

Accessory Dwelling Units and Junior Accessory Dwelling Units
A Summary of New Law
AB 2299 (Bloom), SB 1069 (Wieckowski), and AB 2406 (Thurmond)

California's affordable housing crisis quickly became a legislative priority in 2016. Efforts included several proposals to increase funding to develop affordable housing which the League supported. But it was evident that the Governor and legislators would not limit the conversation to funding alone. Several proposals were unveiled that impacted the approval processes for affordable housing with the goal of decreasing development costs. Unfortunately, many of those proposals also limited public input and local control. Some – such as the Governor's "by right" proposal – failed to pass. Others – including AB 2299 (Bloom, Chapter 735, Statutes of 2016), AB 2406 (Thurmond, Chapter 755, Statutes of 2016) and SB 1069 (Wieckowski, Chapter 720, Statutes of 2016) – were approved. These measures make significant changes to local authority to regulate 2nd units.

AB 2299, AB 2406, and SB 1069 are interconnected and should be considered together. Their provisions will nullify any local ordinance that does not comply with the requirements of the bills. While a general outline of the impacts and requirements of the bills are below, cities are encouraged to work closely with their city attorneys when considering options and interpretations and deciding what changes to make to their ordinances in response to these measures, including how such changes interact with other ordinances and laws which may apply.

Accessory Dwelling Units (Formerly Known as 2nd Units)

AB 2299 and SB 1069 rename "second units" as "accessory dwelling units" (ADUs), and make significant changes to local authority to regulate these units. The changes fall into four areas: Parking, Types and Size of Units, Approval Process and Timelines, and Water and Sewer Utility Fees.

Parking

A local government cannot require parking if an ADU complies with any of the following:

- Located within ½ mile of "public transit"; (term is not defined)
- Located within architecturally and historically significant historic district; (terms are not defined)
- The ADU is part of an existing primary residence or an existing accessory structure;
- On-street parking permits are required but not offered to the occupant of the ADU; or
- There is a car share vehicle located within one block of the ADU.

For ADUs not described above, the following restrictions apply:

- Requirements may not exceed one parking space per unit or per bedroom, and spaces may be provided as tandem parking on an existing driveway;

- Offstreet parking must be permitted in setback areas in locations determined by the city or through tandem parking, unless findings are made that parking in setback areas or tandem parking is not feasible based upon specific site, regional topographical, or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

Types and Size of Units

- An ADU can be either attached to the existing dwelling; located within the living area of the existing dwelling; or detached and located on same lot;
- The increased floor area of attached ADU may not exceed 50 percent of the existing living area¹;
- The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet;
- No passageway shall be required in conjunction with construction of an accessory dwelling unit; and
- No setback shall be required for an existing garage that is converted to an ADU. In addition, a setback of no more than five feet from the side and rear lot lines shall be required for an ADU that is constructed above a garage.

Approval Process and Timelines

- If a city does not have an existing ordinance and chooses not to adopt an ordinance, then an application for an ADU must be approved ministerially without discretionary review;
- Even if a city has adopted an ordinance, a city must approve an application for a building permit to create an ADU if it meets the following requirements: it is within a single-family zone; there is one ADU per lot if contained within existing space of residence or accessory structure; and the ADU has independent exterior access and side and rear yard setbacks that are sufficient for fire safety. Fire sprinklers may not be required if not required for the primary residence; and
- In both cases, approval must occur within 120 days of receipt of application.

Water and Sewer Utility Fees

- Connection or capacity fees for ADUs within existing structures in a single-family zone: A city may not require an applicant to install a new or separate utility connection directly between the ADU and the utility or impose a related connection fee or capacity charge if the ADU is located within the existing space of a single-family residence or the existing space of an accessory structure on a single-family lot; and
- Connection and capacity fees for ADUs within new structures or within multi-family zone: A city may require a new or separate utility connection directly between the ADU and the utility. The connection fee or capacity charge shall be “proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer

¹ “Living area” is defined as the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure (Section 65852.2(i)(1)).

system.” The fee or charge may not exceed the reasonable cost of providing the water or sewer service.

Junior Accessory Dwelling Units

AB 2406 creates special rules for Junior Accessory Dwelling Units (JADUs), which are ADUs 500 square feet in size or smaller that are located within an existing single-family residence within a single-family zone. Cities have the choice whether they adopt an ordinance specific to JADUs, or treat them as ADUs. An ordinance providing for JADUs may:

- Limit the number of JADUs to one per existing single-family residence in a single-family zone;
- Require owner-occupancy of the single-family residence in which the JADU is located;
- Prohibit the sale of the JADU separate from the sale of the single-family residence;
- Require the inclusion of an existing bedroom in the JADU;
- Require a separate entrance; and
- Require an efficiency kitchen.

No additional parking may be required.

A JADU must be approved within 120 days of submittal of an application; no discretionary review is allowed.

The JADU may not be considered a separate or new dwelling unit for purposes of fire or life protection ordinances or for purposes of water, sewer, or power connection fees. No fees or regulations may be imposed on a single-family residence that contains a JADU unless such fees or regulations are imposed on single-family residences generally.