**

Following the joint Council and Planning Commission work session, staff will incorporate any comments received into the Housing Element Update and Residential Objective Standards Project, respectively.

*Prepared by:* Leigha Schmidt, AICP, Acting Principal Planner  
Elizabeth Blanton, AICP, Senior Planner  
Taylor Richard, Assistant Planner

*Recommended by:* Jennifer Ott, Assistant City Manager/Development Services Director

Approved by:

A handwritten signature in black ink, appearing to read 'K McAadoo', written over a horizontal line.

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Kelly McAadoo, City Manager

## Recent Housing and Land Use Legislation

Page #	Bill	Summary
2	<a href="#">SB 8 (2021)</a>	This bill extends and clarifies the Housing Crisis Act of 2019 (SB 330), which speeds up residential project approvals. Notably, it now includes single family homes as subject to the HCA.
3	<a href="#">SB 9 (2021)</a>	This bill allows a lot to be divided into 2 lots, and each of those lots to have up to 2 homes, any of which could be sold separately.
5	<a href="#">SB 10 (2021)</a>	This bill simplifies the lengthy and costly process to rezone, as long as the rezone is limited to up to 10 homes per lot. A jurisdiction has the ability to decide whether or not to implement SB 10.
6	<a href="#">SB 478 (2021)</a>	This bill creates a maximum to the minimum lot size a city can require.
7	<a href="#">AB 2345 (2020)</a>	This bill expands existing state Density Bonus law to allow developers to build more homes in exchange for a higher set aside of affordable units. Specifically, a developer may now receive a 50% increase in their project's density in exchange for reserving either 15% of units at Very-Low-Income (VLI) levels, or 24% of units at Low-Income. A developer can also receive a 50% bonus by reserving 44% of their units for Moderate-Income households, but only in for-sale projects. The law also provides more flexibility for earning Density Bonus concessions (e.g., lower parking requirements, reduced setbacks, etc.). AB 2345 can help a developer make a project pencil where inclusionary requirements are higher by providing more bonus density to offset the higher percentage of affordability.
9	<a href="#">AB 1763 (2019)</a>	This bill creates enhanced density bonus options, including a potential 80 percent increase in base density and unlimited density bonuses for qualifying projects within a half-mile of a major transit stop, under the State Density Bonus Law. However, this only applies to projects that consist of 100 percent affordable housing (no more than 20 percent moderate-income, and the remainder for lower-income).
11	<a href="#">SB 330 (2019)</a>	The Housing Crisis Act of 2019 tightens the protections for residential development projects under the Housing Accountability Act by limiting a jurisdiction's ability to change development standards and zoning applicable to the project once a preliminary application is submitted. Streamlines the permitting and approval processes, limits the number of public hearings, discourages demolition of existing housing and ensures no net loss in zoning capacity.
13	<a href="#">SB 35 (2017)</a>	This bill streamlines multifamily housing project approvals, at the request of a developer, in a city that fails to issue building permits for its share of the regional housing need by income category. (Hayward currently falls into this category.) In a SB 35 city, approval of a qualifying housing development on qualifying site is a ministerial act, without CEQA review or public hearings.
16	ADUs (2016-2021)	AB2299, AB 2406 and AB 670 are among 14 bills that requires ministerial, nondiscretionary approval of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs). For more information, please review the attached guidelines from California Department of Housing and Community Development (HCD).

## **SB 8 (Skinner) – 2021**

Currently in effect, sunsets 1/1/2030

### **Background:**

The Housing Crisis Act of 2019 requires a housing development be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application is submitted. It also prohibits approving a housing development project that requires the demolition of occupied or vacant protected units unless the developer agrees to provide the occupants of any protected units with relocation benefits and a right of first refusal for a comparable unit available in the new housing development that is affordable to the household.

### **Overview:**

This bill clarifies that for various purposes the Housing Crisis Act of 2019, that “housing development project” **includes projects that involve no discretionary approvals, projects that involve both discretionary and nondiscretionary approvals, and projects that include a proposal to construct a single dwelling unit.** It does not affect a project for which an application was submitted before 1/1.22.

This bill also specifies that the act **does not prohibit an *affordable* housing project from being subject to ordinances, policies, and standards adopted after the preliminary application was submitted if the project has not commenced construction within 3.5 years.**

It also **limits the requirement to provide relocation benefits and a right of first refusal to only the occupants of protected units** that are lower income households. It does not apply to an occupant of a short-term rental of fewer than 30 days.

### **Exemptions**

- Applications submitted after 1/1/19, but before 1/1/20, that are in a jurisdiction with a population under 31,000 that has adopted a rent or price control ordinance.
- Projects with a single residential unit located on a site where a single protected unit is being demolished are exempt from the right of first refusal requirement
- Protected units in a housing development where 100% of the units are reserved for lower income households, not including any manager’s units, are also exempt from right of first refusal unless the occupant of a protected unit qualifies for residence in the new development and the occupant is not precluded from occupancy due to unit size limitations or other requirements of one or more funding source of the housing development.

*This legislative update is provided for general information purposes only and does not constitute legal advice. Urban Planning Partners is a private firm providing planning and environmental consulting services for both governmental agencies and the private sector.*

Questions related to this legislative update may be directed to Meredith Rupp at [mrupp@up-partners.com](mailto:mrupp@up-partners.com)

## SB 9 (Atkins, Caballero, Rubio, Wiener) – 2021

**Status as of 9/16/2021: Chaptered by Secretary of State. Chapter 162, Statutes of 2021.**

This bill will be effective on January 1, 2022.

### Overview:

SB 9 requires cities to **ministerially approve construction of two units on any parcel zoned for single-family residential** and requires cities to ministerially approve "urban lot splits" to **subdivide any residential lot into two lots of equal size no smaller than 1,200 square feet each.**

Cities may only require up to one additional off-street parking space per unit. Ministerial approval does not include a public hearing. Some local zoning provisions would be preempted if the provisions preclude development of two units on a single-family lot.

### Impact:

This bill is considered by many to be the most significant housing bill coming out of California's 2021 legislative session. SB 9 could expand the supply of smaller-scaled housing, particularly in higher-resourced, single-family neighborhoods. It builds on recent ADU legislation that allowed ADUs on nearly all California single-family parcels. SB 9 allows for the development of new, for-sale homes, either on a newly subdivided lot or through the conversion of existing single family homes into multiple units.

According to the [Turner Center](#), the ability to create duplexes and/or split the lot and convey new units with a distinct title:

- Allows property owners to pursue a wider range of financing options than are available for ADU construction to build these new homes.
- Open up new homeownership opportunities at more attainable price points for prospective purchasers, who would be able to apply for a traditional mortgage to buy the home.
- Depends on local context because:
  - 1) It does not apply to single-family parcels in historic districts, fire hazard zones, and rural areas
  - 2) Local market prices and development costs play a large role in determining where there is financial viability for the addition of new homes.
  - 3) Physical constraints, such as small lot sizes and other local regulations, can limit the number of new homes built as a result of this bill.

The Turner Center analysis found "that SB 9's primary impact will be to unlock incrementally more units on parcels that are already financially feasible under existing law, typically through the simple subdivision of an existing structure. **Relatively few new single-family parcels are expected to become financially feasible for added units as a direct consequence of this bill.**"

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Other potential impacts include:

- Loss of local control and local decision-making including due process and public hearings
- Environmental review under CA Environmental Quality Act (CEQA) not required
- Increases parking issues

**Limitations:**

- SB 9 does not apply to projects which require demolition or alteration of affordable housing
- SB 9 does not apply to projects which would require demolition of more than 25% of an existing structure (walls)
- SB 9 does not apply to projects located within a historic district or designated as a historic landmark

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## **SB 10 (Wiener) – 2021**

Goes into effect 1/1/22

### **Overview**

Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing.

This bill authorizes local governments to adopt an ordinance to zone any parcel for up to 10 units of residential density per parcel:

- Notwithstanding any local restrictions on adopting zoning ordinances
- At a height specified in the ordinance
- If the parcel is located in a transit-rich area *or* an urban infill site

### **Implementation & Limitations**

- SB 10 maintains local control, as a local legislative body must pass a resolution to adopt the plan.
- It will not impact project approvals or CEQA exemptions for projects.
- Local governments can determine which individual projects will be ministerial or subject to discretionary approval.
- The bill prohibits an ordinance adopted under these provisions from superseding a local restriction enacted or approved by a local initiative that designates publicly owned land as open-space land or for park or recreational purposes.
- The zoning ordinance must clearly demarcate the areas subject to the ordinance
- The legislative body must make a finding that the ordinance is consistent with the city or county's obligation to affirmatively further fair housing.
- The ordinance must be adopted by a 2/3 vote of the members of the legislative body if the ordinance supersedes any zoning restriction established by local initiative.
- An ordinance adopted under these provisions cannot reduce the density of any parcel subject to the ordinance

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### SB 478 (Wiener) – 2021

This bill is effective on January 1, 2022

#### Overview:

- This bill prohibits local agencies from imposing a floor area ratio (FAR) standard that is less than 1.0 on a housing development project that consists of 3 to 7 units, or less than 1.25 on a housing development project that consists of 8 to 10 units.
- The bill prohibits local agencies from imposing a lot coverage requirement that would physically preclude a housing development project from achieving the FARs described above.
- The bill prohibits a local agency from denying a housing development project located on an existing legal parcel *solely on the basis* that the lot area of the proposed lot does not meet the local agency's requirements for minimum lot size.
- The bill only applies to housing development projects that is located in a multifamily residential zone or a mixed-use zone

#### Background:

Existing law requires HCD to notify jurisdictions and the Attorney General if a jurisdiction is in violation of state law due to their housing element (or an amendment to that element), or any specified action or failure to act, does not substantially comply with housing element law. The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. Existing law makes void and unenforceable all instruments affecting the transfer or sale of a planned development that effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets specified standards.

#### Enforcement:

The bill requires HCD to identify violations by a local government of these provisions. This bill adds the Housing Crisis Act of 2019 to the specified provisions of law for which the department is required to give notice of a violation.

This bill **makes void and unenforceable** all covenants and restrictions (or conditions contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development), and **any provision of a governing document that effectively prohibits or unreasonably restricts a housing project from using the FAR standards authorized under this bill.**

The bill does not apply to provisions that impose reasonable restrictions that do not make the implementation of a project subject to the FAR standards infeasible.

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**AB 2345 (Gonzalez & Chiu) – 2020**

**Overview:** This bill expands existing state Density Bonus law to allow developers to build more homes in exchange for a higher set aside of affordable units. Specifically, a developer may now receive a 50% increase in their project’s density in exchange for reserving either 15% of units at Very-Low-Income (VLI) levels, or 24% of units at Low-Income. A developer can also receive a 50% bonus by reserving 44% of their units for Moderate-Income households, but only in for-sale projects. The law also provides more flexibility for earning Density Bonus concessions (e.g., lower parking requirements, reduced setbacks, etc.). AB 2345 can help a developer make a project pencil where inclusionary requirements are higher by providing more bonus density to offset the higher percentage of affordability.

**Background:** Previous density bonus law allows developers to build more densely in exchange for making a certain percentage of the project’s units affordable to certain income levels. In addition to increased density, the law also previously allowed projects to claim other incentives to facilitate housing development, such as lowered parking requirements. However, the Turner Center’s 2018 California Residential Land Use Survey revealed that most cities saw little to no use of California’s density bonus law. So this bill expands the existing law to allow developers to build more homes in exchange for a higher set aside of affordable units.

	<b>Current Density Bonus Law</b>	<b>AB 2345</b>
Very Low Income (VLI)	35% bonus for 11% VLI units	50% bonus for 15% VLI units
Low Income (LI)	35% bonus for 20% LI units	50% bonus for 24% LI units
Moderate Income (MI)	35% bonus for 44% MI units (for-sale only)	50% bonus for 44% MI units (for-sale only)

**Eligibility Criteria:**

Under AB 2345, which takes effect on January 1, 2021, the maximum available density bonus for projects not composed exclusively of affordable housing will increase from 35 to 50 percent, where additional affordable units are built. To receive the top bonus, a project must comply with unit replacement requirements and set aside at least (1) 24 percent of units for low-income households, (2) 15 percent of units for very low-income households, or (3) 44 percent of for-sale units for moderate-income households.

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Bonuses between 35 and 50 percent will be granted on a sliding scale, while current affordability requirements to obtain a lesser bonus will remain unchanged.

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# California's Density Bonus Law: 2020 Update

January 21, 2020

California's Density Bonus Law provides housing developers with tools to encourage the development of much needed affordable and senior housing. In 2019, the California Legislature passed new legislation that provides for an 80% density bonus to be granted to 100% affordable housing projects, the largest density bonus ever required under California law. That legislation, [Assembly Bill 1763](#), also requires other benefits to be provided to 100% affordable projects which allows them to be built denser and taller than under prior law. The changes will be particularly helpful to affordable housing projects that qualify for federal and state low income housing tax credits, which are the types of housing projects most often developed as 100% affordable. Effective January 1, 2020, the new legislation reflects the Legislature's commitment to maintaining and fortifying the Density Bonus Law as a critical tool for incentivizing affordable housing development in California.

These legislative changes are outlined below and incorporated into the 2020 update of our Guide to the California Density Bonus Law. Please click [here](#) to read or print out the 2020 Guide. If you have questions about the Density Bonus Law or information in the Guide, please contact the author of the Guide, Meyers Nave attorney [Jon Goetz](#), at 800.464.3559 or [jgoetz@meyersnave.com](mailto:jgoetz@meyersnave.com).

**Bigger Density Bonus.** For housing projects where all of the units are affordable to low, very low and moderate income residents, AB 1763 more than doubles the state-required density bonus to 80%. Before AB 1763, California's density bonus law provided developers up to a 35% increase in project densities, set on a sliding scale based on the amount of affordable housing provided. The 80% density bonus represents the first time the Legislature has specifically tailored a density bonus to completely affordable housing projects, and has allowed owners to meet affordable rent requirements with the maximum rents allowed under the low income housing tax credit program. If the project is located within a half mile of a major transit stop, AB 1763 goes even further by eliminating all local government limits on density, and allowing a height increase of up to three stories or 33 feet.

**More Incentives and Concessions.** Prior to the passage of AB 1763, projects qualifying for a density bonus were entitled to one to three "incentives" and "concessions" to help make the development of affordable and senior housing more economically feasible, such as reduced setback and minimum square footage requirements as requested by the developer. AB 1763 provides a fourth incentive and concession to 100% affordable projects. Local governments are required to grant the applicant's proposed concession or incentive unless it would not reduce project costs, would cause public health or safety or environmental problems, would harm historical property, or would be otherwise contrary to law. Qualifying developers are entitled to incentives and concessions even without a

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elimination of parking requirements, special needs projects must offer paratransit service or be located within ½ mile from an accessible bus route.

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## **Firm Spotlight**

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## SB 330 - 2019

**Overview:** SB 330 tightens the protections for development projects under the HAA by limiting a jurisdiction's ability to change development standards and zoning applicable to the project once a preliminary application is submitted.

**Background:** Prior law held that standards in place at the time an application was complete were applicable and thus jurisdictions could change applicable standards during the application process in order to preclude it from qualifying for HAA protection.

**Protections:** The Housing Crisis Act of 2019 includes a number of new procedural protections, including the following:

- *Preliminary Application Protections* – limitations on a jurisdiction's ability to change development standards and zoning applicable to the project once a "preliminary application" is submitted. The bill also reduces the time in which a lead agency is required to approve or disapprove certain housing projects
- *Application Completeness Streamlining* – amends the Permit Streamlining Act to specify what constitutes a "preliminary application" and states that a jurisdiction has one chance to identify incomplete items in an initial application and after that may not request the submission of any new information that was not in the initial list of missing items
- *Fees/Exactions Limitations* – prevents jurisdictions from increasing exactions or fees during a project's application period, but allows such increases if the resolution or ordinance establishing the fee calls for automatic increases in the fee over time
- *Hearing Limitations* – prohibits cities or counties from conducting more than five hearings if a proposed housing development complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete. This prevents jurisdictions from undertaking a protracted approval process in which projects can stall because of financing or other issues
- *Downzoning Prohibitions* – prohibits a jurisdiction (with some exceptions) from enacting development policies, standards or conditions that would change current zoning and general plan designations of land where housing is an allowable use to "lessen the intensity of housing"; from placing a moratorium or similar restrictions on housing development; from imposing subjective design standards established after Jan. 1, 2020; and limiting or capping the number of land use approvals or permits that will be issued in the jurisdiction, unless the jurisdiction is predominantly agricultural
- *Historic Nature Determinations* – requires jurisdictions to make a determination on the historic nature of a planned housing development site at the time the application is deemed complete. This determination remains valid for the pendency of the development process

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If the development project does not start construction within 2 ½ years of final approval or the project is modified to include 20 percent or more residential units or square footage, then a jurisdiction can subject a project to new standards.

Some of the most important provisions in SB 330 sunset on Jan. 1, 2025, if not extended.

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## SB 35 — 2017

**Overview:** SB 35 streamlines multifamily housing project approvals, at the request of a developer, in a city that fails to issue building permits for its share of the regional housing need by income category. In a SB 35 city, approval of a qualifying housing development on a qualifying site is a ministerial act, without CEQA review or public hearings.

**Qualifying cities:** To qualify, cities must meet the following criteria:

- City fails to submit an annual housing element report for two consecutive years prior to the date when a development application is submitted; or
- City issues fewer building permits than the locality's share of RHNA in each of the four income categories for the last four-year reporting period, as determined by HCD.

**Qualifying sites:** Developments must be located on a site that:

- Is within a city that includes some portion of an urbanized area (population 50,000 or more) or urban cluster (population between 2,500 and 50,000);
- Is on an infill site (at least 75% of the perimeter adjoining parcels are developed with urban uses); and
- Is zoned for residential use or residential mixed-use development or has a General Plan designation that allows residential use or a mix of residential use and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

**Qualifying developments:** Development sites are excluded if they are located in an ecologically protected area, including coastal zones, prime farmland, wetlands, high fire severity zones, earthquake fault zones, hazardous waste sites, floodplains or floodways, and lands under conservation easement. Developments are also excluded if they would demolish:

- A historic structure;
- Any housing occupied by tenants in the past 10 years; or
- Housing that is subject to rent or price control.

Developments must:

- Abide by certain inclusionary requirements (10% must be affordable to households earning 80% or less of AMI if the city did not meet its moderate income RHNA, or 50% must be affordable to households earning 80% or less of AMI if localities did not meet its low-income RHNA); and
- Pay prevailing wages and use a "skilled and trained workforce."

In 2018, HCD's first assessment of cities subject to SB 35 identified that 97.6% of California cities and counties were eligible for streamlining. The majority of metros (378) are subject to streamlining for developments with at least 10% affordable housing. Only twelve cities and counties are not able to apply for SB 35 status between 2018 and 2020: Beverly Hills, Carpinteria, Carte Madera, San Anselmo, Sonoma County, Santa Barbara County, Foster City, Hillsborough, Lemon Grove, San Fernando, Napa County, and West Hollywood.

**Ministerial approval:** If a city determines that the development is in conflict with the city's objective planning and design review standards then it must provide written documentation within 60 days of submittal if the

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development contains 150 or fewer housing units and within 90 days of submittal if the development contains more than 150 units. “Objective standards” involve “no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.”

Approvals must be completed within 90 to 180 days (depending on the number of units in housing development) and must be ministerial and not subject to CEQA.

No parking requirements can be imposed on a SB 35 housing development project if it is located:

- Within a half-mile of public transit;
- Within an architecturally and historically significant historic district;
- In an area where on-street parking permits are required but not offered to the occupants of the development; or
- Where there is a car-share vehicle located within one block of the development.

One parking space per unit can be required of all other SB 35 projects.

**Length of approval:** The approval does not expire if the project includes public investment in housing affordability beyond tax credits where 50% of units are affordable to households earning less than 80% of AMI. If the project does not include 50% of units affordable to households earning less than 80% of AMI, approval automatically expires in three years except for a one-year extension if significant progress has been made in preparing the development for construction (such as filing a building permit application). All approvals remain valid for three



years and as long as vertical construction has begun and is in progress.

**Litigation:** In January 2019 the City of Huntington Beach filed a lawsuit seeking to overturn SB 35. The lawsuit contends that the state’s Constitution grants charter cities exclusive authority over local land use and zoning.

**Expected Impact:** As of June 2019, SB 35 has resulted in the approval of approximately 4,000 housing units currently underway.

**1900 Fourth Street, Berkeley:** In 2018, this project became one of the first in the state to apply for SB 35 status. The development would have included 260 units of housing, half of which would have been subsidized housing for low-income families. The project was proposed on what is currently a parking lot. The plan had faced controversy in the past because of concerns it would disturb an Ohlone tribe shellmound. In June 2018, the City of Berkeley rejected the development’s application for SB 35 status. In September 2018, the City rejected the application for a second time, citing the proximity of the shellmound as a protected historic resource. The developer ultimately decided not to develop the site.

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**Vallco Mall Project, Cupertino:** In 2014, San Hill Properties proposed plans to transform the mostly empty Vallco Shopping Mall into 2 million square feet of office space, 2,400 housing units, and a 400,000 square foot retail center. The proposed project, located one mile from Apple’s new headquarters, faced several years of strong community pushback. After the passage of SB 35, San Hill Properties released a new plan indicating that 50% of the 2,402 housing units will be affordable to low- and very-low income households. In September 2018, the City of Cupertino approved the project. No public funds will be needed to build the affordable housing.

**681 Florida Street, San Francisco:** In April 2018, a 130-unit affordable housing project located in the Mission District applied for SB 35 status. The project is being developed by Mission Economic Development Agency and Tenderloin Neighborhood Development Corporation on a site that was donated to the city as part of the community benefits package for a 195-unit market rate development on Bryant Street. The nonprofit developers expect SB 35 to cut the entitlement process for the project by six months to a year. The development will include a 9,000 square foot community arts center and social services for residents, 20% of whom will be formerly homeless.



California Department of Housing and  
Community Development

# Accessory Dwelling Unit Handbook



Where foundations begin

*Updated December 2020*

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# Understanding Accessory Dwelling Units (ADUs) and Their Importance



California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative environmental impacts.

\*\*\*\*\*

Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are Accessory Dwelling Units (ADUs - also referred to as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling Units (JADUs).

## **What is an ADU?**

An ADU is an accessory dwelling unit with complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build and offer benefits that address common development barriers such as affordability and environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land, dedicated parking or other costly infrastructure required to build a new single-family home. Because they are contained inside existing single-family homes, JADUs require relatively

modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one or two-story wood frames, which are also cheaper than other new homes. Additionally, prefabricated ADUs can be directly purchased and save much of the time and money that comes with new construction. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents often want better access to schools and do not necessarily require single-family homes to meet their needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. To address our state's needs, homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners who can receive extra monthly rent income.

ADUs also give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care, thus helping extended families stay together while maintaining privacy. The space can be used for a variety of reasons, including adult children who can pay off debt and save up for living on their own.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees and relaxing zoning requirements. A 2019 study from the Turner Center on Housing Innovation noted that one unit of affordable housing in the Bay Area costs about \$450,000. ADUs and JADUs can often be built at a fraction of that price and homeowners may use their existing lot to create additional housing, without being required to provide additional infrastructure. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.

# Summary of Recent Changes to Accessory Dwelling Unit Laws



In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. Changes to ADU laws effective January 1, 2021, further reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs).

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing

options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the California Department of Housing and Community Development (HCD) has prepared this guidance to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. The following is a summary of recent legislation that amended ADU law: AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019). Please see Attachment 1 for the complete statutory changes for AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019).

## AB 3182 (Ting)

Chapter 198, Statutes of 2020 (Assembly Bill 3182) builds upon recent changes to ADU law (Gov. Code, § 65852.2 and Civil Code Sections 4740 and 4741) to further address barriers to the development and use of ADUs and JADUs.

This recent legislation, among other changes, addresses the following:

- States that an application for the creation of an ADU or JADU shall be *deemed approved* (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days.
- Requires ministerial approval of an application for a building permit within a residential or mixed-use zone to create one ADU *and* one JADU per lot (not one or the other), within the proposed or existing single-family dwelling, if certain conditions are met.
- Provides for the rental or leasing of a separate interest ADU or JADU in a common interest development, notwithstanding governing documents that otherwise appear to prohibit renting or leasing of a unit, *and* without regard to the date of the governing documents.

- Provides for not less than 25 percent of the separate interest units within a common interest development be allowed as rental or leasable units.

## **AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski)**

Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Gov. Code § 65852.2, 65852.22) and further address barriers to the development of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).
- Clarifies areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025 (Gov. Code, § 65852.2, subd. (a)(6)).
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and requires approval of a permit to build an ADU of up to 800 square feet (Gov. Code, § 65852.2, subds. (c)(2)(B) & (C)).
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of offstreet parking spaces cannot be required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).
- Clarifies that “public transit” includes various means of transportation that charge set fees, run on fixed routes and are available to the public (Gov. Code, § 65852.2, subd. (j)(10)).
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees (Gov. Code § 65852.2, subd. (f)(3)); ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd. (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd. (j)(2)).
- Authorizes HCD to notify the local agency if HCD finds that their ADU ordinance is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation (RHNA) housing needs (Gov. Code, §§ 65583.1, subd. (a), and 65852.2, subd. (m)).
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them (Gov. Code, § 65852.2, subds. (a)(3), (b), and (e)).



- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code § 65852.22, subd. (a)(4); former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).

### **AB 587 (Friedman), AB 670 (Friedman), and AB 671 (Friedman)**

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an impact on state ADU law, particularly through Health and Safety Code Section 17980.12. These pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households (Gov. Code, § 65852.26).
- AB 670 provides that covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civ. Code, § 4751).
- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Gov. Code, § 65583; Health & Safety Code, § 50504.5).

# Frequently Asked Questions: Accessory Dwelling Units<sup>1</sup>

## 1. Legislative Intent

### a. Should a local ordinance encourage the development of accessory dwelling units?

Yes. Pursuant to Government Code Section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities and others. Therefore, ADUs are an essential component of California's housing supply.

ADU law and recent changes intend to address barriers, streamline approval,

### Government Code 65852.150:

(a) *The Legislature finds and declares all of the following:*

(1) *Accessory dwelling units are a valuable form of housing in California.*

(2) *Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.*

(3) *Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.*

(4) *Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.*

(5) *California faces a severe housing crisis.*

(6) *The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.*

(7) *Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.*

(8) *Accessory dwelling units are, therefore, an essential component of California's housing supply.*

(b) *It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.*

<sup>1</sup> Note: Unless otherwise noted, the Government Code section referenced is 65852.2.

and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU ordinances must be carried out consistent with Government Code, Section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

In addition, ADU law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies. (Gov. Code, § 65852.2, subd. (g)).

## 2. Zoning, Development and Other Standards

### A) Zoning and Development Standards

- **Are ADUs allowed jurisdiction wide?**

No. ADUs proposed pursuant to subdivision (e) must be considered in any residential or mixed-use zone. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service, and the impacts on traffic flow and public safety. Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Examples of public safety include severe fire hazard areas and inadequate water and sewer service and includes cease and desist orders. Impacts on traffic flow should consider factors like lesser car ownership rates for ADUs and the potential for ADUs to be proposed pursuant to Government Code section 65852.2, subdivision (e). Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns. (Gov. Code, § 65852.2, subd. (e))

Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

- **Can a local government apply design and development standards?**

Yes. A local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

What does objective mean?

“objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Gov Code § 65913.4, subd. (a)(5)

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to do so. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with ADU law. Examples of these processes include areas where additional health and safety concerns must be considered, such as fire risk.

- **Can ADUs exceed general plan and zoning densities?**

Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning that does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C).)

- **Are ADUs permitted ministerially?**

Yes. ADUs must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks, or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways such as privacy, compatibility with neighboring properties or promoting harmony and balance in the community; subjective standards shall not be imposed for ADU development. Further, ADUs must not be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code, § 65852.2, subd. (a)(3).)

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure or a new construction detached ADU subject to certain development standards.

- **Can I build an ADU in a historic district, or if the primary residence is subject to historic preservation?**

Yes. ADUs are allowed within a historic district, and on lots where the primary residence is subject to historic preservation. State ADU law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards do not apply to ADUs proposed pursuant to Government Code section 65852.2, subdivision (e).

As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinance and submit these standards along with their ordinance to HCD. (Gov. Code, § 65852.2, subs. (a)(1)(B)(i) & (a)(5).)

## B) Size Requirements

- **Is there a minimum lot size requirement?**

No. While local governments may impose standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (800 square feet ADU with a height limitation of 16 feet and 4 feet side and rear yard setbacks). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility.

What is a statewide exemption ADU?

A statewide exemption ADU is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with 4 feet side and rear yard setbacks. ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, ADU law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code section 17958.1.

The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used for a maximum unit size?**

Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unit size for attached or detached ADUs but only if it does not restrict an ADU's size to less than the standard of at least 850 square feet (or at least 1000 square feet for ADUs with more than one bedroom). Local agencies must not, by ordinance, establish any other minimum or maximum unit sizes, including based on

a percentage of the primary dwelling, that precludes a statewide exemption ADU. Local agencies utilizing percentages of the primary dwelling as maximum unit sizes could consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

Yes. Maximum unit sizes, by ordinance, can exceed 1,200 square feet for ADUs. ADU law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs (Gov. Code, § 65852.2, subd. (g)).

Larger unit sizes can be appropriate in a rural context or jurisdictions with larger lot sizes and is an important approach to creating a full spectrum of ADU housing choices.

### C) Parking Requirements

- **Can parking requirements exceed one space per unit or bedroom?**

No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances.

What is Tandem Parking?

Tandem parking means two or more automobiles that are parked on a driveway or in any other location on a lot, lined up behind one another. (Gov. Code, § 65852.2, subs. (a)(1)(D)(x)(l) and (j)(11).)

Local agencies may choose to eliminate or reduce parking requirements for ADUs such as requiring zero or half a parking space per each ADU.

- **Is flexibility for siting parking required?**

Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi).)

- **Can ADUs be exempt from parking?**

Yes. A local agency shall not impose ADU parking standards for any of the following, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10).

(1) Accessory dwelling unit is located within one-half mile walking distance of public transit.

- (2) Accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) Accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

*Note: For the purposes of state ADU law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways and other forms of transportation that charge set fares, run on fixed routes and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the coastal zone.*

## D) Setbacks

- **Can setbacks be required for ADUs?**

Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. Additional setback requirements may be required in the coastal zone if required by a local coastal program. Setbacks may also account for utility easements or recorded setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks of less than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a statewide exemption ADU and must not unduly constrain the creation of all types of ADUs. (Gov. Code, § 65852.2, subd. (c).)

## E) Height Requirements

- **Is there a limit on the height of an ADU or number of stories?**

Not in state ADU law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)

## F) Bedrooms

- **Is there a limit on the number of bedrooms?**

State ADU law does not allow for the limitation on the number of bedrooms of an ADU. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs.

## G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. Should an ADU be 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

What is “Proportionately”?

“Proportionately” is some amount that corresponds to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and ultimately, the creation of ADUs. In the case of the example above, anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs.

For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square foot expansion, a total ADU square footage over 750 square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A).)

- **Can local agencies, special districts or water corporations waive impact fees?**

Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may also use fee deferrals for applicants.

- **Can school districts charge impact fees?**

Yes. School districts are authorized but do not have to levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for



utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home. (Gov. Code, §§ 65852.2, subd. (f), and 66000)

- **Can I still be charged water and sewer connection fees?**

ADUs converted from existing space and JADUs shall not be considered by a local agency, special district or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. State ADU law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2)(A).)

## **H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e))**

- **Are local agencies required to comply with subdivision (e)?**

Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of ADU law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e) are:

- b. One ADU and one JADU are permitted per lot within the existing or proposed space of a single-family dwelling, or a JADU within the walls of the single family residence, or an ADU within an existing accessory structure, that meets specified requirements such as exterior access and setbacks for fire and safety.**
- c. One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.**
- d. Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.**
- e. Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.**

The above four categories are not required to be combined. For example, local governments are not required to allow (a) and (b) together or (c) and (d) together. However, local agencies may elect to allow these ADU types together.

Local agencies shall allow at least one ADU to be created within the non-livable space within multifamily dwelling structures, or up to 25 percent of the existing multifamily dwelling units within a structure and may also allow not more than two ADUs on the lot detached from the multifamily dwelling structure. New detached units are subject to height limits of 16 feet and shall not be required to have side and rear setbacks of more than four feet.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards. This would enable the conversion of an accessory structure, such as a 2,000 square foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings. These types of ADUs are also eligible for a 150 square foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide replacement or additional parking. Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days, and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs shall not be counted as units when calculating density for the general plan and are not subject to owner-occupancy.

- **Can I convert my accessory structure into an ADU?**

Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through the state ADU law. These conversions of accessory structures are not subject to any additional development standard, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under building and safety codes. A local agency should not set limits on when the structure was created, and the structure must meet standards for health and safety. Finally, local governments may also consider the conversion of illegal existing space and could consider alternative building standards to facilitate the conversion of existing illegal space to minimum life and safety standards.

- **Can an ADU converting existing space be expanded?**

Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. In addition, an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.

As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.

## I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per state law. For example, an applicant shall not be required to improve sidewalks, carry out street improvements, or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, an applicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).)

## J) Renter and Owner-occupancy

- **Are rental terms required?**

Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, § 65852.2, subs. (a)(6) & (e)(4).)

- **Are there any owner-occupancy requirements for ADUs?**

No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.

However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU, or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. (Gov. Code, § 65852.2, subd. (a)(2).)

## K) Fire Sprinkler Requirements

- **Are fire sprinklers required for ADUs?**

No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subs. (a)(1)(D)(xii) and (e)(3).)

Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence” for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

## L) Solar Panel Requirements

- **Are solar panels required for new construction ADUs?**

Yes, newly constructed ADUs are subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, non-manufactured, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.

Please refer to the CEC on this matter. For more information, see the CEC's website [www.energy.ca.gov](http://www.energy.ca.gov). You may email your questions to: [title24@energy.ca.gov](mailto:title24@energy.ca.gov), or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD's website at <https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml>.

### 3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22

- **Are two JADUs allowed on a lot?**

No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1).)

- **Are JADUs allowed in detached accessory structures?**

No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single-family residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subds. (a)(1), (a)(4), and (h)(1).)

- **Are JADUs allowed to be increased up to 150 square feet when created within an existing structure?**

No. Only ADUs are allowed to add up to 150 square feet “beyond the physical dimensions of the existing accessory structure” to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

Yes. There are owner-occupancy requirements for JADUs. The owner must reside in either the remaining portion of the primary residence, or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

### 4. Manufactured Homes and ADUs

- **Are manufactured homes considered to be an ADU?**

Yes. An ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes a manufactured home (Health & Saf. Code, § 18007).

Health and Safety Code section 18007, subdivision (a): **“Manufactured home,”** for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

## 5. ADUs and the Housing Element

- **Do ADUs and JADUs count toward a local agency’s Regional Housing Needs Allocation?**

Yes. Pursuant to Government Code section 65852.2 subdivision (m), and section 65583.1, ADUs and JADUs may be utilized towards the Regional Housing Need Allocation (RHNA) and Annual Progress Report (APR) pursuant to Government Code section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition, and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey, can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other applications.

- **Is analysis required to count ADUs toward the RHNA in the housing element?**

Yes. To calculate ADUs in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must

include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code, § 65583 and Health & Saf. Code, § 50504.5.)

## 6. Homeowners Association

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU or JADU?**

No. Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance.

## 7. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General.

In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

## 8. Other

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

No. Ordinances existing prior to the new 2020 laws are only null and void to the extent that existing ADU ordinances conflict with state law. Subdivision (a)(4) of Government Code Section 65852.2 states an ordinance that fails to meet the requirements of subdivision (a) shall be null and void and shall apply the state standards (see Attachment 3) until a compliant ordinance is adopted. However, ordinances that substantially comply with ADU law may continue to enforce the existing ordinance to the extent it complies with state law. For example, local governments may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law. At the same time, ordinances that are fundamentally incapable of being enforced because key provisions are invalid -- meaning there is not a reasonable way to sever conflicting provisions and apply the remainder of an ordinance in a way that is consistent with state law -- would be fully null and void and must follow all state standards until a compliant ordinance is adopted.

- **Do local agencies have to adopt an ADU ordinance?**

No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose to not adopt an ADU ordinance, any proposed ADU development would be only subject to standards set in state ADU law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with state ADU law. (See Attachment 4 for a state standards checklist.)

- **Is a local government required to send an ADU ordinance to the California Department of Housing and Community Development (HCD)?**

Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to HCD within 60 days after adoption. After the adoption of an ordinance, the Department may review and submit written findings to the local agency as to whether the ordinance complies with this section. (Gov. Code, § 65852.2, subd. (h)(1).)

Local governments may also submit a draft ADU ordinance for preliminary review by HCD. This provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with the new state ADU law.

- **Are charter cities and counties subject to the new ADU laws?**

Yes. ADU law applies to a local agency which is defined as a city, county, or city and county, whether general law or chartered. (Gov. Code, § 65852.2, subd. (j)(5)).

Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared ADU law as “...a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution” and concluded that ADU law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the Coastal Zone?**

Yes. ADU laws apply to jurisdictions in the Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (l)).

Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the [California Coastal Commission 2020 Memo](#) and reach out to the locality’s local Coastal Commission district office.

- **What is considered a multifamily dwelling?**

For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.

# Resources





## Attachment 1: Statutory Changes (Strikeout/Italics and Underline)

### GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

#### Combined changes from (AB 3182 Accessory Dwelling Units) and (AB 881, AB 68 and SB 13 Accessory Dwelling Units)

(Changes noted in ~~strikeout~~, underline/*italics*)

Effective January 1, 2021, Section 65852.2 of the Government Code is amended to read:

#### **65852.2.**

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
- (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
- (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
- (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
- (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
- (D) Require the accessory dwelling units to comply with all of the following:
- (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
- (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
- (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
- (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
- (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
- (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
- (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
- (viii) Local building code requirements that apply to detached dwellings, as appropriate.
- (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
- (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.
- (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
- (III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
- (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
- (xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

- (2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
- (3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.
- (4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.
- (5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
- (6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.
- (7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.
- (8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
- (b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.
- (c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.
- (2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:
- (A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(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.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

- (f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
- (2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
- (3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
- (B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
- (4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.
- (5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
- (g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
- (h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.
- (2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.
- (B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:
- (i) Amend the ordinance to comply with this section.
- (ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
- (3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
- (B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
- (i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
- (j) As used in this section, the following terms mean:
- (1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:
- (A) An efficiency unit.
- (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

- (2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
- (3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
- (4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
- (5) "Local agency" means a city, county, or city and county, whether general law or chartered.
- (6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
- (7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
- (8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
- (9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
- (10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
- (k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
- (l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
- (m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
- (n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
- (1) The accessory dwelling unit was built before January 1, 2020.
- (2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
- (o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.  
**(Becomes operative on January 1, 2025)**

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2021 statute noted in underline/italic):

**65852.2.**

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
- (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
- (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
- (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
- (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

- (D) Require the accessory dwelling units to comply with all of the following:
- (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
  - (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
  - (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
  - (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
  - (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
  - (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
  - (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
  - (viii) Local building code requirements that apply to detached dwellings, as appropriate.
  - (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
  - (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions. (III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
  - (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
  - (xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
- (2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
- (3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.
- (4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.
- (5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
- (6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed

accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or ~~imposed, including any owner-occupant requirement, except that~~ imposed except that, subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not

more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(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.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

[\(4\) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph \(6\) of subdivision \(a\).](#)

~~(4)~~ (5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

~~(5)~~ (6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

~~(6)~~ (7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision

(b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family ~~home-~~ dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the



Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit

applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed.~~ *become operative on January 1, 2025.*

Effective January 1, 2021, Section 4740 of the Civil Code is amended to read (changes noted in ~~strikeout~~, underline/italics) (AB 3182 (Ting)):

#### **4740.**

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to ~~his or~~ *her* ~~their~~ separate interest.

~~(b) Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.~~

~~(c)~~ *(b)* For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:

(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.

(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

~~(d)~~ *(c)* Prior to renting or leasing ~~his or her~~ *their* separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative.

~~(e)~~ *(d)* Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.

~~(f) This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.~~

Effective January 1, 2021 of the *Section 4741 is added to the Civil Code, to read (AB 3182 (Ting)):*

#### **4741.**

*(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.*

*(b) A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased.*

*(c) This section does not prohibit a common interest development from adopting and enforcing a provision in a*

governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.

(d) For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.

(e) For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.

(f) A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governing documents to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.

(g) A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(h) In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Effective January 1, 2020, Section 65852.22 of the Government Code is was amended to read (AB 68 (Ting)):  
**65852.22.**

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of proposed or existing single-family residence.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the proposed or existing single-family residence.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A cooking facility with appliances.

(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.

(h) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 is was added to the Health and Safety Code, immediately following Section 17980.11, to read (SB 13 (Wieckowski)):

**17980.12.**

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:

(A) The accessory dwelling unit was built before January 1, 2020.

(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.

(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.

(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).

(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.

(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2**  
**AB 587 Accessory Dwelling Units**

Effective January 1, 2020 Section 65852.26 is was added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

**65852.26.**

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

- (1) The property was built or developed by a qualified nonprofit corporation.
- (2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.
- (3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:
  - (A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.
  - (B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.
  - (C) A requirement that the qualified buyer occupy the property as the buyer's principal residence.
  - (D) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
- (4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.
- (5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(b) For purposes of this section, the following definitions apply:

- (1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.
- (2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

**CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1**  
**AB 670 Accessory Dwelling Units**

Effective January 1, 2020, Section 4751 is was added to the Civil Code, to read (AB 670 (Friedman)):

**4751.**

- (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.
- (b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability

to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6**

**AB 671 Accessory Dwelling Units**

Effective January 1, 2020, Section 65583(c)(7) of the Government Code ~~is~~ was added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

**65583(c)(7).**

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, “accessory dwelling units” has the same meaning as “accessory dwelling unit” as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 ~~is~~ was added to the Health and Safety Code, to read (AB 671 (Friedman)):

**50504.5.**

(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.

(b) The list shall be posted on the department’s internet website by December 31, 2020.

(c) For purposes of this section, “accessory dwelling unit” has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

## Attachment 2: State Standards Checklist

YES/NO	STATE STANDARD*	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains a proposed, or existing, dwelling.	65852.2(a)(1)(D)(ii)
	The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure, or detached from the proposed or existing dwelling and located on the same lot as the proposed or existing primary dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing primary dwelling but shall be allowed to be at least 800/850/1000 square feet.	65852.2(a)(1)(D)(iv), (c)(2)(B) & C
	Total area of floor area for a detached accessory dwelling unit does not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.	65852.2(a)(1)(D)(vii)
	Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)(I)

## Attachment 3: Bibliography

### [ACCESSORY DWELLING UNITS: CASE STUDY](#) (26 pp.)

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

### [THE MACRO VIEW ON MICRO UNITS](#) (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)  
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

### [SECONDARY UNITS AND URBAN INFILL: A Literature Review](#) (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)  
UC Berkeley: IURD  
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

### [RETHINKING PRIVATE ACCESSORY DWELLINGS](#) (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)  
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed “accessory dwelling units” that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-law suites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.



[Regulating ADUs in California: Local Approaches & Outcomes](#) (44 pp.)

By Deidra Pfeiffer  
Terner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting—contribute to these goals. This research helps to fill this gap by using data from the Terner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2) a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging in place. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to help align formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

[ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes](#) (8 p.)

By David Garcia (2017)  
Terner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes.

In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single-family homes that have an ADU could contribute meaningfully to California's housing shortage.

[Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver](#) (29 pp.)

By Karen Chapple et al (2017)  
Terner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

[Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain](#) (37 pp.)

By Darrel Ramsey-Musolf (2018)

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In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low-income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.