Monterey County

Planning Commission

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Agenda Item No. 3

Legistar File Number: PC 18-114

October 10, 2018

Introduced: 10/3/2018 **Current Status:** Agenda Ready

Version: 1 **Matter Type:** Planning Item

REF180015 - ACCESSORY DWELLING UNITS REGULATIONS UPDATE
(Continued from September 26, 2018)

Public Hearing to make a recommendation to the Board of Supervisors to adopt an ordinance amending Title 21 (non-coastal zoning ordinance) to update the County's inland zoning regulations for accessory dwelling units.

Proposed Location: County-wide (non-coastal)

Proposed CEQA Action: Statutorily Exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080.17 and CEQA Guidelines section 15282(h).

RECOMMENDATION:

It is recommended that the Planning Commission recommend that the Board of Supervisors:

a. Find the project statutorily exempt from the California Environmental Quality Act; and
b. Adopt an ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to amend the regulations for accessory dwelling units in the inland unincorporated area of Monterey County to include amending parking and setback requirements and addressing conversion of existing single family residences and accessory structures to accessory dwelling units (**Attachment 1 to Exhibit A**);

PROJECT INFORMATION:

Planning File Number: PLN180015 (Inland, Accessory Dwelling Unit Regulations)
Plan Area: Inland Areas (Non-coastal)

SUMMARY:

On April 3, 2018, Economic Development Department and Resource Management Agency (RMA) staff provided a report to the Board of Supervisors responding to Board Referral No. 2017.21 requesting information for Accessory Dwelling Units in Monterey County to address the housing shortage. As a follow-up to the April 3rd meeting, on June 26, 2018 the Planning Commission reviewed a draft ordinance that documented amendments to County regulations for Accessory Dwelling Units (ADUs) to update the County Code to be consistent with legislation that went into effect in January 2017 and January 2018. Although the County Code does not reflect the state amendments, RMA staff is applying County Code consistent with state law.

On June 26, 2018, the Planning Commission conducted a public hearing on Accessory Dwelling Units (ADU's) At that meeting staff presented a redline of the current ordinance that reflected the necessary amendments to the County regulations to update the County Code to be consistent with state legislation that became in effect in January 2017 and January 2018. The amendments to the ordinance are necessary to dispel any ambiguity or questions regarding conformance to state law. During the

public hearing, a discussion ensue regarding parking, the use of modular homes/tiny homes, and consistency of the ordinance with the 2010 General Plan.

Staff has prepared an ordinance to update the County's ADU regulations starting with the inland ordinance that include amending parking and setback requirements and addressing conversion of existing single family residences and accessory structures to accessory dwelling units. Once the inland ordinance is completed, staff will draft the coastal ordinance. As state law evolves, additional amendments may be necessary depending on actions with pending state legislation. Amendments to The Zoning Ordinance require the recommendation of the Planning Commission at a noticed public hearing before consideration by the Board. Amendments to coastal regulations will require certification by the Coastal Commission.

DISCUSSION:
On May 24, 2011**,** the Board of Supervisors adopted Ordinance No. 5177 which, among other housing amendments, prospectively replaced "Caretaker Units" (Section 21.64.030) and "Senior Citizen Units" (Section 21.64.010) with ADUs (Section 21.64.030 Regulations for Accessory Dwelling Units). See **Exhibit B, County Inland Zoning Regulations.** In addition, in 2011, the Board adopted a Resolution of Intent to adopt housing amendments for the coastal zone, including to replace Caretaker Units (section 20.64.030) and Senior Citizen Units (section 20.64.010) with ADUs (section 20.64.030 Regulations for Accessory Dwelling Units). The CCC required changes in order to certify the County's ordinance, including requirements for a Coastal Administrative Permit with public hearing and excluding certain areas (North County Coastal). In December 2015, the Board adopted the coastal housing regulations as certified by the CCC, Ordinance No. 5283 on December 8, 2015. See **Exhibit C, County Coastal Zoning Regulations.**

In 2016 and 2017, the State Legislature passed, and Governor Brown signed four bills governing Accessory Dwelling Units (ADUs):

- 2016: (SB1069 and AB2229, signed by the Governor on October 8, 2017, became effective January 1, 2017); and
- 2017: (SB229 and AB494, signed by the Governor on October 8, 2017, became effective January 1, 2018).

These regulations amended Section 65852.2 of the California Government Code relative to Accessory Dwelling Units. Additionally, AB2406 relating to Junior ADUs was signed by the Governor on September 28, 2017, and became effective January 1, 2017; allowing for the establishment of "Junior Accessory Dwelling Units."

Additionally, the State Legislature has initiated three bills that could significantly change ADU regulations. One of the bills, SB1469 died in the Senate; the other two AB2890 and SB831 are still moving through the legislation process.

- AB2890 would provide for the creation of ADUs by ordinance in areas zoned to allow single-family or multifamily dwelling residential use. The bill would revise the standards for the local ordinance to, among other things, remove the requirement for minimum lot size for the allowance of an ADU; require that the square footage of an ADU not be calculated

in floor area ratio or lot coverage, if required in the applied zoning for a lot; require that the existing or proposed square footage of an ADU not be less than 800 square feet and at least 16 feet in height.

- SB831 would require that in areas zoned to allow single-family or multifamily dwelling residential use, there may be designated areas that may be excluded from allowing ADUs, due to public health and safety purposes. The bill would revise the standards for the local ordinance to, among other things, remove the requirement for minimum lot size for ADUs unless it is found that the ADU would adversely impact public health and safety, including fire safety; require that the square footage of an ADU not be calculated in floor area ratio or lot coverage, if required in the applied zoning for a lot; require that the existing or proposed square footage of an ADU not be less than 800 square feet or more than 50 percent of an existing or proposed single family residence not to exceed 1,200 square feet. Finally, an application for an ADU shall be approved ministerially within 60 days of submittal.

The California State Association of Counties (CSAC), the Urban Counties of California (UCC), the Rural County Representatives of California (RCRC), and the League of California Cities (LCC) have submitted letters opposing these bills as drafted (**Exhibit F**).

Staff has drafted amendments to the inland regulations to address current statutory language.

Regulations for Accessory Dwelling Units - Inland (Non-coastal Area)

Currently, the County's inland Zoning Code (Title 21 of the Monterey County Code) provides a ministerial process for approval of ADUs in residential zoning districts, except for specified areas that the County appropriately designated as not allowing ADUs due to infrastructure or resource constraints. (Monterey County Code, section 21.64.030.). In 2018, California Department of Housing and Community Development (HCD) staff interpreted the new language added to Government Code section 65852.2 as rendering city and county ordinances adopted prior to January 1, 2017 "null and void" unless the ordinances had been amended to conform to the January 1, 2017 state law amendments. Per Board direction on April 3, 2018, staff has prepared a draft ordinance to incorporate the state law changes, affirm the ministerial process, and designate areas where ADUs are allowed in the County and not allowed due to infrastructure constraints.

The ordinance will remove requirements for off street parking and setbacks of existing structures consistent with changes to state law. In accordance with the 2010 General Plan, the ordinance amends Section 21.64.030 (Regulations for Accessory Dwelling Units) to retain designated areas where ADUs are not allowed due to infrastructure constraints, but has added an exception for existing habitable spaces not exceeding 1,200 square feet to conform to the 2016 and 2017 amendments to Government Code section 65852.2. As amended by the 2016 and state legislation, subdivision (e) of Government Code section 65852.2 added a requirement for a ministerial approval process for ADUs, regardless of location, "if the unit is contained within the existing space of a single-family residence or accessory structure, including but not limited to a studio, pool house, or other similar structure." (Government Code section 65852.2(e).) Staff conferred with HCD on County's interpretation that this relates to legally permitted habitable structures existing prior to enactment of this subsection. HCD

staff indicated their agreement that this section does not allow ministerial conversion of existing structures that were built without the required land use permits.

CEQA:
Adoption of ordinances by a county to implement Government Code section 65852.2 is statutorily exempt from CEQA per Section 15282 (h). (Pub. Res. Code section 21080.17.)

Regulations for Accessory Dwelling Units - Coastal Zone

The update to the County's coastal regulations relating to ADUs will need to take account of both the state housing law and the Coastal Act. Subdivision (j) of section 65852.2 explicitly provides that "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." County's original proposed Title 20 ordinance omitted a public hearing requirement based on state ADU law, but the California Coastal Commission (CCC) staff required the County to restore the discretionary public hearing requirement. Currently our coastal ordinance requires a Coastal Administrative Permit for an ADU and in some cases a Coastal Development Permit. CCC also added to the areas where ADUs are not allowed in the coastal zone. On April 18, 2017, CCC circulated a memo intended to help local governments interpret and implement new state requirements regarding regulation of "accessory dwelling units" in the coastal zone (**Exhibit E)**. The Coastal Commission staff is now advising local governments to approve ADUs administratively if possible, but it is not clear if CCC staff would still require County ordinances to include a hearing requirement. The CCC memo recognizes that the ADU dictates of Government Code section 65852.2 and the Local Coastal Program could conflict. The advice of CCC is to preserve local government authority to protect coastal resources when regulating ADUs in the coastal zone, while also complying with the state ADU law "*to the greatest extent feasible*". Where there is a direct conflict, to consider updating the LCP to be consistent with ADU law "to the greatest extent feasible" while still complying with the Coastal Act. Due to this remaining ambiguity, staff is only recommending updates to the inland ordinance at this time.

Regulations for Junior Accessory Dwelling Units
State law authorizes, but does not require, the county to adopt an ordinance to provide for junior accessory dwelling units (JADU). However, staff will draft a separate ordinance incorporating JADUs as it is a simple way to increase the available affordable housing stock in the County. The JADU Ordinance is proposed to:

1. Allow Junior Accessory Dwelling Units in all residential zones.
2. Allow one Accessory Dwelling Unit per lot. A Junior Accessory Dwelling Unit shall not be permitted prior to a main residence and shall be located within the main residence. A Junior Accessory Dwelling Unit must utilize an existing legally constructed room (i.e. bedroom, office etc.), shall have an efficiency kitchen and can share a bathroom in the principal residence. A Junior Accessory Dwelling Unit may be separately rented. One of the units, either the principal residence or the Junior Accessory Dwelling, must be owner occupied.
3. There is no minimum lot size for the establishment of a Junior Accessory Dwelling Unit.
4. A Junior Accessory Dwelling Unit shall not be subject to density requirements of the zoning district in which the lot is located.

5. The maximum floor area for an Accessory Dwelling Unit is 500 square feet.
6. Prior to commencement of the use, the property owner shall record a deed restriction stating that that the Junior Accessory Dwelling Unit shall not be subdivided or sold from the principal residence.
6. Junior Accessory Dwelling Unit are subject to the zoning and development standards (lot coverage, height, setbacks, design, etc.) for the principal residence of the zoning district which governs the lot.
7. No Additional parking is required for a Junior Accessory Dwelling unit. Parking required to the principal residence shall apply in accordance with Parking Regulations in Chapter 21.58.
8. A Junior Accessory Dwelling Unit shall be designed in such a manner as to be visually consistent and compatible with the principal residence on-site and other residences in the area.
9. A Junior Accessory Dwelling Units is subject to review and approval by the Director of Environmental Health to ensure adequate sewage disposal and water supply facilities exist or are readily available to serve the unit.
10. That a Junior Accessory Dwelling Unit is prohibited to be rented for less than 30 days and used for transient use.

Staff is considering how to incorporate JADUs into the ordinance and the appropriate environmental review under CEQA for a JADU ordinance; JADU is also the subject of pending state legislation.

OTHER AGENCY INVOLVEMENT:
RMA consulted County Counsel regarding state ADU law and developing zoning code amendments. State Housing and Community Development was also consulted for interpretation of state ADU law. In addition, RMA consulted California Coastal Commission staff relative to application of state ADU law within the coastal zone.

Economic Development Department
Health Department/Environmental Health Bureau
County Counsel's Office

Prepared by: Jacqueline R. Onciano, RAA Chief of Planning
Reviewed by: John M. Dugan, FAICP, RMA Deputy Director of Land Use
Approved by: Carl Holm, AICP, Director Resource Management Agency

The following attachments are on file with the RMA:
Exhibit A - Draft Ordinance amending Title 21 - Chapter 21.64.030 MCC, Inland
Exhibit B - Section 21.64.030 MCC (Regulations for Accessory Dwelling Units), Inland
Exhibit C - Section 20.64.030 MCC (Regulations for Accessory Dwelling Units), Coastal
Exhibit D - State ADU Statute (Government Code Section 65852.2)
Exhibit E - California Coastal Commission Memo regarding Accessory Dwelling Units
Exhibit F - Letters regarding AB2890, SB1469 & SB831 & State Legislature (AB2890, SB1469 & SB831)

cc: Front Counter Copy; California Coastal Commission; Brandon Swanson, RMA Services Manager; The Open Monterey Project (Molly Erickson); LandWatch; John H. Farrow; Janet

Brennan; Project File REF180015

Exhibit A

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Before the Planning Commission in and for the County of Monterey, State of California

Resolution No.
Recommendation to the Board of Supervisors
Related to Proposed Ordinance to Amend
Section 21.64.030 of Title 21 relating to
Accessory Dwelling Units

This resolution is made with reference to the following facts:

I. RECITALS

1. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.
2. The County's coastal and non-coastal zoning ordinances (Title 20 and Title 21 of the County Code respectively) contain regulations pertaining to accessory dwelling units.
3. The state adopted amendments to Government Code section 65852.2 in 2016 and 2017 relating to accessory dwelling units, thereby necessitating an update of County zoning regulations to ensure that County's regulations include and incorporate all recent state law requirements.
4. Per Government Code sections 65854 and 65855, amendments to the County zoning ordinance require the Planning Commission to conduct a noticed public hearing and make a written recommendation to the Board of Supervisors on the proposed amendments to the zoning ordinance.
5. On June 27, 2018 and October 10, 2018, the Monterey County Planning Commission conducted a duly noticed public hearing on a proposed ordinance to amend section 21.64.030 of Title 21 (non-coastal zoning) of the Monterey County Code relating to accessory dwelling units.
6. The ordinance amends parking and setback requirements for ADUs and addresses conversion of existing space within a single family residences and accessory structures to an ADU.
7. The ordinance is statutorily exempt from the California Environmental Quality Act which provides that CEQA does not apply to adoption of an ordinance by a county to implement the provisions of Government Code section 65852.2. (Public Resources Code section 21080.17 and CEQA Guidelines section 15282(h)).

II. DECISION

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends that the Board of Supervisors:

a) Find that the proposed ordinance is statutorily exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080.17 and CEQA Guidelines section 15282(h); and

b) Adopt an ordinance, in the same or substantially the same form as the attached ordinance, to amend Title 21 (non-coastal zoning ordinance) of the Monterey County Code to update the regulations for accessory dwelling units in the inland unincorporated area of Monterey County.

PASSED AND ADOPTED on this ____ day of_____, 2018, by the following vote:

AYES:
NOES:
ABSENT:

By: _____
Jacqueline R. Onciano, Secretary

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING SECTION 21.64.030 OF TITLE 21 (NON-COASTAL ZONING) OF THE MONTEREY COUNTY CODE RELATING TO ACCESSORY DWELLING UNITS.

County Counsel Summary

This ordinance amends the County's zoning regulations for accessory dwelling units applicable in the non-coastal unincorporated area of Monterey County. The ordinance updates section 21.64.030 of Title 21 (non-coastal zoning) of the Monterey County Code to conform to recently enacted state law requirements for accessory dwelling units.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and Declarations.

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. Per amendments to Government Code section 65852.2 adopted by the state legislature in 2016 and 2017, the County desires to amend its existing regulations pertaining to Accessory Dwelling Units to ensure that its regulations include and incorporate all state law requirements.

C. This ordinance is statutorily exempt from the California Environmental Quality Act which provides that CEQA does not apply to adoption of an ordinance by a county to implement the provisions of Government Code section 65852.2. (Public Resources Code section 21080.17.)

SECTION 2. Section 21.64.030. of the Monterey County Code is amended to read as follows:

21.64.030 Regulations for Accessory Dwelling Units

A. Purpose: The purpose of this Section is to establish the regulations, standards and circumstances under which an Accessory Dwelling Unit, accessory to the main residence on a lot, may be permitted.

B. Definitions:

Unless otherwise expressly stated, whenever used in this section 21.64.030, the following terms shall have the meanings set forth below:

1. "Accessory dwelling unit" has the same meaning as "dwelling unit, accessory" set forth in section 21.06.372.

~~1.~~2. "Legally constructed structure" means a structure that was constructed with all land use and construction permits that were required at the time of construction.

~~B~~C. Applicability: This Section is applicable in all residential zoning districts and in other districts where an Accessory Dwelling Unit may be allowed subject to a Use Permit.

~~C~~D. Accessory Dwelling Units (New Construction) are ~~P~~prohibited in certain areas of the inland unincorporated area of the County. Accessory Dwelling Units would pose a hazard to public health, safety and welfare in certain unincorporated non-coastal areas of the County because of known infrastructure limitations, including adequacy of water and sewer and the impact of new construction ~~-~~of ADUs on traffic in traffic-impacted areas. These infrastructure limitations are recognized in the 2010 General Plan (See Polic~~y~~ies NC-1.5, CV-1.6, T-1.7, and GS-1.13), zoning districts (B-8 overlay) and adopted specific plans. ~~The County acknowledges prohibiting Accessory Dwelling Units in these areas may limit the housing opportunities of the region; however, specific adverse impacts on the public health, safety and welfare that would result from allowing Accessory Dwelling Units in these areas justify these limitations.~~ Accordingly, except as provided by subsection G below, Accessory Dwelling Units will not be permitted in the following areas:

1. ~~___~~ ___Within a B-8 zoning overlay.
2. _____North County Planning Area, ~~not including~~ except the Castroville Community Plan area where Accessory Dwelling Units may be allowed.
3. _____All lots in the Carmel Valley Master Plan Area; ~~created after October 26, 2010 and all existing legal lots of record containing less than 5 acres.~~
4. That portion of the Toro Planning Area which is shown on Figure LU-10 of the 2010 General Plan as being limited to the first single family home on a legal lot o~~f~~f record per General Plan Policy T-1.7.
5. That portion of the Greater Salinas Planning Area with residential land use designations north of the City of Salinas, generally between Williams Road and Highway 101 which is shown on Figure LU-7 of the 2010 General Plan as being limited to the first single family home on a legal lot o~~f~~f record per General Plan Policy GS-1.13.
6. Areas for which the County has adopted a Specific Plan, except as allowed by the Specific Plan.
7. Lots that are less than two acres and not served by public sewer.

~~D~~E. Regulations: Accessory ~~-~~Dwelling Units are subject to the following ~~regulations~~ standards:

1. Only one Accessory Dwelling Unit per lot shall be allowed.
2. An Accessory Dwelling Unit shall ~~not be permitted prior to a main residence and shall~~ be located on the same lot as the existing or proposed primary dwelling ~~main residence~~.
3. An Accessory Dwelling Unit must provide complete independent living facilities for one or more persons and shall contain permanent provisions for living, sleeping, eating, cooking, and sanitation.
4. An Accessory Dwelling Unit may be separately rented, provided such rental is for more than 30 days.
5. An Accessory Dwelling Unit is prohibited to be used as a Vacation Rental~~6. The minimum lot size for establishment of an Accessory Dwelling Unit in areas not served by public sewers shall be two acres, except in the Carmel Valley Master Plan area where the minimum lot size shall be five acres~~.
~~7~~6. An Accessory Dwelling Unit shall not be subject to density requirements of the zoning district in which the lot is located.
~~8~~7. An Accessory Dwelling Unit shall not be sold or otherwise conveyed separate from the primary residence.

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~~8~~. The maximum floor area for an Accessory Dwelling Unit is one thousand two hundred (1,200) square feet.

~~9~~. 9. Within the residentially zoned areas, units permitted as a Senior Citizen unit or a Caretaker unit prior to the adoption of these regulations for Accessory Dwelling Units shall be considered an Accessory Dwelling Unit for the purposes of this section.

~~6. An Accessory Dwelling Unit shall conform to all of the~~ following ~~standards:~~

10~~0~~. An Accessory Dwelling Unit attached to the principal residence shall be subject to the height~~, setback~~, and coverage regulations of the principal residence. An Accessory Dwelling Unit detached from the principal dwelling shall be treated as a habitable accessory structure in regard to height~~, and setbacks~~.

11. No setback shall be required for an existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

~~Parking for an Accessory Dwelling Unit shall conform to the parking regulations for Accessory Dwelling Units set forth in Chapter 21.58.~~

12.~~7~~ An Accessory Dwelling Unit shall be designed in such a manner as to be visually consistent and compatible with the principal residence on-site and other residences in the area.

13. ~~8~~Accessory Dwelling Units are subject to review and approval by the Director of Environmental Health to ensure adequate sewage disposal and water supply facilities exist or are readily available to serve the unit.

14~~9~~. An Accessory Dwelling Unit shall comply with local building code requirements that apply to detached dwellings, as appropriate.

~~E~~F. An Accessory Dwelling Unit may be allowed in the Resource Conservation zone subject to an Administrative Permit in each case. In order to grant the Administrative Permit, the Appropriate Authority shall make all of the following findings:

1. The establishment of the Accessory Dwelling Unit will not, under the circumstances of the particular application, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.

2. The proposed Accessory Dwelling Unit complies with all of the applicable requirements of this Section.

3. That the subject property upon which the Accessory Dwelling Unit is to be built is in compliance with all rules and regulations pertaining to zoning uses, subdivisions and any other applicable provisions of this Title and that all zoning violation abatement costs, if any, have been paid.

4. That adequate sewage disposal and water supply facilities exist or are readily available, as determined by the Director of Environmental Health.

G. Any Accessory Dwelling Unit which does not comply with height ~~or setback~~ regulations for the district in which it is proposed shall require a Use Permit. The Zoning Administrator is the appropriate authority to consider said permit. The Use Permit may only be approved if the Appropriate Authority finds that the deviation from the height ~~and/or setback~~ requirements better achieves the policies of the General Plan and regulations of this Title.

H.. Regulations for Conversion of Legally Constructed Structures into Accessory Dwelling Units:

Notwithstanding subsections A through F above, within a zone for single-family use, the County shall ministerially approve an application for a building permit for one Accessory Dwelling Unit per lot if all of the following criteria are met:

1. the Accessory Dwelling Unit is contained within the existing space of a single family dwelling or existing accessory habitable structure;

2. the existing single family dwelling or accessory habitable structure proposed for conversion to Accessory Dwelling Unit was legally permitted and has no existing code violations;

3. the total area of floorspace of the Accessory Dwelling Unit does not exceed one thousand two hundred (1,200) square feet;

4. the Accessory Dwelling Unit has independent exterior access from the existing residence; and

5. the side and rear setbacks are sufficient for fire safety;

6. the primary residence or Accessory Dwelling Unit is owner-occupied.

7. the Accessory Dwelling Unit shall not be rented for a period of less than 30 consecutive calendar days.

SECTION. 3. Section 21.58.040 of the Monterey County Code is amended to read as follows:

21.58.040 PARKING SPACES REQUIRED

The number of off-street parking spaces shall not be less than:

Use	*Parking* Spaces Required
Agricultural Employee Housing	1 space/dwelling unit or 1 space/4 beds
Agricultural Processing Plant	1 space/500 square feet
Amusement *Park*	1 space/4 occupant
Appliance Repair	1 space/500 square feet
Art Gallery	1 space/200 square feet
Auditorium	1 space/4 seat. If no fixed seating, 1 space/35 square feet
Automobile Repair	1 space/500 square feet of floor area
Automobile Sales	1 space/500 square feet of floor area plus 1 space/2,000 square feet outdoor sales, display or storage area
Automobile Services Station	1 space/500 square feet floor area
Bank	1 space/200 square feet
Bar, Lounge, Night Club	1 space/3 seats.
Cocktail Lounge	Where seating is not fixed, 1 space 50 square feet
Barber Shop, Beauty Parlor	2 spaces/chair

Baseball *Park*	1 space/4 seats
Bed and Breakfast Facility	1 space/unit
Billiard Hall	2 spaces/table
Bowling alley	5 spaces/lane
Building Materials	1 space/500 square feet floor area plus 1 space/2000 square feet outdoor use area
Bus Depot	1 space/20 square feet waiting area plus 1 space/300 square feet office area
Cabinet Shop	1 space/500 square feet
Caretaker Unit	1 space/unit
Children's Home, Orphanage	1 space/4 seats. If no fixed seating, 1 space/35 square feet
Church	1 space/4 seat. If no fixed seating, 1 space/35 square feet
Cleaners	2 space plus spaces/1,000 square feet
Community Center	1 space/4 seats. If no fixed seating, 1 spaces/35 square feet
Contractor's Yard	1 space/3,000 square feet lot area
Convalescent Home, Nursing Home, Rest Home, Home for the Aged	1 space/3 beds
Convention Center, Meeting Hall, Exhibit Facility	1 space/4 seats or 1 space/50 square feet
Dance Hall	1 space/50 square feet
Dental Clinic/Office	1 space/200 square feet
Driving Range	1 space/tee
Equipment Rental	1 space/500 square feet floor area plus 1 space/2,000 square feet outdoor use area
Family Day Care Facility	1 space/employed plus 1 space/10 children
Farm Equipment and Supplies	1 space/500 square feet floor area plus 1 space/2,000 square feet outdoor use area
Flea Market/Open Air Sales	1 space/200 square feet sales area
Freight Terminals	2 spaces/loading bay plus 1 space/250 square feet office space
Funeral Home, Mortuary	1 space/4 seats. If no fixed seating, 1 space/356 square feet
Golf Course	4 space/hole
Guesthouse	1 space/unit

Gymnasium, Spa, Health Studio	1 space/50 square feet
Heating, Air Conditioning, Electrical Shop	1 space/500 square feet
Homeless Shelter	1 space/employee and 1 space/6 beds or portion thereof
Hospital	12 spaces/bed
Hotel	1 space/unit plus 2 spaces/3 employees on largest shift plus other applicable requirement (i.e. restaurant, lounge, etc.)
Industrial Office	1 space/300 square feet
Laboratory	1 space/250 square feet
Laundromat	1 space/2 machines
Library	1 space/200 square feet
Manufacturing	1 space/500 square feet
Marina	3 spaces/4 boat slips
Medical Clinic/Office	1 space/200 square feet
Miniature Golf	2 spaces/hole
Mini-Storage	2 spaces for manager plus 2 customer spaces
Motel	2 spaces for manager plus 1 space/unit
Museum	1 space/200 square feet
Nursery	1 space/2,000 square feet
Office	1 space/250 square feet
Open Air Sales	1 space/200 square feet sales area
Photography Studio	1 space/400 square feet
Post Office	5 spaces/services window plus 1 space/500 square feet of non-customer area
Printer, Copying, Reproduction	1 space/400 square feet
Race Track	1 space/4 seats
Recreational Enterprises	1 space/4 occupants capacity
Recreational Vehicle *Park*	1 standard vehicle space/1 R.V. space
Residential:	
Single-Family Detached	2 spaces/unit
~~Accessory Dwelling Unit~~	~~1 space/unit~~
Duplex	2 spaces/unit
Triplex	2 spaces/unit
Multiple-Family Residential,	1 space/studio unit
Apartments, Townhouses,	1.5 spaces/1 bedroom unit

Condominiums, Cluster Homes	2 spaces/2 bedroom unit; 2.2 spaces/3 or more bedroom unit; In addition, 1 guest *parking* space shall be provided for every 4 units
Boarding House, Rooming	1 space/guest room
House, Organizational	1 space/100 sq. ft. of guest room
Large Residential Care Facility	1 space/employee plus 2 additional spaces
Small Residential Care Facility	1 space/employee plus 2 additional spaces
Single Room Occupancy Facility	.5 spaces/unit (Within 2,000 feet of Public Transit)
Single Room Occupancy Facility	1 space/unit (Not within 2,000 feet of Public Transit)
Handicapped Housing	1 space/2 units plus 1 guest space/8 units
Mobile Home *Park*	2 spaces/unit plus 1 guest *parking* space/4 units
Restaurant	1 space/4 seats. Where seating is not fixed, 1 space/50 square feet of seating, waiting, or cocktail lounge area
Restaurant, Drive-In	1 space/3 seats enclosed plus 3 and Drive-Through spaces/services window and 3 employee spaces
Retail, General	1 space/250 square feet
Retail, Large Item	1 space/500 square feet (i.e. Appliance Stores)
Savings and Loan	1 space/200 square feet
Schools:	
Pre-School, Day Care	1 space/employee plus 1 space/10 children
Kindergarten through Grade Nine	2 spaces/classroom plus 1 space/50 square feet in the Auditorium
High School	2 spaces/classroom plus 1 space/5 students
College, University	1 space/employee plus 1 space/3 students
Trade School, Vocational School, Business School, Professional School, Art Academy, Craft School, Music School, Dancing School	1 space/employee plus 1 space/3 students
Shopping Center	1 space/250 square feet

Skating Rink	1 space/250 square feet
Social Care Facility	1 space/3 beds plus
Sanitarium, Welfare Institution, Asylum	1 space/employee on the largest shift
Social Club	1 space/50 square feet
Stable, Public	1 space/3 horses
Stadium, Sports Area	1 space/4 seats
Swimming Pool	1 space/100 square feet pool area
Tennis Court, Racquetball Courts	2 spaces/court
Theater	1 space/3 seats
Warehouse	1 space/500 square feet
Veterinary Hospital	1 space/250 square feet

SECTION.4. Section 21.06.372 of the Monterey County Code is amended to read as follows:

21.06.372 "Dwelling Unit, Accessory"

"Accessory dwelling unit" means an attached or detached residential dwelling unit, which is secondary to a proposed or existing primary dwelling, and which provides complete independent living facilities for one or more persons. It shall include permanent provision for living, sleeping, eating, cooking, and sanitation on the same parcel ~~where~~ as the single-family dwelling is situated. Accessory dwelling unit includes:

a. An efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code; and

~~a.~~b. A manufactured home, as defined in Section 18007 of the California Health and Safety Code. The term "manufactured home" includes "tiny home" if the tiny home meets the requirements of Section 18007 of the California Health and Safety Code.

SECTION 6. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 7. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ____day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Luis A. Alejo, Chair
Monterey County Board of Supervisors

A T T E S T

VALERIE RALPH
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

WENDY S. STRIMLING
Senior Deputy County Counsel

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Exhibit B

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21.64.030 - Regulations for accessory dwelling units.

A. Purpose. The purpose of this section is to establish the regulations, standards and circumstances under which an accessory dwelling unit, accessory to the main residence on a lot, may be permitted.

B. Applicability. This section is applicable in all residential zoning districts and in other districts where an accessory dwelling unit may be allowed subject to a Use Permit.

C. Accessory Dwelling Units Prohibited in Certain Areas. Accessory dwelling units would pose a hazard to public health, safety and welfare in certain unincorporated non-coastal areas of the County because of known infrastructure limitations. These infrastructure limitations are recognized in the 2010 General Plan (See Policy NC-1.5, CV-1.6, T-1.7, and GS-1.13), zoning districts (B-8 overlay) and adopted specific plans. The County acknowledges prohibiting accessory dwelling units in these areas may limit the housing opportunities of the region; however, specific adverse impacts on the public health, safety and welfare that would result from allowing accessory dwelling units in these areas justify these limitations. Accessory dwelling units will not be permitted in the following areas:

1. Within a B-8 zoning overlay.
2. North County Planning Area, not including the Castroville Community Plan area.
3. All lots in the Carmel Valley Master Plan Area created after October 26, 2010 and all existing legal lots of record containing less than five acres.
4. That portion of the Toro Planning Area which is shown on Figure LU-10 of the 2010 General Plan as being limited to the first single family home on a legal lot or record per General Plan Policy T-1.7.
5. That portion of the Greater Salinas Planning Area with residential land use designations north of the City of Salinas, generally between Williams Road and Highway 101 which is shown on Figure LU-7 of the 2010 General Plan as being limited to the first single family home on a legal lot or record per General Plan Policy GS-1.13.
6. Areas for which the County has adopted a Specific Plan, except as allowed by the Specific Plan.

D. Regulations. Accessory dwelling units are subject to the following regulations:

1. Only one accessory dwelling unit per lot shall be allowed. An accessory dwelling unit shall not be permitted prior to a main residence and shall be located on the same lot as the main residence. An accessory dwelling unit must provide complete independent living facilities for one or more persons and shall contain permanent provisions for living, sleeping, eating, cooking, and sanitation. An accessory dwelling unit may be rented.
2. The minimum lot size for establishment of an accessory dwelling unit in areas not served by public sewers shall be two acres, except in the Carmel Valley Master Plan area where the minimum lot size shall be five acres.
3. An accessory dwelling unit shall not be subject to density requirements of the zoning district in which the lot is located.
4. The maximum floor area for an accessory dwelling unit is one thousand two hundred (1,200) square feet.
5. Within the residentially zoned areas, units permitted as a senior citizen unit or a caretaker unit prior to the adoption of these regulations for accessory dwelling units shall be considered an accessory dwelling unit for the purposes of this section.
6. An accessory dwelling unit shall conform to all of the zoning and development standards (lot

coverage, height, setbacks, design, etc.) of the zoning district which governs the lot. An accessory dwelling unit attached to the principal residence shall be subject to the height, setback and coverage regulations of the principal residence. An accessory dwelling unit detached from the principal dwelling shall be treated as a habitable accessory structure in regard to height, and setbacks. Parking for an accessory dwelling unit shall be consistent with the parking regulations in Chapter 21.58.

7. An accessory dwelling unit shall be designed in such a manner as to be visually consistent and compatible with the principal residence on-site and other residences in the area.
8. Accessory dwelling units are subject to review and approval by the Director of Environmental Health to ensure adequate sewage disposal and water supply facilities exist or are readily available to serve the unit.

E. An accessory dwelling unit may be allowed in the Resource Conservation Zone subject to an Administrative Permit in each case. In order to grant the Administrative Permit, the Appropriate Authority shall make all of the following findings:
   1. The establishment of the accessory dwelling unit will not, under the circumstances of the particular application, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.
   2. The proposed accessory dwelling unit complies with all of the applicable requirements of this section.
   3. That the subject property upon which the accessory dwelling unit is to be built is in compliance with all rules and regulations pertaining to zoning uses, subdivisions and any other applicable provisions of this title and that all zoning violation abatement costs, if any, have been paid.
   4. That adequate sewage disposal and water supply facilities exist or are readily available, as determined by the Director of Environmental Health.

F. Any accessory dwelling unit which does not comply with height or setback regulations for the district in which it is proposed shall require a Use Permit. The Zoning Administrator is the appropriate authority to consider said permit. The Use Permit may only be approved if the Appropriate Authority finds that the deviation from the height and/or setback requirements better achieves the policies of the General Plan and regulations of this title.

(Ord. No. 5177, §§ 51, 52, 5-24-2011)

Editor's note— Ord. No. 5177, §§ 51, 52, adopted May 24, 2011, repealed and reenacted Section 21.64.030 in its entirety to read as herein set out. Formerly, Section 21.64.030 pertained to regulations for caretaker units, and derived from original codification.

Exhibit C

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20.64.030 REGULATIONS FOR ACCESSORY DWELLING UNITS.

A. Purpose: The purpose of this Section is to establish the regulations, standards and circumstances under which an Accessory Dwelling Unit, accessory to the main residence on a lot may, be permitted. .

B. Applicability: The provisions of this Section are applicable in the HDR, MDR, LDR, RDR, and WSC zoning districts.

C. Permit Requirement: Accessory Dwelling Units shall require a Coastal Administrative Permit, or Coastal Development Permit if applicable, in all cases due to significant water, sewer, habitat, visual, and traffic resource constraints that exist within the Monterey County Coastal Zone. In non-residential zoning districts such as the Watershed and Scenic Conservation Zoning District, Accessory Dwelling Units shall require a Coastal Development Permit.

D. Accessory Dwelling Units Prohibited in certain areas: Accessory Dwelling Units would pose a hazard to public health, safety and welfare in certain unincorporated coastal areas of the County because of known infrastructure and resource limitations. These infrastructure limitations are recognized in the Land Use Plans for the North County, Big Sur, Carmel Area, and Del Monte Forest (See North County Land Use Plan Section 4.2, Big Sur Land Use Plan Section 5.2, Carmel Area Land Use Plan Section 4.2, and Del Monte Forest Land Use Plan Chapter Three-- Introduction), and zoning restrictions (B-8 overlay). The County acknowledges prohibiting Accessory Dwelling Units in these areas may limit the housing opportunities of the region; however, specific adverse impacts on the public health, safety and welfare that would result from allowing Accessory Dwelling Units in these areas justify these limitations. Accessory Dwelling Units will not be permitted in the following areas:

1. In any zoning district combined with a B-8 zoning overlay.
2. In the North County Land Use Plan area.
3. In the Carmel Area Land Use Plan area, on lots less than 40 acres in area.
4. In the Big Sur Coast Land Use Plan area, no Accessory Dwelling Units beyond the first 50 (including previously permitted caretaker units) approved in the Plan area from the time of certification of the Big Sur Coast Land Use Plan (April 9, 1986).

E. Regulations: Accessory Dwelling Units may be allowed subject to a Coastal Administrative Permit or Coastal Development Permit if applicable in designated districts and subject in all cases to the following regulations:

1. Only one Accessory Dwelling Unit per lot shall be allowed.
2. Accessory Dwelling Units shall not be permitted prior to a main residence and shall be located on the same lot as the main residence. Accessory Dwelling Units must provide complete independent living facilities for one or more persons and shall contain permanent provisions for living, sleeping, eating, cooking, and sanitation. An Accessory Dwelling Unit may be rented.
3. The minimum lot size for establishment of an Accessory Dwelling Unit shall be as follows:
   a. Two acres in areas not served by public sewers.
   b. In Big Sur the minimum lot size shall be two acres.
   c. In Carmel the minimum lot size shall be forty acres.

4. Accessory dwelling units are subject to the build out limitations established by each Land Use Plan but are not subject to density requirements of the zoning district in which a lot is located.

5. The maximum floor area for an Accessory Dwelling Unit is 1,200 square feet.

6. Parking for accessory dwelling units shall be consistent with the Parking Regulations of this Title (Chapter 20.58).

7. Within the applicable areas, units permitted as a Senior Citizen unit or a Caretaker unit prior to adoption of these regulations for Accessory Dwelling Units shall be considered an Accessory Dwelling Unit for the purposes of this section.

8. Accessory Dwelling Units shall conform to all of the zoning and development standards (lot coverage, height, setbacks, design, etc.) of the zoning district which governs the lot. Development standards shall be applied to Accessory Dwelling Units based on the cumulative development on the parcel. An Accessory Dwelling Unit attached to the principal residence shall be subject to the height, setback and coverage regulations of the principal residence. An Accessory Dwelling Unit detached from the principal dwelling shall be treated as a habitable accessory structure in regard to height, and setbacks.

9. Accessory Dwelling Units shall be designed in such a manner as to be visually consistent and compatible with the principal residence on-site and other residences in the area.

10. Accessory Dwelling Units are subject to review and approval by the Director of Environmental Health to ensure adequate sewage disposal and water supply facilities exist or are readily available to serve the unit.

11. Accessory Dwelling Units are subject to all the resource protection policies of the applicable Land Use Plan and shall not be permitted to substantially degrade resources at the site or in the area. Some of the resource constraints that may preclude development of an Accessory Dwelling Unit include but are not limited to:

a. Areas containing environmentally sensitive habitat.

b. In no case shall Accessory Dwelling Units be permitted within native Cypress habitat (Del Monte Forest).

c. Areas where the Accessory Dwelling Unit would cause a substantial adverse impact on visual resources.

d. In no case shall an Accessory Dwelling Unit be permitted within the critical viewshed (Big Sur);

e. Areas determined to have a critically short water supply.

f. Forest health and tree resources;

g. Hazards including slopes, beach and bluff erosion, fire, traffic and other health and safety conditions;

h. Potential impacts to historic and archaeological resources; and

i. Conflicts with public access.

F. In order to grant the Coastal Administrative Permit or Coastal Development Permit the Appropriate Authority shall make the following findings.

1. That the establishment of the Accessory Dwelling Unit will not, under the circumstances of the particular application, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the County; and

2. The Accessory Dwelling Unit as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

Exhibit D

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EXHIBIT D

State Accessory Dwelling Unit Statute (Government Code Section 65852.2)

California Government Code
Section 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 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 criteria that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, 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 Places.

(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 unit may be rented separate from the primary residence, buy may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily use and includes a proposed or existing single-family dwelling.

(iii) The accessory dwelling unit is either attached or located within the living area of the proposed or existing primary dwelling or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) The total area of floor space of an attached accessory dwelling unit shall not exceed 50 percent of the proposed or existing primary dwelling living area or 1,200 square feet.

(v) The total area of floor space 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 garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(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 unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Off street 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 a 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, and the local agency requires that those off street parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).
(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered 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, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, 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 subsequent to the effective date of the act adding this paragraph 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. In the event that 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 upon the effective date of the act adding this paragraph 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 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 zoned for residential use that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that 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.
(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) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the proposed or existing primary dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(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 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) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a zone for single-family use one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.

(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) Accessory dwelling units shall not be considered by a local agency, special district, or water corporation to be a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in 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.

EXHIBIT D

State Accessory Dwelling Unit Statute (Government Code Section 65852.2)

(B) For an accessory dwelling unit that is not described in 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 size or the number of its plumbing fixtures, 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) Local agencies 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. The department may review and comment on this submitted ordinance.

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

(1) “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.

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

(3) For purposes of this section, “neighborhood” has the same meaning as set forth in Section 65589.5.

(4) “Accessory dwelling unit” means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

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

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

(6) “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.

(j) 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.

Exhibit E

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CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

TO: Planning Directors of Coastal Cities and Counties

FROM: John Ainsworth, Executive Director

RE: Implementation of New Accessory Dwelling Unit Law

DATE: November 20, 2017

On April 18, 2017, we circulated a memo intended to help local governments interpret and implement new state requirements regarding regulation of "accessory dwelling units" (ADUs) in the coastal zone. Following the enactment of AB 2299 (Bloom) and SB 1069 (Wiekowski), changes to Government Code 65852.2 now impose specific requirements on how local governments can and cannot regulate ADUs, with the goal of increasing statewide availability of smaller, more affordable housing units. Our earlier memo was intended to help coastal jurisdictions and members of the public understand how to harmonize the new ADU requirements with LCP and Coastal Act policies. This memo is meant to provide further clarification and reduce confusion about whether and how to amend LCPs in response to these changes.

Although Government Code Section 65852.2(j) states that it does not supersede or lessen the application of the Coastal Act, it would be a mistake for local governments with certified LCPs to interpret this as a signal that they can simply disregard the new law in the coastal zone. The Commission interprets the effect of subdivision (j) as preserving the authority of local governments to protect coastal resources when regulating ADUs in the coastal zone, while also complying with the standards in Section 65852.2 to the greatest extent feasible. In other words, ADU applications that are consistent with the standards in Section 65852.2 should be approved administratively, provided they are also consistent with Chapter 3 of the Coastal Act as implemented in the LCP. Where LCP policies and ordinances are already flexible enough to implement the provisions of Section 65852.2 directly, local governments should do so. Where LCP policies directly conflict with the new provisions or require refinement, those LCPs should be updated to be consistent with the new ADU statute to the greatest extent feasible while still complying with Coastal Act requirements.

Bear in mind that Section 65852.2 still preserves a meaningful level of local control by authorizing local governments to craft policies that address local realities. It allows local governments to designate areas where ADUs are allowed based on criteria such as the adequacy of public services and public safety considerations. It also explicitly allows local governments to adopt ordinances that impose certain standards, including but not limited to standards regarding height, setbacks, lot coverage, zoning density, and maximum floor area. In the coastal zone, local governments can incorporate such standards in LCP policies in order to protect Chapter 3 resources while still streamlining approval of ADUs.

Therefore, the Commission reiterates its previous recommendation that local governments amend their LCPs accordingly, using Section 65852.2 as a blueprint for crafting objective

standards related to design, floor area, parking requirements and processing procedures for ADUs in a manner that protects wetlands, sensitive habitat, public access, scenic views of the coast, productive agricultural soils, and the safety of new ADUs and their occupants. Depending on the individual LCP, such amendments might include:

- Updating the definition of an ADU (variously referred to in existing LCPs as second units, granny units, etc.)
- Implementing an administrative review process for ADUs that includes sufficient safeguards for coastal resources
- Re-evaluating the minimum and maximum ADU floor area and related design standards
- Specifying that ADUs shall not be required to install new or separate utility connections
- For ADUs contained within existing residences or accessory structures, eliminating local connection fees or capacity charges for utilities, water and sewer services.
- Providing for ministerial approval of Junior Accessory Dwelling Units (JADUs)
- Clarifying that no more than one additional parking space per bedroom is required
- Eliminating off-street parking requirements for ADUs located within a ½ mile of public transit, an architecturally significant historic district, an existing primary residence or accessory structure, one block of a car share vehicle, or where on-street parking permits are required but not offered to the occupant of an ADU

This is just a partial list, as specific changes will depend on existing LCP policies as well as unique local resource constraints. See our earlier memo for additional recommendations.

We are currently conducting a survey to identify the number of local governments which have already initiated the amendment process. For those that have not, Commission staff strongly urges those jurisdictions to do so in the very near future.

To expedite the process, the Commission will process ADU-specific LCPAs as minor or de minimis amendments whenever possible. We realize that procedural requirements for public review and participation can be time consuming, and will strive to complete the Commission's review process expeditiously. In the interim, we urge local governments to consider which provisions of Section 65852.2 might be implemented administratively, through existing procedures, definitions, or variances. Because each LCP is distinct and unique to its particular jurisdiction, some are inherently more flexible than others. We strongly suggest applying any existing discretion in a manner that conforms to Section 65852.2 as well as your LCP.

We acknowledge that because of the nature of our state/local partnership the Commission cannot compel local governments to undertake these amendments. The foregoing advice is offered in the spirit of our mutual goals and responsibilities of preserving both Coastal Act objectives and local control of planning and permitting decisions. We are grateful that the Legislature elected to preserve the integrity of the Coastal Act when it passed these bills. We are also mindful that this did not reflect any intent to discourage ADUs in the coastal zone, but rather to ensure that new ADU incentives are implemented in a way that does not harm coastal resources. In order to maintain the Legislature's continued support for this approach, and avoid the imposition of unilateral coastal standards for ADUs in the future, it is essential to demonstrate that these housing policies can and will be responsibly implemented in the coastal zone.

My staff and I remain ready and available to assist in this effort.

Exhibit F

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April 18, 2018

The Honorable David Chiu
Chair, Assembly Housing and Community Development Committee
State Capitol, Room 4112
Sacramento, CA 95814

Re: AB 2890 (Ting): Land use: accessory dwelling units
As amended on April 12, 2018 – OPPOSE
Set for hearing in Assembly Housing and Community Development Committee – April 25, 2018

Dear Assembly Member Chiu,

The California State Association of Counties (CSAC), the Urban Counties of California (UCC), the Rural County Representatives of California (RCRC), and the League of California Cities (LCC) are opposed to Assembly Bill 2890 by Assembly Member Ting. This bill would significantly amend the statewide standards that apply to locally-adopted ordinances concerning accessory dwelling units (ADUs), even though the law was thoroughly revised in 2016 Legislative Session. These revisions were a product of two carefully-negotiated bills that only became effective in January 2017, with further amendments during the 2017 Legislative Session. All local agencies that worked in good faith to implement those laws would have to reopen their ordinances yet again to comply with the provisions of AB 2890. Our organizations are opposed to this complete rewrite of the statutes pertaining to ADU's for the following reasons.

Reverses Existing ADU Law. The last major changes to the state's ADU law only became effective on January 1, 2017. Since that time, counties and cities have updated their ordinances to be consistent with state law by designating areas where ADU's are allowed and have imposed development standards consistent with the law. AB 2890 reverses the framework of the existing law, instead requiring ordinances to identify only where ADUs are *prohibited*. This would likely require every agency that updated their ordinance pursuant to the last bills to reopen the revisions made in 2016 and 2017 once again—a costly and unnecessary burden.

Precludes Imposition of Impact Fees. Existing ADU law allows units of up to 1,200 square ft. Builders of pre-fabricated homes have developed new models that meet this size limit and include up to four bedrooms and two bathrooms. Existing ADU law requires that impact fees be charged in proportionate to the size of the unit, so such a four-bedroom unit would not be charged the same fees as an efficiency-sized studio unit. Despite the fact that such ADUs will clearly have impacts on infrastructure similar to the impacts of a new single family home, this bill would preclude the imposition of any impact fees designed to offset the costs of new or expanded infrastructure that residential growth requires.

Precludes Undefined "Other Fees or Charges." AB 2890 provides that ADU's "shall not be subject to impact fees, connection fees, capacity charges, *or any other fees or charges levied by a local agency*…." The scope of this last clause is unclear, and will invite litigation. Does "any other fees or charges" include ordinary processing fees to recover the local agency's cost to process the ADU application? If so, this represents a taxpayer subsidy for permit applicants, and a significant unreimbursed state mandate. What other fees are (or are not) prohibited by this provision? As written, this provision will be difficult to administer, and will financially harm the very same county departments responsible for permitting ADUs and serving their future residents.

Allows ADUs in Non-Residential Zones. The 2016 ADU law revisions applied only to residentially-*zoned* land. AB 2890 would require local agencies to approve ADUs "in areas where a single-family or multifamily dwelling is *authorized*." The reason for this change is unclear, but the new language could be interpreted to mandate that ADU's be allowed on any parcel with an existing single-family home, regardless of the zoning. This change will intensify non-conforming land uses, creating conflict with other policy goals. For instance, counties and cities must consider whether allowing additional residential living space in an agricultural or industrial zoned parcel would create new conflicts with adjacent land uses such as established businesses. Under existing law, local agencies have discretion to allow ADUs in such contexts when there is an existing legal non-conforming dwelling unit. Given the potential for conflict, such units should continue to be discretionary on commercial, agricultural, or industrial lands.

Precludes Legitimate Restrictions on Parcel Size and Lot Coverage. In unincorporated areas, where many parcels do not have public water or sewer service, parcel sizes and lot coverage standards are important regulatory tools for ensuring that a particular lot can actually accommodate an ADU. Instead of allowing counties to establish reasonable, generally applicable standards identifying those parcels unable to accommodate required well and septic services, this bill requires such issues to be considered on a case-by-case, which will create uncertainty and confusion for applicants.

Department of Housing and Community Development Guidelines Process. HCD should not be given authority to create guidelines that would have the effect of overriding a local land use ordinance without going through the formal rulemaking process under the Office of Administrative Law. The normal rulemaking process is necessary to ensure that the public and affected local governments have sufficient input on the development of such regulations.

Preponderance of Evidence Standard. The preponderance of evidence standard is inappropriate for judicial review of a legislative decision by elected officials to prohibit ADUs or make them a discretionary use in areas where additional residential construction may present a threat to health and safety. This will merely invite litigation in which judges will be asked to second-guess decisions made through democratic process. For instance, how much evidence would a local agency need to provide in order to convince a judge that making ADUs discretionary in areas without community water or sewer service is justified, or to preclude ADUs in a high fire hazard severity area? The existing substantial evidence standard is appropriate and sufficient.

Junior Accessory Dwelling Units. Current ADU law requires that local agencies allow conversions of existing space into an ADU. Given that this requirement supports development of additional living space that is largely similar to that authorized by the current optional junior accessory dwelling unit (JADU) law, the mandatory JADU requirement in this bill is unnecessary and duplicative.

Timing for Approval. We recognize that the sixty-day timeframe for permit approval is based on a similar standard for discretionary applications under the Permit Streamlining Act. We hope to work with the author to ensure that any similar timeframe for ADU permits is workable in the context of granting a ministerial permit.

For these reasons, we respectfully oppose AB 2890. If you need additional information regarding our position on this measure, please do not hesitate to contact Christopher Lee of CSAC at (916) 327-7500 (clee@counties.org), Tracy Rhine of RCRC at (916) 447-4806 (trhine@rcrcnet.org), Jolena Voorhis of UCC at (916) 327-7531 (jolena@urbancounties.com), or Jason Rhine of LCC at (916) 658-8200 (jrhine@cacities.org).

Sincerely,

Christopher Lee
Associate Legislative Representative
CSAC

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Executive Director
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LCC

cc: The Honorable Philip Ting, Member of the State Assembly
Members of the Assembly Housing and Community Development Committee
Lisa Engle, Chief Consultant, Assembly Housing and Community Development Committee
William Weber, Consultant, Assembly Republican Caucus

AB-2890 Land use: accessory dwelling units. (2017-2018)

Date Published: 05/26/2018 04:00 AM

AMENDED IN ASSEMBLY MAY 25, 2018

AMENDED IN ASSEMBLY MAY 01, 2018

AMENDED IN ASSEMBLY APRIL 12, 2018

AMENDED IN ASSEMBLY MARCH 22, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL No. 2890

Introduced by Assembly Member Ting
(Principal coauthor: Senator Skinner)

February 16, 2018

An act to amend Sections 65852.2 and 65852.22 of the Government Code, and to add Section 17921.2 to the Health and Safety Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 2890, as amended, Ting. Land use: accessory dwelling units.

The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of accessory dwelling units in single-family and multifamily residential zones and sets forth standards the ordinance is required to impose, including, among others, maximum unit size, parking, lot coverage, and height standards. Existing law prohibits the ordinance from establishing size requirements for accessory dwelling units that do not permit at least an efficiency unit to be constructed.

This bill would prohibit the imposition of lot coverage standards or requirements on minimum lot size, lot coverage, or floor area ratio, and would prohibit an ordinance from establishing size requirements for accessory dwelling units that do not permit at least an 800 square foot unit *of at least 16 feet in height* to be constructed.

Existing law requires a local agency that has adopted an ordinance for the creation of accessory dwelling units to consider a permit application within 120 days of receiving the application, and requires a local agency that has not adopted an ordinance to ministerially approve a permit application for the creation of an accessory dwelling unit within 120 days of receiving the application. Existing law also authorizes a local agency ordinance to require a permit applicant for an accessory dwelling unit to be an owner-occupant.

This bill would instead require a local agency that has or has not adopted an ordinance to consider a permit application for the creation of an accessory dwelling unit within 60 days. The bill would provide that, if a local

agency imposes an owner-occupancy restriction, the frequency of monitoring owner occupancy shall not be monitored more frequently than annually, shall be based on specified published documents, and would further define "owner-occupant" for purposes of that requirement.

Existing law requires a local agency to ministerially approve a permit application to create one accessory dwelling unit per single-family lot, subject to specified conditions and requirements.

This bill would provide for the ministerial approval of one or more accessory dwelling units on single-family and multifamily lots, subject to specified conditions and requirements.

Existing law requires a local agency to submit an ordinance adopted for the creation of accessory dwelling units to the department and authorizes the department to review and comment on the ordinance.

This bill would authorize the department to submit written findings as to whether the ordinance complies with state law and to notify the Attorney General if the ordinance is in violation of state law. The bill would authorize the department to adopt guidelines to implement uniform standards or criteria to supplement or clarify the terms, references, and standards set forth in statute and would exempt the adoption of the guidelines from the Administrative Procedure Act. The bill would also revise applicable definitions and make other conforming changes.

Existing law authorizes a local agency to provide by ordinance for the creation of junior accessory dwelling units in single-family residential zones and requires a local agency to consider an application for a junior accessory dwelling unit ministerially and to issue the permit within 120 days of submission of the application.

This bill would require the permit to be approved within 60 days of application and would require a local agency that has not adopted an ordinance for the creation of junior accessory dwelling units to apply the same standards established by this bill for local agencies with ordinances.

The State Housing Law requires the Department of Housing and Community Development to propose building standards to the California Building Standards Commission, and to adopt, amend, or repeal rules and regulations governing apartment houses and dwellings, as specified.

This bill would require the department to create and submit small building standards to the California Building Standards Commission by January 1, 2020.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. 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 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 criteria that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(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 Places. These standards shall not include requirements on minimum lot size, lot coverage, or floor area ratio.

(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 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 use and includes a proposed or existing single-family dwelling.

(iii) The accessory dwelling unit is either attached or located within the living area of the proposed or existing primary dwelling or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) The total area of floorspace of an attached accessory dwelling unit shall not exceed 50 percent of the proposed or existing primary dwelling living area or 1,200 square feet.

(v) The total area of floorspace 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 garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(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 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 a 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, and the local agency requires that those off-street parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered 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, within 60 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, 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 subsequent to the effective date of the act adding this paragraph 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. In the event that 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 upon the effective date of the act adding this paragraph 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 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 zoned for residential use that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that 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. If an ordinance imposes an owner-occupancy restriction, this restriction shall not be monitored more frequently than annually based on published public documents that evidence residency, including, but not limited to, a driver's license, school registration, or a voter registration document. For purposes of this requirement, an owner-occupant shall include any of the following:

(A) An owner of the lot who occupies either the primary dwelling or the accessory dwelling unit.

(B) A trust in which ownership of the lot is placed if at least one beneficiary of the trust is a person with a disability and that person occupies the primary dwelling or the accessory dwelling unit.

(C) An organization that owns the lot in order to provide long-term, deed-restricted affordable housing that is subject to a regulatory agreement with a local agency.

(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) within 60 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the proposed or existing primary dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an 800 square foot *accessory dwelling* unit *and an at least 16 feet in height accessory dwelling unit* to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(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 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 to create any of the following:

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

(i) The accessory dwelling unit or junior accessory dwelling unit is within the existing space of a single-family dwelling or accessory structure, including, but not limited to, reconstruction of an existing space with the same physical dimensions as the existing accessory structure.

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

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

(B) One detached, new-construction, single-story accessory dwelling *unit that may be subject to a limit* of not more than 800 square ~~feet~~ *feet, may be subject to a height limit of 16 feet, and* that does not exceed four-foot side and rear yard setbacks for a lot with a single-family dwelling. *This detached, new-construction, single-story accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A).*

(C) 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, or garages, if each unit complies with state building standards for dwellings.

(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, the correction of nonconforming 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.

(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.

(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) Accessory dwelling units shall not be considered by a local agency, special district, or water corporation to be a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in 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.

(B) For an accessory dwelling unit that is not described in 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 size or the number of its plumbing fixtures, 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) Local agencies 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. If the department finds that the local agency's ordinance does not comply with this section, the department ~~shall~~ *may* notify the local agency and ~~may notify~~ the Attorney General that the local agency is in violation of state law. The local agency shall consider findings made by the department and may change the ordinance to comply with this section or adopt the ordinance without changes. The legislative body of the local

agency shall include findings in its resolution that explain the reason the legislative body believes the ordinance complies with this section despite the findings of the department.

(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.

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

(1) "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.

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

(3) "Neighborhood" has the same meaning as set forth in Section 65589.5.

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

(5) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

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

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

(7) "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) 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.

SEC. 2. Section 65852.22 of the Government Code is amended to read:

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 already 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 existing walls of the structure, and require the inclusion of an existing bedroom.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.

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

(A) A sink with a maximum waste line diameter of 1.5 inches.

(B) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas.

(C) 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 whether the junior accessory dwelling unit is in compliance 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. A permit shall be issued within 60 days of submission of an application for a permit pursuant to this section. 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 the 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 the 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, that local agency shall apply the standards established in this section for the approval of a permit to construct a junior accessory dwelling unit.

(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 an existing single-family structure. 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.

SEC. 3. Section 17921.2 is added to the Health and Safety Code, to read:

17921.2. The department shall create small home building standards to apply to accessory dwelling units, which shall be drafted to achieve the most cost-effective construction standards possible, similar or more cost effective than standards in the 2007 edition of the California Building Standards Code. These small building standards shall be submitted to the California Building Standards Commission for consideration on or before January 1, 2020.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

April 19, 2018

The Honorable Mike McGuire
Chair, Senate Governance and Finance Committee
State Capitol, Room 2082
Sacramento, CA 95814

Re: SB 1469 (Skinner): Land use: accessory dwelling units
As amended on April 16, 2018 – OPPOSE
Set for hearing in Senate Governance and Finance Committee April 25, 2018

Dear Senator McGuire,

The California State Association of Counties (CSAC), the Urban Counties of California (UCC), the Rural County Representatives of California (RCRC), and the League of California Cities (LCC) are opposed to Senate Bill 1469 by Senator Nancy Skinner. This bill would significantly amend the statewide standards that apply to locally-adopted ordinances concerning accessory dwelling units (ADUs), even though the law was thoroughly revised in 2016 Legislative Session. These revisions were a product of two carefully-negotiated bills that only became effective in January 2017, with further amendments during the 2017 Legislative Session. All local agencies that worked in good faith to implement those laws would have to reopen their ordinances yet again to comply with the provisions of SB 1469. Our organizations are opposed to this complete rewrite of the statutes pertaining to ADU's for the following reasons.

Reverses Existing ADU Law. The last major changes to the state's ADU law only became effective on January 1, 2017. Since that time, counties and cities have updated their ordinances to be consistent with state law by designating areas where ADU's are allowed and have imposed development standards consistent with the law. SB 1469 reverses the framework of the existing law, instead requiring ordinances to identify only where ADUs are *prohibited*. This would likely require every agency that updated their ordinance pursuant to the last bills to reopen the revisions made in 2016 and 2017 once again—a costly and unnecessary burden.

Precludes Imposition of Impact Fees. Existing ADU law allows units of up to 1,200 square ft. Builders of pre-fabricated homes have developed new models that meet this size limit and include up to four bedrooms and two bathrooms. Existing ADU law requires that impact fees be charged in proportionate to the size of the unit, so such a four-bedroom unit would not be charged the same fees as an efficiency-sized studio unit. Despite the fact that such ADUs will clearly have impacts on infrastructure similar to the impacts of a new single family home, this bill would preclude the imposition of any impact fees designed to offset the costs of new or expanded infrastructure that residential growth requires.

Precludes Undefined "Other Fees or Charges." SB 1469 provides that ADU's "shall not be subject to impact fees, connection fees, capacity charges, *or any other fees or charges levied by a local agency*…." The scope of this last clause is unclear, and will invite litigation. Does "any other fees or charges" include ordinary processing fees to recover the local agency's cost to process the ADU application? If so, this represents a taxpayer subsidy for permit applicants, and a significant unreimbursed state mandate. What other fees are (or are not) prohibited by this provision? As written, this provision will be difficult to administer, and will financially harm the very same county departments responsible for permitting ADUs and serving their future residents.

Allows ADUs in Non-Residential Zones. The 2016 ADU law revisions applied only to residentially-*zoned* land. SB 1469 would require local agencies to approve ADUs "in areas where a single-family or multifamily dwelling is *authorized*." The reason for this change is unclear, but the new language could be interpreted to mandate that ADU's be allowed on any parcel with an existing single-family home, regardless of the zoning. This change will intensify non-conforming land uses, creating conflict with other policy goals. For instance, counties and cities must consider whether allowing additional residential living space in an agricultural or industrial zoned parcel would create new conflicts with adjacent land uses such as established businesses. Under existing law, local agencies have discretion to allow ADUs in such contexts when there is an existing legal non-conforming dwelling unit. Given the potential for conflict, such units should continue to be discretionary on commercial, agricultural, or industrial lands.

Precludes Legitimate Restrictions on Parcel Size and Lot Coverage. In unincorporated areas, where many parcels do not have public water or sewer service, parcel sizes and lot coverage standards are important regulatory tools for ensuring that a particular lot can actually accommodate an ADU. Instead of allowing counties to establish reasonable, generally applicable standards identifying those parcels unable to accommodate required well and septic services, this bill requires such issues to be considered on a case-by-case, which will create uncertainty and confusion for applicants.

Conflicts with Concurrent Legislation. SB 1469 amends the same section of law as Senate Bill 831 (Wieckowski). We urge the Committee to ensure that these two measures do not move forward with conflicting language.

Department of Housing and Community Development Guidelines Process. HCD should not be given authority to create guidelines that would have the effect of overriding a local land use ordinance without going through the formal rulemaking process under the Office of Administrative Law. The normal rulemaking process is necessary to ensure that the public and affected local governments have sufficient input on the development of such regulations.

Preponderance of Evidence Standard. The preponderance of evidence standard is inappropriate for judicial review of a legislative decision by elected officials to prohibit ADUs or make them a discretionary use in areas where additional residential construction may present a threat to health and safety. This will merely invite litigation in which judges will be asked to second-guess decisions made through democratic process. For instance, how much evidence would a local agency need to provide in order to convince a judge that making ADUs discretionary in areas without community water or sewer service is justified, or to preclude ADUs in a high fire hazard severity area? The existing substantial evidence standard is appropriate and sufficient.

Junior Accessory Dwelling Units. Current ADU law requires that local agencies allow conversions of existing space into an ADU. Given that this requirement supports development of additional living space that is largely similar to that authorized by the current optional junior accessory dwelling unit (JADU) law, the mandatory JADU requirement in this bill is unnecessary and duplicative.

Timing for Approval. We recognize that the sixty-day timeframe for permit approval is based on a similar standard for discretionary applications under the Permit Streamlining Act. We hope to work with the author to ensure that any similar timeframe for ADU permits is workable in the context of granting a ministerial permit.

For these reasons, we respectfully oppose SB 1469. If you need additional information regarding our position on this measure, please do not hesitate to contact Christopher Lee of CSAC at (916) 327-7500 (clee@counties.org), Tracy Rhine of RCRC at (916) 447-4806 (trhine@rcrcnet.org), Jolena Voorhis of UCC at (916) 327-7531 (jolena@urbancounties.com), or Jason Rhine of LCC at (916) 658-8200 (jrhine@cacities.org).

Sincerely,

Christopher Lee
Associate Legislative Representative
CSAC

Jolena L. Voorhis
Executive Director
UCC

Tracy Rhine
Legislative Representative
RCRC

Jason Rhine
Legislative Representative
LCC

cc: The Honorable Nancy Skinner, Member of the State Senate
Members of the Senate Governance & Finance Committee
Anton Favorini-Csorba, Consultant, Governance & Finance Committee
Ryan Eisberg, Consultant, Senate Republican Caucus

SB-1469 Land use: accessory dwelling units. (2017-2018)

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AMENDED IN SENATE MAY 01, 2018

AMENDED IN SENATE APRIL 16, 2018

AMENDED IN SENATE APRIL 11, 2018

AMENDED IN SENATE MARCH 22, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL No. 1469

Introduced by Senator Skinner

February 16, 2018

An act to amend Sections 65852.2 and 65852.22 of the Government Code, and to add Section 17921.2 to the Health and Safety Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1469, as amended, Skinner. Land use: accessory dwelling units.

The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of accessory dwelling units in single-family and multifamily residential zones, requires the ordinance to designate areas within the local jurisdiction where accessory dwelling units may be permitted, and sets forth standards the ordinance is required to impose, including, among others, maximum unit size, parking, lot coverage, and height standards.

The State Housing Law requires, with an exception for building standards adopted, amended or repealed by the State Fire Marshal, the Department of Housing and Community Development to propose the adoption, amendment, or repeal of building standards to the California Building Standards Commission, as specified, and adopt, amend, and repeal other rules and regulations for the protection of the public health, safety, and general welfare of the occupant and the public governing the erection, construction, enlargement, conversion, alteration, repair, moving, removal, demolition, occupancy, use, height, court, area, sanitation, ventilation and maintenance of all apartment houses and dwellings, and buildings and structures accessory thereto.

This bill would ~~instead authorize accessory dwelling units to be created in areas where a single-family or multifamily dwelling is authorized. The bill would~~ *revise and recast the above-described provisions regarding accessory dwelling units to* authorize the ordinance adopted for the creation of accessory dwelling units to designate areas where accessory dwelling units are excluded for ~~fire and life~~ *health and* safety purposes based on clear findings supported by ~~a preponderance of~~ *substantial* evidence. The bill would limit the types of standards

that a local agency may impose on accessory dwelling units, including parking, height, size, and setback requirements, and would revise certain standards as specified. The bill would include among the standards a requirement that the accessory dwelling unit comply with building standards in effect prior to the effective date of small home building standards that the bill would require the Department of Housing and Community Development to create, as specified, and submit to the California Building Standards Commission by January 1, 2020. The bill would require compliance with the latter building standards after their effective date. The bill would require a local agency that has not adopted an ordinance for accessory dwelling units to consider the permit ministerially without discretionary review or a hearing, and would deem an application approved if the local agency does not act on the submitted application within 60 days. *The bill would prohibit an accessory dwelling unit on a single-family lot, when assessed as new construction, from triggering a reassessment of the value of the underlying land and structures.* The bill would require a local agency, regardless of whether it has adopted an ordinance, to ministerially approve an application for a building permit to create one or more accessory dwelling units in specified circumstances.

Existing law ~~authorizes a local agency, special district, or water corporation to require~~ *prohibits an accessory dwelling unit from being 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. Existing law prohibits requirements for the installation of* a new or separate utility connection between the accessory dwelling unit and the ~~utility~~ *utility, except in instances where an accessory dwelling unit is subject to ministerial approval, as specified,* and authorizes fees to be ~~charged.~~ *charged in those instances.*

This bill would ~~specify that an accessory dwelling unit is not subject to impact fees, connection fees, capacity charges, or any other fees or charges levied by a local agency, school district, special district, or water corporation. The bill would also prohibit an accessory dwelling unit or a junior accessory dwelling unit on a single-family lot, when assessed as new construction, from triggering a reassessment of the value of the underlying land and structures.~~ *instead prohibit an accessory dwelling unit from being considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating fees charged for new development, except in certain circumstances when a new or separate utility connection between the accessory dwelling unit and the utility may be required and except for certain fees charged by a school district that the bill would limit to $3,000 per accessory dwelling unit.*

Existing law requires a local agency to submit an ordinance adopted for the creation of accessory dwelling units to the department and authorizes the department to review and comment on the ordinance.

This bill would authorize the department to submit written findings as to whether the ordinance complies with state law and to notify the Attorney General if the ordinance is in violation of state law. The bill would authorize the department to adopt guidelines to implement uniform standards or criteria to supplement or clarify the terms, references, and standards set forth in statute and would exempt the adoption of the guidelines from the Administrative Procedure Act. The bill would also revise applicable definitions and make other conforming changes.

Existing law authorizes a local agency to provide by ordinance for the creation of junior accessory dwelling units in single-family residential zones.

This bill would revise these provisions to among other things, require ministerial review of a permit and issuance at the permit within 60 days of application.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas ~~where a single-family or multifamily dwelling is authorized.~~ *zoned to allow single-family or multifamily residential use.*

The ordinance shall do all of the following:

(1) Impose not more than the following standards on accessory dwelling units:

(A) (i) Subject to subdivision (m), require parking if an accessory dwelling unit is proposed on a lot. However, this parking requirement may be reduced or eliminated at the discretion of the local agency.

(ii) Subject to clause (iii), authorize required parking spaces to be provided as tandem parking, other nonconforming parking configurations, within a driveway, or within setback areas, without a requirement that any parking space be covered or within a structure.

(iii) The authorization of clause (ii) may be limited by specific findings by the local agency that tandem parking or other nonconforming parking configurations, or parking in setback locations is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(B) Require a front yard setback, landscape, and an architectural review of the accessory dwelling unit.

(C) Limits on accessory dwelling units greater than 800 square feet that are either attached to the rear of an existing or proposed primary dwelling structure or located in the rear yard of that dwelling structure.

(D) Standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(E) Prohibit the accessory dwelling unit from being sold or otherwise conveyed separately from the primary dwelling structure, except that the accessory dwelling unit may be rented separately from the primary dwelling structure.

(F) Require the lot where an accessory dwelling unit is located to have a proposed or existing single-family or multifamily primary dwelling structure.

(G) Require the accessory dwelling unit to be attached to or located within the living area of the proposed or existing primary single-family or multifamily dwelling structure, attached to or located within a proposed or existing accessory structure for the primary dwelling structure, or detached from the proposed or existing primary dwelling structure, and located on the same lot as the proposed or existing primary dwelling structure.

(H) Limit the total area of floorspace of an accessory dwelling unit and, if also on the same lot, a junior accessory dwelling unit, as defined in Section 65852.22, to not exceed 50 percent of the proposed or existing living area of the primary dwelling structure or 1,200 square feet, whichever is greater.

(I) Require an accessory dwelling unit to comply with the building standards in effect prior to the effective date of the building standards described in Section 17921.2 of the Health and Safety Code. Upon the effective date of the building standards described in Section 17921.2 of the Health and Safety Code, the ordinance adopted pursuant to this section shall require compliance with those building standards. If the accessory dwelling unit is factory-built housing approved by the department, the ordinance shall require compliance with the building standards for factory-built housing approved by the department and published in the California Building Standards Code.

(2) Provide that an accessory dwelling unit does 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 for the lot.

(3) Provide that an accessory dwelling unit shall not be considered to exceed the total allowable floor area or allowable floor-to-area ratio for the lot upon which the accessory dwelling unit is located.

(4) Provide that minimum lot size, total floor area, floor area ratio, and lot coverage standards shall not be applied to an accessory dwelling unit in an existing structure or a new construction, single story rear yard accessory dwelling unit, unless the unit exceeds a height of 16 feet or exceeds four-feet side and rear yard setbacks.

(5) Provide that no passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(6) Provide that no setback shall be required for an existing living area or accessory 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 five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above or attached to a garage or that is constructed in a rear or side yard area.

(7) Provide that an accessory dwelling unit that conforms to the ordinance shall be deemed to be an accessory use or an accessory building shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot, and shall not be considered to be a change of use for any purpose or exceed the allowable density for the lot upon which it is located.

(b) The ordinance adopted pursuant to subdivision (a) may do any of the following:

(1) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be excluded, but only for ~~purposes of fire and life safety,~~ *health and safety, including fire safety, purposes,* based on clear findings that are supported by ~~a preponderance of~~ *substantial* evidence. The designation of these areas shall be based on criteria that include the adequacy of water and sewer services and other ~~fire and life safety~~ *health and safety, including fire safety,* issues.

(2) Require an applicant for a permit issued pursuant to subdivision (a) on a lot with a proposed or existing single-family dwelling to be an owner-occupant. For purposes of this requirement, an owner-occupant shall include any of the following:

(A) An owner of the lot who occupies either the primary dwelling or the accessory dwelling unit, regardless of whether ownership of the lot is held in trust on behalf of the owner.

(B) A trust in which ownership of the lot is held if at least one beneficiary of the trust is a person with a disability and that person occupies the primary dwelling or the accessory dwelling unit.

(C) An organization or person that owns the lot and leases the primary dwelling or accessory dwelling unit at a below market rent pursuant to a regulatory agreement with a local agency.

(3) Require any rental of the property to be for a term longer than 30 days and be subject to additional short-term rental standards.

(4) Require approval by the local health officer where a private sewage system is being used.

(5) Limit the height of an accessory dwelling unit only if the accessory dwelling unit is greater than 16 feet.

(c) The ordinance and an accessory dwelling unit that conforms to the ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(d) A permit application for an accessory dwelling unit submitted pursuant to the ordinance adopted pursuant to subdivision (a) shall be considered 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, within 60 days after receiving the application. If the local agency does not act on the submitted application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(e) An existing ordinance governing an accessory dwelling unit 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 subdivision (a). If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of that subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in subdivision(a) for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(f) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under the ordinance adopted pursuant to this section.

(g) This section establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit ~~where a residential dwelling is authorized.~~ *on a lot zoned for residential use.* No additional standards, other than those provided in this section, shall be utilized or imposed.

(h) If an ordinance imposes an owner occupancy restriction, this restriction shall not be monitored more frequently than annually based on published public documents that evidence residency, including, but not limited to, a drivers license, school registration, or a voter registration document.

(i) An accessory dwelling unit on a single-family lot shall not, when assessed as new construction, trigger a reassessment of the value of the underlying land or other structures on the property.

(j) 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 section.

(k) When a local agency that has not adopted an ordinance pursuant to 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) within 60 days after receiving the application. If the local agency does not act upon the submitted application within 60 days, it shall be deemed approved.

(l) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the proposed or existing primary dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an 800 square foot unit to be constructed in compliance with local development standards. The installation of fire sprinklers shall not be required in an accessory dwelling unit if they are not required for the primary residence.

(m) A local agency, whether or not it has adopted an ordinance pursuant to subdivision (a), shall not impose parking standards for one or two accessory dwelling units on a single-family dwelling lot in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile 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 single-family dwelling 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.

(n) 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, a local agency shall not require that those offstreet parking spaces be replaced.

(o) (1) Notwithstanding subdivisions (a) to (l), inclusive, a local agency shall ministerially approve an application for a building permit to create any of the following:

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

(i) The accessory dwelling unit or junior accessory dwelling unit is within the existing space of a single-family dwelling or accessory structure, including, but not limited to, reconstruction of an existing space with the same physical dimensions as the existing accessory structure.

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

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

(B) One new construction single story accessory dwelling of not more than 800 square feet, not more than 16 feet in height, and that does not exceed four-feet side and rear yard setbacks.

(C) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as a livable space, including, but not limited to, a storage room, boiler room, passageway, attic, or garage.

(D) No 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) The installation of fire sprinklers shall not be required in an accessory dwelling unit authorized by ministerial permit pursuant to this subdivision if they are not required for the primary residence, and the local agency shall

not require existing zoning nonconforming improvements to be corrected as a condition of granting the ministerial permit.

(3) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot created pursuant to this subdivision.

(p) A local agency shall not implement standards for minimum lot size, lot coverage, or floor area ratio requirements for accessory dwelling units and shall allow for the construction of an accessory dwelling unit that complies with this section on any lot that allows for construction of a single-family or multifamily dwelling structure, unless specific findings are made based on a preponderance of evidence by a local agency that the construction of the accessory dwelling unit would adversely impact fire and life safety.

(q) *(1)* An accessory dwelling unit shall not be considered by a local agency, ~~school district,~~ special district, or water corporation to be a new residential use for the purposes of calculating ~~fees.~~ *fees charged for new development, except as provided in paragraphs (2) and (3).*

(2) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (o), 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, capacity charge, or equivalent charge for new service that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, and upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(3) Fees charged by a school district pursuant to Chapter 4.9 (commencing with Section 65995) and Chapter 6 of Part 10.5 of Division 1 of Title 1 of the Education Code (commencing with Section 17620) shall be limited to no more than three thousand dollars ($3,000) per accessory dwelling unit.

~~(r) An accessory dwelling unit permitted pursuant to this section shall not be subject to impact fees, connection fees, capacity charges, or any other fees or charges levied by a local agency, school district, special district, or water corporation.~~

~~(s)~~

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

~~(t)~~

(s) 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. If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law. The local agency shall consider findings made by the department and may change the ordinance to comply with section or adopt the ordinance without changes. The legislative body of the local agency shall include findings in its resolution that explain the reason the legislative body believes the ordinance complies with this section despite the findings of the department.

~~(u)~~

(t) 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.

~~(v)~~

(u) As used in this section, the following terms have the following meanings:

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

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

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

(2) "Accessory structure" means a detached structure from a single-family or multifamily dwelling structure and includes a detached garage, pool house, studio, and other similar structures, but does not include an accessory dwelling unit or junior accessory dwelling unit.

(3) "Department" means the Department of Housing and Community Development.

(4) "Factory-built housing" has the same meaning as in Section 19971 of the Health and Safety Code.

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

(B) "Living area" within a multifamily dwelling means the interior habitable area of the dwelling, but does not include a basement, attic, garage, or any accessory structure.

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

(7) "Neighborhood" has the same meaning as set forth in Section 65589.5.

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

(9) "Public transit" means 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.

~~(w)~~

(v) 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.

~~(x)~~

(w) The amendments made to this section by the act adding this subdivision shall not be construed to apply to a permit application for an accessory dwelling unit submitted prior to January 1, 2019, which shall be subject to the requirements of this section as it read prior to that date.

SEC. 2. Section 65852.22 of the Government Code is amended to read:

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 dwellings with a single-family dwelling already built on the lot.

(2) Require owner-occupancy in the single-family dwelling 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 existing walls of the structure, and require the inclusion of an existing bedroom.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.

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

(A) A sink with a maximum waste line diameter of 1.5 inches.

(B) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas.

(C) 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 whether the junior accessory dwelling unit is in compliance 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. A permit shall be issued within 60 days of submission of an application for a permit pursuant to this section. 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 the 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 dwelling that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family dwellings within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit.

(e) For the 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, that local agency shall apply the standards established in this section for the approval if a permit to construct a junior accessory dwelling unit, unless and until the local agency adopts an ordinance that complies with this section.

(h) A junior accessory dwelling unit shall not, when assessed as new construction, trigger a reassessment of the value of the underlying land or other structures on the property.

(i) 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 an existing single-family structure. 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.

SEC. 3. Section 17921.2 is added to the Health and Safety Code, to read:

17921.2. The department shall create small home building standards to apply to accessory dwelling units, which shall be drafted to achieve the most cost-effective construction standards possible, similar or more cost effective

than standards in the 2007 edition of the California Building Standards Code. These small building standards shall be submitted to the California Building Standards Commission for consideration on or before January 1, 2020.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

April 18. 2018

The Honorable Mike McGuire
Chair, Senate Governance and Finance Committee
State Capitol, Room 5061
Sacramento, CA 95814

Re: SB 831 (Wieckowski): Land use: accessory dwelling units
As amended on April 9, 2018 – OPPOSE
Referred to Senate Governance and Finance Committee

Dear Senator McGuire,

The California State Association of Counties (CSAC), the Urban Counties of California (UCC), the Rural County Representatives of California (RCRC), and the League of California Cities (LCC) are opposed to Senate Bill 831 by Senator Wieckowski. This bill would significantly amend the statewide standards that apply to locally-adopted ordinances concerning accessory dwelling units (ADUs), even though the law was thoroughly revised in 2016 Legislative Session. These revisions were a product of two carefully-negotiated bills that only became effective in January 2017, with further amendments during the 2017 Legislative Session. All local agencies that worked in good faith to implement those laws would have to reopen their ordinances yet again to comply with the provisions of SB 831. Our organizations are opposed to this complete rewrite of the statutes pertaining to ADU's for the following reasons.

Reverses Existing ADU Law. The last major changes to the state's ADU law only became effective on January 1, 2017. Since that time, counties and cities have updated their ordinances to be consistent with state law by designating areas where ADU's are allowed and have imposed development standards consistent with the law. SB 831 reverses the framework of the existing law, instead requiring ordinances to identify only where ADUs are *prohibited*. This would likely require every agency that updated their ordinance pursuant to the last bills to reopen the revisions made in 2016 and 2017 once again—a costly and unnecessary burden.

Precludes Imposition of Impact Fees. Existing ADU law allows units of up to 1,200 square ft. Builders of pre-fabricated homes have developed new models that meet this size limit and include up to four bedrooms and two bathrooms. Existing ADU law requires that impact fees be charged in proportionate to the size of the unit, so such a four-bedroom unit would not be charged the same fees as an efficiency-sized studio unit. Despite the fact that such ADUs will clearly have impacts on infrastructure similar to the impacts of a new single family home, this bill would preclude the imposition of any impact fees designed to offset the costs of new or expanded infrastructure that residential growth requires.

Precludes Undefined "Other Fees or Charges." SB 831 provides that ADU's "shall not be subject to impact fees, connection fees, capacity charges, *or any other fees or charges levied by*

a local agency…." The scope of this last clause is unclear, and will invite litigation. Does "any other fees or charges" include ordinary processing fees to recover the local agency's cost to process the ADU application? If so, this represents a taxpayer subsidy for permit applicants, and a significant unreimbursed state mandate. What other fees are (or are not) prohibited by this provision? As written, this provision will be difficult to administer, and will financially harm the very same county departments responsible for permitting ADUs and serving their future residents.

Allows ADUs in Non-Residential Zones. The 2016 ADU law revisions applied only to residentially-*zoned* land. SB 831 would require local agencies to approve ADUs "in areas where a single-family or multifamily dwelling is *authorized*." The reason for this change is unclear, but the new language could be interpreted to mandate that ADU's be allowed on any parcel with an existing single-family home, regardless of the zoning. This change will intensify non-conforming land uses, creating conflict with other policy goals. For instance, counties and cities must consider whether allowing additional residential living space in an agricultural or industrial zoned parcel would create new conflicts with adjacent land uses such as established businesses. Under existing law, local agencies have discretion to allow ADUs in such contexts when there is an existing legal non-conforming dwelling unit. Given the potential for conflict, such units should continue to be discretionary on commercial, agricultural, or industrial lands.

Precludes Legitimate Restrictions on Parcel Size and Lot Coverage. In unincorporated areas, where many parcels do not have public water or sewer service, parcel sizes and lot coverage standards are important regulatory tools for ensuring that a particular lot can actually accommodate an ADU. Instead of allowing counties to establish reasonable, generally applicable standards identifying those parcels unable to accommodate required well and septic services, this bill requires such issues to be considered on a case-by-case, which will create uncertainty and confusion for applicants.

Conflicts with Concurrent Legislation. SB 831 amends the same section of law as Senate Bill 1469 (Skinner). We urge the Committee to ensure that these two measures do not move forward with conflicting language.

Department of Housing and Community Development Guidelines Process. HCD should not be given authority to create guidelines that would have the effect of overriding a local land use ordinance without going through the formal rulemaking process under the Office of Administrative Law. The normal rulemaking process is necessary to ensure that the public and affected local governments have sufficient input on the development of such regulations.

Preponderance of Evidence Standard. The preponderance of evidence standard is inappropriate for judicial review of a legislative decision by elected officials to prohibit ADUs or make them a discretionary use in areas where additional residential construction may present a threat to health and safety. This will merely invite litigation in which judges will be asked to second-guess decisions made through democratic process. For instance, how much evidence would a local agency need to provide in order to convince a judge that making ADUs discretionary in areas without community water or sewer service is justified, or to preclude ADUs in a high fire hazard severity area? The existing substantial evidence standard is appropriate and sufficient.

Timing for Approval. We recognize that the sixty-day timeframe for permit approval is based on a similar standard for discretionary applications under the Permit Streamlining Act. We hope to work with the author to ensure that any similar timeframe for ADU permits is workable in the context of granting a ministerial permit.

For these reasons, we respectfully oppose SB 831. If you need additional information regarding our position on this measure, please do not hesitate to contact Christopher Lee of CSAC at (916) 327-7500 (clee@counties.org), Tracy Rhine of RCRC at (916) 447-4806 (trhine@rcrcnet.org), Jolena Voorhis of UCC at (916) 327-7531 (jolena@urbancounties.com), or Jason Rhine of LCC at (916) 658-8200 (jrhine@cacities.org).

Sincerely,

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cc: The Honorable Bob Wieckowski, Member of the State Senate
Members of the Senate Governance and Finance Committee
Anton Favorini-Csorba, Consultant, Senate Governance and Finance Committee
Ryan Eisberg, Consultant, Senate Republican Caucus

SB-831 Land use: accessory dwelling units. (2017-2018)

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AMENDED IN SENATE MAY 25, 2018

AMENDED IN SENATE MAY 14, 2018

AMENDED IN SENATE MAY 01, 2018

AMENDED IN SENATE APRIL 09, 2018

AMENDED IN SENATE MARCH 13, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL No. 831

Introduced by Senator Wieckowski
(Coauthors: Senators ~~Atkins~~ *Atkins, Skinner,* and Wiener)

January 04, 2018

An act to amend Sections ~~65585 and 65852.2 of,~~ *65585 and 65852.2, and to add Section 65852.21 to,* and to add and repeal Section 65852.23 of, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 831, as amended, Wieckowski. Land use: accessory dwelling units.

The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of accessory dwelling units in single-family and multifamily residential zones, requires that ordinance to designate areas where accessory dwelling units may be permitted, and sets forth standards the ordinance is required to impose, including, among others, maximum unit size, parking, and height standards. Existing law prohibits an accessory dwelling unit from being 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. Existing law prohibits requirements for the installation of a new or separate utility connection between the accessory dwelling unit and the utility, except in instances where an accessory dwelling unit is subject to ministerial approval, as specified, and authorizes a fee to be charged in those instances. Existing law requires a local agency to submit an ordinance adopted for the creation of accessory dwelling units to the Department of Housing and Community Development and authorizes the department to review and comment on the ordinance. Existing law requires an application for an accessory dwelling unit permit to be considered, as specified, within 120 days of receiving it.

This bill would require the ordinance for the creation of accessory dwelling units to designate areas where accessory dwelling units may be excluded for health and safety purposes, as specified. The bill would revise the standards for the local ordinance to, among other things, *delete the authority to include lot courage standards,*

include a prohibition on considering the square footage of a proposed accessory dwelling unit when calculating an allowable floor-to-area ratio *or lot coverage ratio* for the lot. The bill would require that a permit application for an accessory dwelling unit be approved or disapproved within 60 days and would specify that if a local agency does not act on an application for a accessory dwelling unit within 60 days, then the application shall be deemed approved. The bill would prohibit a local agency from requiring that offstreet parking spaces be replaced when a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an accessory dwelling unit. The bill would prohibit another local ordinance, policy, or regulation from being the basis for the delay of the issuance of a building permit or use permit for an accessory dwelling unit. The bill would delete provisions authorizing a local agency to require owner occupancy by the permit applicant and would declare an agreement with a local agency to maintain owner occupancy as void and unenforceable.

This bill would prohibit an accessory dwelling unit from being considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating fees charged for new development, except in certain circumstances when a new or separate utility connection between the accessory dwelling unit and the utility may be required and except for certain fees charged by a school district that the bill would limit to $3,000 per accessory dwelling unit.

The bill would authorize the department, upon submission of an adopted ordinance for the creation of accessory dwelling units, to submit written findings to the local agency regarding whether the ordinance complies with statutory provisions. The bill would authorize the department to adopt guidelines to implement uniform standards or criteria to supplement or clarify the terms, references, or standards set forth in statute and would exempt the adoption of those guidelines from the Administrative Procedure Act. The bill would, until January 1, 2029, also require a local building official, upon request of the owner of the accessory dwelling unit, to approve a delay of not less than 10 years of the enforcement of any building code requirement that, in the judgment of the building official, is not necessary to protect public health and safety. By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

This bill would also require the department to notify the city, county, or city and county and authorize notice to the Attorney General when the city, county, or city and county is not substantially complying with the above-described provisions regarding accessory dwelling units.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

The bill would require a local agency to ministerially approve an application for a building permit to create one or more accessory dwelling units if certain criteria are met.

Existing law authorizes a local agency to provide by ordinance for the creation of junior accessory dwelling units, as defined, in single-family residential zones and requires the ordinance to include, among other things, standards for the creation of a junior accessory dwelling unit, required deed restrictions, and occupancy requirements. Existing law prohibits an ordinance from requiring, as a condition of granting a permit for a junior accessory dwelling unit, additional parking requirements.

The bill would require a local agency to ministerially approve the creation of junior accessory dwelling units in single-family residential zones, if specified criteria are met.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65585 of the Government Code is amended to read:

65585. (a) In the preparation of its housing element, each city and county shall consider the guidelines adopted by the department pursuant to Section 50459 of the Health and Safety Code. Those guidelines shall be advisory to

each city or county in the preparation of its housing element.

(b) (1) At least 90 days prior to adoption of its housing element, or at least 60 days prior to the adoption of an amendment to this element, the planning agency shall submit a draft element or draft amendment to the department.

(2) The planning agency staff shall collect and compile the public comments regarding the housing element received by the city, county, or city and county, and provide these comments to each member of the legislative body before it adopts the housing element.

(3) The department shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the draft in the case of an adoption or within 60 days of its receipt in the case of a draft amendment.

(c) In the preparation of its findings, the department may consult with any public agency, group, or person. The department shall receive and consider any written comments from any public agency, group, or person regarding the draft or adopted element or amendment under review.

(d) In its written findings, the department shall determine whether the draft element or draft amendment substantially complies with this article.

(e) Prior to the adoption of its draft element or draft amendment, the legislative body shall consider the findings made by the department. If the department's findings are not available within the time limits set by this section, the legislative body may act without them.

(f) If the department finds that the draft element or draft amendment does not substantially comply with this article, the legislative body shall take one of the following actions:

(1) Change the draft element or draft amendment to substantially comply with this article.

(2) Adopt the draft element or draft amendment without changes. The legislative body shall include in its resolution of adoption written findings which explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with this article despite the findings of the department.

(g) Promptly following the adoption of its element or amendment, the planning agency shall submit a copy to the department.

(h) The department shall, within 90 days, review adopted housing elements or amendments and report its findings to the planning agency.

(i) (1) (A) The department shall review any action or failure to act by the city, county, or city and county that it determines is inconsistent with an adopted housing element or Section 65583, including any failure to implement any program actions included in the housing element pursuant to Section 65583. The department shall issue written findings to the city, county, or city and county as to whether the action or failure to act substantially complies with this article, and provide a reasonable time no longer than 30 days for the city, county, or city and county to respond to the findings before taking any other action authorized by this section, including the action authorized by subparagraph (B).

(B) If the department finds that the action or failure to act by the city, county, or city and county does not substantially comply with this article, and if it has issued findings pursuant to this section that an amendment to the housing element substantially complies with this article, the department may revoke its findings until it determines that the city, county, or city and county has come into compliance with this article.

(2) The department may consult with any local government, public agency, group, or person, and shall receive and consider any written comments from any public agency, group, or person, regarding the action or failure to act by the city, county, or city and county described in paragraph (1), in determining whether the housing element substantially complies with this article.

(j) The department shall notify the city, county, or city and county and may notify the Office of the Attorney General that the city, county, or city and county is in violation of state law if the department finds that the housing element or an amendment to this element, or any action or failure to act described in subdivision (i), does not substantially comply with this article or that any local government has taken an action in violation of the following:

(1) Housing Accountability Act (Section 65589.5 of the Government Code).

(2) Section 65863 of the Government Code.

(3) Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(4) Section 65008 of the Government Code.

(5) Section 65852.2 of the Government Code.

SEC. 2. 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 excluded for health and safety, including fire safety, purposes, based on clear findings that are supported by substantial evidence. The designation of areas shall be based on criteria that may include, but are not limited to, the adequacy of water and sewer services and other health and safety, including fire safety, issues.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, ~~lot coverage,~~ 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 Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(iii) Notwithstanding clause (i), a local agency may not implement standards for minimum lot size requirements for accessory dwelling units and shall allow for the construction of an accessory dwelling unit that complies with this section on any lot zoned for residential use, unless the local agency makes specific findings that the construction of the accessory dwelling unit would adversely impact public health and safety, including fire safety.

(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. The square footage of a proposed accessory dwelling unit shall not be considered when calculating an allowable floor-to-area ratio *or lot coverage ratio* for the lot upon which the accessory dwelling unit is to be located.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The 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 includes a proposed or existing single-family dwelling.

(iii) The accessory dwelling unit is either attached or located within the proposed or existing living area of the proposed or existing primary dwelling or 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) The total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the proposed or existing primary dwelling living area or 1,200 square feet.

(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 that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than three feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from 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 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 a 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, a local agency shall not require that those off-street parking spaces be replaced.

(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 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, within 60 days after receiving the application. If the local agency has not acted upon the submitted application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, 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. In the event that 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 utilized or imposed, 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. The square footage of a proposed accessory dwelling unit shall not be considered when calculating an allowable floor-to-area ratio for the lot upon which the accessory dwelling unit is to be located.

(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) within 60 days after receiving the application. If the local agency has not acted upon the submitted application within 60 days from the date of receipt, it shall be deemed approved.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the proposed or existing primary dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an ~~efficiency~~ *800-square-foot accessory dwelling* unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(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 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) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create one accessory dwelling unit per lot if the unit is substantially contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(f) A city shall not require owner occupancy for either the primary or the accessory dwelling unit. An agreement with a local agency to maintain owner occupancy as a condition for issuance of a building permit for an accessory dwelling unit shall be void and unenforceable.

(g) (1) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for the purposes of calculating fees charged for new development, except as provided in paragraphs (2) and (3).

(2) For an accessory dwelling unit that is not described in 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, capacity charge, or equivalent charge for new service that 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 system. This fee or charge shall not exceed the reasonable cost of providing this service.

(3) Fees charged by a school district pursuant to Chapter 4.9 (commencing with Section 65995) of this code and Chapter 6 (commencing with Section 17620) of Part 10.5 of Division 1 of Title 1 of the Education Code shall be limited to no more than three thousand dollars ($3,000) per accessory dwelling unit.

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

(i) 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. If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and may notify the office of the Attorney General that the local agency is in violation of state law. The local agency shall consider findings made by the department and may change the ordinance to comply with this section or 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.

(j) 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.

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

(1) "Accessory structure" means an existing, fixed structure, including, but not limited to, a garage, studio, pool house, or other similar structure.

(2) "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.

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

(4) "Neighborhood" has the same meaning as set forth in Section 65589.5.

(5) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

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

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

(7) "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.

(8) "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.

(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.

SEC. 3. *Section 65852.21 is added to the Government Code, immediately following Section 65852.2, to read:*

65852.21. *(a) Notwithstanding Sections 65852.2 and 65852.22, 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:*

(1) One accessory dwelling unit on a lot with a single-family dwelling, if all of the following apply:

(A) The accessory dwelling unit is substantially contained within the existing space of a single-family dwelling or accessory structure, including, but not limited to, reconstruction of an existing space with the same physical dimensions as the existing accessory structure.

(B) The space has exterior access from the existing single-family dwelling.

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

(2) One junior accessory dwelling unit on a lot with a single family dwelling, if all of the following apply:

(A) The junior accessory dwelling unit is contained within the existing space of a single-family dwelling or accessory structure, including, but not limited to, reconstruction of an existing space with the same physical dimensions as the existing accessory structure.

(B) The space has exterior access from the existing single-family dwelling.

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

(3) 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, or garages, if each unit complies with state building standards for dwellings.

(4) 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 three-foot rear yard and side setbacks.

(b) Accessory dwelling units and junior accessory dwelling units permitted pursuant to this section shall not be considered by a local agency, special district, or water corporation to be a new residential use for the purposes of calculating fees charged for new development.

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

(1) "Junior accessory dwelling unit" has the same meaning as set forth in Section 65852.22.

(2) "Accessory dwelling unit" has the same meaning as set forth in Section 65852.2.

(3) "Accessory structure" has the same meaning as set forth in Section 65852.2.

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

~~SEC. 3.~~***SEC. 4.*** Section 65852.23 is added to the Government Code, immediately following Section 65852.22, to read:

65852.23. (a) As used in this section, the following definitions apply:

(1) "Accessory dwelling unit" is defined as in Section 65852.2.

(2) "Building code" means the California Building Standards Code or that code as modified by a local agency.

(3) "Local agency" is defined as in Section 65852.2.

(b) When a local building official finds that a substandard accessory dwelling unit poses an imminent risk to the health and safety of the residents of the accessory dwelling unit, the local building official shall, upon request of the owner of the accessory dwelling unit and subject to the conditions set forth in this section, approve a delay of not less than 10 years of the enforcement of any building code requirement that, in the judgment of the building official, is not necessary to protect public health and safety.

(c) An owner of an accessory dwelling unit shall be eligible for the delay specified in subdivision (b) only if the owner has not received a notice or order to abate.

(d) In granting a delay pursuant to subdivision (b), a building official shall consult with the applicable fire and code enforcement officials regardless of whether those officials are organized in a different department or a separate agency from the building official.

(e) A local building official shall not approve a delay pursuant to subdivision (b) on or after January 1, 2029. A delay approved before January 1, 2029, shall remain in force for the full term of the delay after January 1, 2029.

(f) This section shall remain in effect only until January 1, 2039, and as of that date is repealed.

~~SEC. 4.If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.~~

SEC. 5. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*

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