

This bill:

- 1) Requires a permitting agency to act on an application to serve an ADU or a JADU within the same timeframes.
- 2) Specifies the requirement for a permitting agency to act on an application means either to return the approved permit application or to return in writing a full set of comments to the applicant with a comprehensive request for revisions.
- 3) Defines “permitting agency” to mean any entity that is involved in the review of an ADU or JADU permit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.
- 4) Adds front setbacks to the list of local development standards that local governments cannot impose if they would preclude construction of an attached or detached ADU of at least 800 square feet, that is at least 16 feet in height and that has at least four-foot side and rear yard setbacks.
- 5) Specifies, in ministerially approving an application for a building permit to create one detached, new construction ADU on a lot with a single-family dwelling in a zone that allows residential use, a local agency must not impose any objective planning standards that conflict with the ability for the ADU to meet the standards listed in 3) above.
- 6) Clarifies the following:
 - a) An ADU can be attached to or located in a detached garage.
 - b) Local ADU ordinances do not supersede state ADU laws.

COMMENTS:

- 1) *Author’s statement.* According to the author, “Before the COVID 19 pandemic, our state was facing the nation’s worst housing crisis and in the last two years we have seen several families become housing insecure. Some Californians have had their homes foreclosed on, while others are at a greater risk of homelessness. Homeownership rates in California are the second lowest in the nation. Last year, California broke the \$800,000 median home price mark for the first time in history. Accessory dwelling units (ADUs) can play an important role in solving California’s complex housing crisis. AB 2221 would make it easier to build ADUs by clarifying elements of existing law.”

- 2) *Housing Crisis.* California’s housing crisis is a half century in the making. Decades of underproduction underscored by exclusionary policies have left housing supply far behind need and costs soaring. California currently has 13 of the 14 least affordable metropolitan areas for homeownership in the nation; it also has the second highest rate of renter households paying more than 30% of their income for housing at 52%. According to the 2022 Statewide Housing Plan, published by the Department of Housing and Community Development (HCD), California must plan for more than 2.5 million homes over the next eight-year cycle, and no less than one million of those homes must meet the needs of lower-income households.¹ This represents more than double the housing planned for in the last eight-year cycle. The lack of housing supply is the primary factor underlying California’s housing crisis.

During the 1990’s, California averaged only 110,000 new housing units per year. During the early 2000’s, production increased significantly, reaching a peak of 212,000 units in 2004 before plummeting to historic lows during the recession. Unfortunately, the downward trend continues; the fact is that California has under-produced housing every single year since 1989.

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

- 3) *Background: ADUs and JADUs.* According to HCD, “ADUs are an innovative, affordable, effective option for adding much needed housing in California.” ADUs, also known as accessory apartments, accessory dwellings, mother-in-law units, or granny flats, are additional living spaces on single-family or multifamily lots that have a separate kitchen, bathroom, and exterior access independent of the primary residence. These spaces can either be attached to, or detached from, the primary residence. Local ADU ordinances must meet specified parameters outlined in existing state law.

Local governments may also adopt ordinances for JADUs, which are no more than 500 square feet and are bedrooms in a single-family home that have an entrance into the unit from the main home and an entrance to the outside from the JADU. The JADU must have cooking facilities, including a sink and stove, but is not required to have a bathroom.

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

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

- 4) *Encouraging ADU construction.* According to a UC Berkeley study, *Yes in My Backyard: Mobilizing the Market for Secondary Units*, second units are a means to accommodate future growth and encourage infill development in developed neighborhoods. Despite state law requirements for each city in the state to have a ministerial process for approving second units, local regulations often impede development. In response, several bills, including SB 1069 (Wieckowski, 2016), SB 13 (Wieckowski, 2019) and AB 68 (Ting, 2019), have relaxed multiple requirements for the construction and permitting of ADUs and JADUs.

According to a 2020 UCLA Working Paper, "state ADU and JADU legislation has created the market-feasible potential for nearly 1.5 million new units."² Since 2013, the number of permitted ADUs increased from 799 to 12,813 in 2020, for a total of almost 44,000 ADUs permitted statewide³. With localities across the state facing large regional housing needs allocations for the sixth housing element cycle, ADUs and JADUs represent a key tool in the housing production toolbox.

- 5) *Challenges in Implementing ADU Law.* It has been slightly more than five years since the state made ADUs and JADUs permitted by right. In that time, a substantial amount of knowledge and expertise has been developed by invested parties, such as ADU developers, financiers, and regulators such as local planning and permitting staff, special districts, and utilities, and HCD. Not surprisingly, these parties have been able to identify areas of the law that could benefit from clarification or where existing law does not facilitate the timely permitting of ADUs and JADUs envisioned by the enabling legislation.

This bill provides multiple measures to address some of the identified tension points. First, it specifies what it means for a permitting agency to "act" on an application. Currently, the law says that a permitting agency must act within 60 days, but does not specify what it means to act. This bill clarifies that to "act," a permitting agency must approve the permit or return a full set of comments in writing to the applicant with a comprehensive request for revisions. This change will help reduce the time spent by all sides reviewing and revising applications.

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

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

Next, this bill would define “permitting agency” to mean any entity that is involved in the review of an ADU permit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts. In practice, the concept of “permitting agency” has centered on the local agency that receives the ADU building permit, making the local agency responsible for the existing timelines in the law.

However, a building permit for an ADU or JADU often needs approval from additional bodies, including special districts and utilities that have separate governance structures and operations from the local agency. These entities are often not held to the same 60-day timeline as local agencies, which can result in delays for ADU and JADU projects and present a challenge for local governments to manage entities beyond their control. By including special districts and utilities in the definition of permitting agency, this bill would require that these entities meet the timelines specified in the bill.

Finally, this bill clarifies the ways in which a local government can and cannot use objective standards to regulate ADUs. Specifically, the bill says that local governments cannot apply front setback requirements if they would preclude construction of an attached or detached ADU of least 800 square feet that is at least 16 feet in height and has with four-foot side and rear yard setbacks.

- 6) *Another ADU bill?* Earlier this year, this committee heard SB 897 (Wieckowski), another bill that makes changes to the law governing ADUs. The primary overlap between this bill and SB 897 are in the provisions relating to the following:
- a) Objective standards. Both bills aim to clarify that standards imposed on ADUs and JADUs must be objective, but amend statute in different code sections.
 - b) An act by an agency. Both bills aim to clarify that an act by an agency must be an approval or denial of an application, but have a slightly different approach of how it achieves that goal.
 - c) Allowable ADU footprint. AB 2221 prohibits a local agency from establishing limits on front setbacks, in the same code section that SB 897 amends to increase allowable ADU height to 25 feet, as specified.

A third bill making changes to ADU law, AB 916 (Salas), will also be heard in this committee. AB 916, similar to SB 897, increases the height limit allowance for ADUs to 18 feet on a lot that has an existing dwelling.

Moving forward, the authors may wish to consider working out any statutory differences through chaptering amendments.

7) *Double-referral.* This bill is double-referred to the Governance and Finance Committee.

RELATED LEGISLATION:

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

AB 916 (Salas, 2021) — prohibits a local agency from establishing by ordinance a maximum height of less than 18 feet for an accessory dwelling unit (ADU) on a lot that has an existing multifamily and multistory dwelling. *This bill will be heard in the same hearing.*

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

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

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

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

AB 2299 (Bloom, Chapter 735, Statutes of 2016) and **SB 1069 (Wieckowski, Chapter 720, Statutes of 2016)** — collectively, these bills required a local government to ministerially approve ADUs if the unit complies with certain parking requirements, the maximum allowable size of an attached ADU, and setback requirements.

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

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

SUPPORT:

California YIMBY (Sponsor)
Council Member Zach Hilton, City of Gilroy
California Association of Realtors
People for Housing Orange County
Southern California Rental Housing Association
YIMBY Action

OPPOSITION:

None received.

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