

21 ELEMENTS

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ACCESSORY DWELLING UNITS 2016:

THE STATE STRIKES BACK

MONDAY, OCTOBER 31, 3:30 P.M.

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DISCUSSION TOPICS

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- AB 2299 (Bloom) and SB 1069 (Wieckowski)
 - ▣ Mandatory Accessory Dwelling Unit Ordinances and Reduced Parking

- AB 2406 (Thurmond)
 - ▣ Junior Second Units

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AB 2299 (BLOOM) AND SB 1069 (WIECKOWSKI)

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- Both of these bills renamed “2nd units” to “accessory dwelling units” (ADUs)
- AB 2299 **mandated** jurisdictions to adopt or modify existing ordinances to allow for the construction of ADUs on residential lots as well as various other requirements that would need to be met
- SB 1069 didn’t mandate, but rather if a jurisdiction adopted an ordinance on ADUs, then certain restrictions would apply, similar to those in AB 2299. However this bill had more restrictions on utility hook up fees, etc.

LEGISLATIVE HISTORY/BACKGROUND

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- APA CA took a Support if Amended position on both bills
- Only major concern was parking provisions
 - ▣ The bills both restricted the ability to require a parking space(s) if the unit was within a ½ mile of “transit” **or** “shopping”
 - ▣ Distance to shopping removed entirely
 - ▣ APA suggested that better define transit and limit to “major transit stop”
 - ▣ If ADU residents are not provided parking, and may not have a car, they need to have access to reliable public transit to get around

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LEGISLATIVE HISTORY/BACKGROUND

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- Responses
 - ▣ Assembly Member Bloom agreed to work on the transit definition
 - ▣ Senator Wieckowski felt that defining transit would greatly reduce the areas where these units could be built because the definition was too limiting
- Parking had been cited as being used to stop ADU development in many cities according to a study they focused on

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LEGISLATIVE HISTORY/BACKGROUND

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- The Governor signaled his support of the bills even as is
- Both bills had to take last minute amendments due to the chaptering process, which left SB 1069's parking restrictions in place **IF** the Governor signed both bills, which he did
- **Both bills signed by Governor**, in an order which imposes the MOST restrictive version on local agencies

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GOV. CODE SEC. 65852.2 OVERVIEW

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LOCAL ORDINANCES MUST BE UPDATED BY JANUARY 1, 2017

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GOV. CODE SEC. 65852.2 OVERVIEW

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- Prior to the new legislation, cities and counties had substantial flexibility in adopting local ADU ordinances
- By making certain findings, they could also prohibit ADUs entirely
- Proponents of the bills asserted that local agencies and special districts often imposed costly restrictions relating to parking, fees for utility hook-ups, and other development standards
- The new bills limit public agencies' ability to regulate ADUs

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GOV. CODE SEC. 65852.2 OVERVIEW

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ADU Ordinance Adoption Requirement

- To the extent that a local ordinance imposes requirements beyond those enumerated in the state law, **the local ordinance is null and void** as of January 1, 2017, and only state standards may be enforced
- Similarly, if a local agency fails to adopt an ordinance in accordance with state law, the local agency is required to approve or disapprove an ADU application ministerially, applying only the standards specified in Government Code section 65852.2

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GOV. CODE SEC. 65852.2 OVERVIEW

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Time Limit to Act / Ministerial Approval

- Any existing ordinances or new ordinances are required to include an approval process for ADUs that includes only ministerial review, meaning that no discretionary review is permitted in connection with an ADU application
- ADU applications must be approved or disapproved within 120 days of receipt
- Local agencies are required to submit a copy of their ADU ordinance to the Department of Housing and Community Development within 60 days of adoption

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GOV. CODE SEC. 65852.2 OVERVIEW

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Two Categories of ADUs

- Additions to Existing Structures or New Accessory Buildings
 - ▣ Local agencies can designate areas where they are permitted and impose other criteria
- Those Contained Entirely within Existing Structures (including garages)
 - ▣ Very little local discretion, although not clear this was the authors' intent

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GOV. CODE SEC. 65852.2 OVERVIEW

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GOV. CODE SEC. 65852.2 OVERVIEW

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Additions and New Accessory Buildings

- Location and Other Physical Standards
 - Jurisdictions are permitted to designate areas where ADUs are permitted. Local agencies may impose certain physical development standards on ADUs (e.g., height, setbacks, landscaping, architectural review, etc.)
 - ADUs attached to an existing dwelling shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet
 - ADUs in detached buildings shall not exceed 1,200 square feet of floor space

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GOV. CODE SEC. 65852.2 OVERVIEW

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Additions and New Accessory Buildings

- Relationship to Zoning and General Plan
 - The addition of an ADU does not cause a lot to exceed the allowable density
 - ADUs are residential uses consistent with existing residential zoning and general plan designations

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GOV. CODE SEC. 65852.2 OVERVIEW

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Additions and New Accessory Buildings

- Parking Standards
 - ▣ At most, only one space per unit or per bedroom may be required
 - ▣ Parking requirement may be provided as tandem parking on an existing driveway or in setback areas unless specific findings are made based on topographical or fire/life safety conditions or it is not permitted anywhere else in the jurisdiction

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GOV. CODE SEC. 65852.2 OVERVIEW

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Additions and New Accessory Buildings

- Furthermore, no additional parking may be required if the ADU is located:
 - (1) within one-half mile of public transit
 - (2) in an historic district
 - (3) in part of an existing primary residence or an existing accessory structure
 - (4) in an area requiring on-street parking permits but they are not offered to the ADU occupant – or
 - (5) within one block of a car-share vehicle
- While "public transit" and "car-share vehicle" are not defined, a reasonable interpretation may be that
 - ▣ public transit refers to a transit stop (not just a route)
 - ▣ and that car-share vehicle refers to a car-sharing pick-up/drop-off location

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GOV. CODE SEC. 65852.2 OVERVIEW

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Additions and New Accessory Buildings

- No Other Ordinance Can Apply
 - ▣ ADU cannot be denied for noncompliance with another “ordinance, policy, or regulation”
- So a reference to the other ordinance needs to be included within the ADU ordinance
 - ▣ Example: “An ADU must comply with all provisions of the underlying zoning district, except as modified in this chapter.”

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GOV. CODE SEC. 65852.2 OVERVIEW

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ADUs Entirely Within Existing Structures

- An application for an ADU shall be ministerially approved without being subject to the other requirements of Government Code Section 65852.2 if:
 - (1) the ADU is proposed to be contained within the existing space of a single-family residence or accessory structure
 - (2) the property is in a single-family residential zone
 - (3) the ADU has independent exterior access from the existing residence – and
 - (4) the side and rear setbacks are sufficient for fire safety

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GOV. CODE SEC. 65852.2 OVERVIEW

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ADUs Entirely Within Existing Structures

- This appears to permit qualifying ADUs anywhere single-family residential uses are permitted, notwithstanding the limitations on other ADUs discussed earlier
- In addition, such ADUs shall not be required to:
 - ▣ Provide fire sprinklers if they are not also required for the primary residence
 - ▣ Install new or separate utility connections

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GOV. CODE SEC. 65852.2 OVERVIEW

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Occupancy Restrictions

- May require:
 - ▣ That applicants be owner-occupants of properties proposed to include an ADU
 - ▣ That ADUs be used for rentals of terms longer than 30 days
- No additional standards may be imposed other than those listed in the statute

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GOV. CODE SEC. 65852.2 OVERVIEW

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Utility Fees

- ADUs shall not be considered new residential uses for the purpose of calculating connection fees or capacity charges
- However, for ADUs that are not contained in existing structures, a “local agency” may require new or separate utility connections
- Any connection fee or capacity charge shall be proportionate to the burden of the proposed ADU on the water or sewer systems based on its size or number of plumbing fixtures and shall not exceed the reasonable cost of providing this service
- Note “local agency” only includes cities & counties

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GOV. CODE SEC. 65852.2 OVERVIEW

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Environmental Review

- Pursuant to Public Resources Code section 21080.17, the adoption of an ordinance to implement Government Code section 65852.2 is exempt from CEQA
- Similarly, the ministerial approval of ADU applications would not be a "project" for CEQA purposes, and environmental review would not be required prior to approving individual applications

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AB 2406 (THURMOND) OVERVIEW

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Junior Second Units

- Communities can adopt optional ordinance permitting “junior” second units with limited kitchen facilities and shared bath within existing structures
- Very prescriptive (“sink with maximum waste line of 1.5 inches”)
- With passage of AB 2299/SB 1069 permitting full second units in all existing structures, may have role in allowing owners to add minor facilities to existing rented rooms

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