

SEPTEMBER 30, 2016

LAW ALERT

NEW STATE LAWS CLEAR PATH FOR SECOND UNITS; LOCAL ORDINANCES MUST BE UPDATED BY JANUARY 1, 2017

In an effort to streamline housing production in the face of the state's ongoing housing crisis, Governor Brown signed AB 2299 (Bloom) and SB 1069 (Wieckowski) into law, amending Government Code section 65852.2 to make it easier for property owners to create second units (referred to as "accessory dwelling units" or "ADUs") in existing single-family and multifamily homes.

Prior to the new legislation, cities and counties had substantial flexibility in adopting local ordinances to regulate the development of ADUs. By making certain findings, they could also prohibit ADUs entirely. Proponents of the bills asserted that local agencies and special districts often imposed costly restrictions relating to parking, fees for utility hook-ups, and other development standards. The new bills limit public agencies' ability to regulate ADUs, require action on ADU applications within 120 days, and mandate that all local agencies adopt an ADU ordinance consistent with the new provisions by **January 1, 2017**.

ADU ORDINANCE ADOPTION REQUIREMENT

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

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

APPLICABLE STANDARDS

The major substantive requirements included in Government Code section 65852.2 are as follows.

- ***Time Limit to Act.*** ADU applications must be approved or disapproved within 120 days of receipt.
- ***Location and Other Physical Standards.*** Jurisdictions are permitted to designate areas where ADUs are permitted. Local agencies may impose certain physical development standards on ADUs (e.g., height, setbacks, landscaping, etc.). ADUs attached to an existing dwelling shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet. ADUs in detached buildings shall not exceed 1,200 square feet of floor space.
- ***Relationship to Zoning and General Plan.*** The addition of an ADU does not

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cause a lot to exceed the allowable density, and ADUs are residential uses consistent with existing residential zoning and general plan designations.

- **Parking Standards.** At most, only one space per unit or per bedroom may be required, and the parking requirement may be provided as tandem parking on an existing driveway or in setback areas, unless specific findings are made (e.g., tandem parking is not feasible because of specific topographical conditions or it is not permitted anywhere else in the jurisdiction). Furthermore, no additional parking may be required if the ADU is located: (1) within one-half mile of public transit; (2) in an historic district; (3) in part of an existing primary residence or an existing accessory structure; (4) in an area requiring on-street parking permits but they are not offered to the ADU occupant; or (5) within one block of a car-share vehicle. While "public transit" and "car-share vehicle" are not defined, a reasonable interpretation may be that public transit refers to a transit stop (not just a route) and that car-share vehicle refers to a car-sharing pick-up/drop-off location.

ADUs in Existing Structures. An application for an ADU shall be ministerially approved without being subject to the other requirements of Government Code section 65852.2 if: (1) the ADU is proposed to be contained within the existing space of a single-family residence or accessory structure; (2) the property is in a single-family residential zone; (3) the ADU has independent exterior access from the existing residence; and (4) the side and rear setbacks are sufficient for fire safety. In addition, such ADUs shall not be required to provide fire sprinklers if they are not also required for the primary residence nor be required to install new or separate utility connections. This appears to

permit qualifying ADUs anywhere single-family residential uses are permitted, notwithstanding the limitations on other ADUs discussed above; however, it is unclear if this was the legislative intent.

- **Occupancy Restrictions.** Permits may require that applicants be owner-occupants of properties proposed to include an ADU or require that ADUs be used for rentals of terms longer than 30 days, but no additional standards may be imposed other than those listed in the statute.
- **Utility Fees.** ADUs shall not be considered new residential uses for the purpose of calculating connection fees or capacity charges. However, for ADUs that are not contained in existing structures, a local agency may require new or separate utility connections. Any connection fee or capacity charge shall be proportionate to the burden of the proposed ADU on the water or sewer systems based on its size or number of plumbing fixtures and shall not exceed the reasonable cost of providing this service.
- **Environmental Review.** Pursuant to Public Resources Code section 21080.17, the adoption of an ordinance to implement Government Code section 65852.2 is exempt from the California Environmental Quality Act (CEQA). Similarly, the ministerial approval of ADU applications would not be a "project" for CEQA purposes, and environmental review would not be required prior to approving individual applications.

For more information regarding Government Code Section 65852.2 or on drafting an ordinance to satisfy the new requirements, please contact Lynn Hutchins, Karen M. Tiedemann, Barbara E. Kautz, Eric S. Phillips, or any other attorney at Goldfarb & Lipman LLP at 510-836-6336.

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