An act to amend Section 65852.2 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL’S DIGEST

AB 2299, as introduced, Bloom. Land use: housing: 2nd units.

The Planning and Zoning Law authorizes the legislative body of a city or county to regulate, among other things, the intensity of land use, and also authorizes a local agency to provide by ordinance for the creation of 2nd units in single-family and multifamily residential zones, as specified.

This bill would, instead, require a local agency to provide by ordinance for the creation of 2nd units in these zones. By increasing the duties of local officials, this 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.


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, shall, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance—may do any shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where second 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 second units on traffic flow.

(B) Impose standards on second units that include, but are not limited to, parking, height, setback, lot coverage, 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. However, notwithstanding subdivision (d), a local agency shall not impose parking standards for a second unit that is located within one-half mile of public transit or shopping or is within an architecturally and historically significant historic district.

(C) Provide that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(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. Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of second units. 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 second units.

(b) (1) When a local agency—which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the
application and approve or disapprove the application ministerially
without discretionary review pursuant to this subdivision unless
it adopts an ordinance in accordance with subdivision (a) or (c)
within 120 days after receiving the application. Notwithstanding
Section 65901 or 65906, every local agency shall grant a variance
or special use permit for the creation of a second unit if the second
unit complies with all of the following:

(A) The unit is not intended for sale and may be rented.
(B) The lot is zoned for single-family or multifamily use.
(C) The lot contains an existing single-family dwelling.
(D) The second unit is either attached to the existing dwelling
and located within the living area of the existing dwelling or
detached from the existing dwelling and located on the same lot
as the existing dwelling.
(E) The increased floor area of an attached second unit shall
not exceed 30 percent of the existing living area.
(F) The total area of floorspace for a detached second unit shall
not exceed 1,200 square feet.
(G) Requirements relating to height, setback, lot coverage,
arboricultural review, site plan review, fees, charges, and other
zoning requirements generally applicable to residential construction
in the zone in which the property is located.
(H) Local building code requirements—
which that apply to
detached dwellings, as appropriate.
(I) Approval by the local health officer where a private sewage
disposal system is being used, if required.
(2) 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.
(3) This subdivision establishes the maximum standards that
local agencies shall use to evaluate proposed second units on lots
zoned for residential use—which that contain an existing
single-family dwelling. No additional standards, other than those
provided in this subdivision or subdivision (a), 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.
(4) No changes in zoning ordinances or other ordinances or any
changes in the general plan shall be required to implement this
subdivision. Any A local agency may amend its zoning ordinance
or general plan to incorporate the policies, procedures, or other
provisions applicable to the creation of second units if these
provisions are consistent with the limitations of this subdivision.

(5) A second unit which that conforms to the requirements of
this subdivision 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 which that is consistent with the existing
general plan and zoning designations for the lot. The second units
shall not be considered in the application of any local ordinance,
policy, or program to limit residential growth.

(e) No local agency shall adopt an ordinance which totally
precludes second units within single-family or multifamily zoned
areas unless the ordinance contains findings acknowledging that
the ordinance may limit housing opportunities of the region and
further contains findings that specific adverse impacts on the public
health, safety, and welfare that would result from allowing second
units within single-family and multifamily zoned areas justify
adopting the ordinance.

(d)
(c) A local agency may establish minimum and maximum unit
size requirements for both attached and detached second units. No
minimum or maximum size for a second unit, or size based upon
a percentage of the existing dwelling, shall be established by
ordinance for either attached or detached dwellings which that
does not permit at least an efficiency unit to be constructed in
compliance with local development standards.

(e)
(d) Parking requirements for second units shall not exceed one
parking space per unit or per bedroom. Additional parking may
be required provided that a finding is made that the additional
parking requirements are directly related to the use of the second
unit and are consistent with existing neighborhood standards
applicable to existing dwellings. 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, or that it is not permitted anywhere else in the
jurisdiction.

(f)
(e) Fees charged for the construction of second units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(f) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

(g) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(h) 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) “Second 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. A second unit also includes the following:

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

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

(i) 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 (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 second units.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB 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.