

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2299

Introduced by Assembly Member Bloom

February 18, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2299, as amended, 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~~ *The bill would also specify that a local agency may reduce or eliminate parking requirements for any 2nd unit located within its jurisdiction.*

Existing law also requires a local agency, if it has not adopted an ordinance governing 2nd units and receives an application for a permit for the creation of a 2nd unit, as provided, to grant a variance or special use permit if the 2nd unit complies with specified requirements, including specified zoning requirements generally applicable to residential construction in the zone in which the property is located.

This bill would prohibit a requirement for a passageway or pathway clear to the sky between the 2nd unit and a public street and, for a 2nd unit constructed above a garage located on an alley, for a setback of more than 5 feet from the side and rear lot. The bill would also provide

that a 2nd unit constructed above a garage or a garage converted in whole or in part into a 2nd unit is deemed to be an accessory building or accessory use that may be permitted within a required yard or setback area, provided that the 2nd unit is set back a minimum of 5 feet from the side and rear lot areas.

Existing law requires that parking requirements for 2nd units not exceed one parking space per unit or per bedroom. Under existing law, additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the use of the 2nd unit and are consistent with existing neighborhood standards applicable to residential dwellings.

This bill would delete the above-described authorization for additional parking requirements. The bill would also provide that, when a garage, carport, or covered parking structure is demolished in conjunction with the construction of a 2nd 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 2nd unit, as provided.

By increasing the duties of local ~~officials~~, officials with respect to land use regulations, 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 65852.2 of the Government Code is
- 2 amended to read:
- 3 65852.2. (a) (1) A local agency shall, by ordinance, provide
- 4 for the creation of second units in single-family and multifamily
- 5 residential zones. The ordinance shall do all of the following:
- 6 (A) Designate areas within the jurisdiction of the local agency
- 7 where second units may be permitted. The designation of areas
- 8 may be based on criteria, that may include, but are not limited to,
- 9 the adequacy of water and sewer services and the impact of second
- 10 units on traffic flow.

1 (B) Impose standards on second units that include, but are not
2 limited to, parking, height, setback, lot coverage, *landscape*,
3 architectural review, maximum size of a unit, and standards that
4 prevent adverse impacts on any real property that is listed in the
5 California Register of Historic Places. However, notwithstanding
6 subdivision (d), a local agency shall not impose parking standards
7 for a second unit that is located within one-half mile of public
8 transit or shopping or is within an architecturally and historically
9 significant historic district.

10 (C) *Notwithstanding subparagraph (B), a local agency may*
11 *reduce or eliminate parking requirements for any second unit*
12 *located within its jurisdiction.*

13 ~~(E)~~

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

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

20 (3) When a local agency receives its first application on or after
21 July 1, 2003, for a permit pursuant to this subdivision, the
22 application shall be considered ministerially without discretionary
23 review or a hearing, notwithstanding Section 65901 or 65906 or
24 any local ordinance regulating the issuance of variances or special
25 use permits. A local agency may charge a fee to reimburse it for
26 costs that it incurs as a result of amendments to this paragraph
27 enacted during the 2001–02 Regular Session of the Legislature,
28 including the costs of adopting or amending any ordinance that
29 provides for the creation of second units.

30 (b) (1) When a local agency has not adopted an ordinance
31 governing second units in accordance with subdivision (a) receives
32 its first application on or after July 1, 1983, for a permit pursuant
33 to this subdivision, the local agency shall accept the application
34 and approve or disapprove the application ministerially without
35 discretionary review pursuant to this subdivision unless it adopts
36 an ordinance in accordance with subdivision (a) within 120 days
37 after receiving the application. Notwithstanding Section 65901 or
38 65906, every local agency shall grant a variance or special use
39 permit for the creation of a second unit if the second unit complies
40 with all of the following:

- 1 (A) The unit is not intended for sale and may be rented.
- 2 (B) The lot is zoned for single-family or multifamily use.
- 3 (C) The lot contains an existing single-family dwelling.
- 4 (D) The second unit is either attached to the existing dwelling
- 5 and located within the living area of the existing dwelling or
- 6 detached from the existing dwelling and located on the same lot
- 7 as the existing dwelling.
- 8 (E) The increased floor area of an attached second unit shall
- 9 not exceed 30 percent of the existing living area.
- 10 (F) The total area of floorspace for a detached second unit shall
- 11 not exceed 1,200 square feet.
- 12 (G) Requirements relating to height, setback, lot coverage,
- 13 architectural review, site plan review, fees, charges, and other
- 14 zoning requirements generally applicable to residential construction
- 15 in the zone in which the property is ~~located~~: *located, except as*
- 16 *follows:*
- 17 (i) *No passageway or pathway clear to the sky between the*
- 18 *second unit and a public street shall be required in conjunction*
- 19 *with the construction of a second unit.*
- 20 (ii) *No setback more than five feet from the side and rear lot*
- 21 *line shall be required for a second unit constructed above a garage*
- 22 *located on an alley.*
- 23 (H) Local building code requirements that apply to detached
- 24 dwellings, as appropriate.
- 25 (I) Approval by the local health officer where a private sewage
- 26 disposal system is being used, if required.
- 27 (2) No other local ordinance, policy, or regulation shall be the
- 28 basis for the denial of a building permit or a use permit under this
- 29 subdivision.
- 30 (3) This subdivision establishes the maximum standards that
- 31 local agencies shall use to evaluate proposed second units on lots
- 32 zoned for residential use that contain an existing single-family
- 33 dwelling. No additional standards, other than those provided in
- 34 this subdivision or subdivision (a), shall be utilized or imposed,
- 35 except that a local agency may require an applicant for a permit
- 36 issued pursuant to this subdivision to be an owner-occupant.
- 37 (4) No changes in zoning ordinances or other ordinances or any
- 38 changes in the general plan shall be required to implement this
- 39 subdivision. A local agency may amend its zoning ordinance or
- 40 general plan to incorporate the policies, procedures, or other

1 provisions applicable to the creation of second units if these
2 provisions are consistent with the limitations of this subdivision.

3 (5) A second unit that conforms to this subdivision shall *be*
4 *deemed to be an accessory use or an accessory building and shall*
5 *not be considered to exceed the allowable density for the lot upon*
6 *which it is located, and shall be deemed to be a residential use that*
7 *is consistent with the existing general plan and zoning designations*
8 *for the lot. The second units shall not be considered in the*
9 *application of any local ordinance, policy, or program to limit*
10 *residential growth.*

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

18 (d) (1) Parking requirements for second units shall not exceed
19 one parking space per unit or per bedroom. ~~Additional parking~~
20 ~~may be required provided that a finding is made that the additional~~
21 ~~parking requirements are directly related to the use of the second~~
22 ~~unit and are consistent with existing neighborhood standards~~
23 ~~applicable to existing dwellings.~~ Off-street parking shall be
24 permitted in setback areas in locations determined by the local
25 agency or through tandem parking, unless specific findings are
26 made that parking in setback areas or tandem parking is not feasible
27 based upon specific site or regional topographical or fire and life
28 safety conditions, or that it is not permitted anywhere else in the
29 jurisdiction.

30 (2) *When a garage, carport, or covered parking structure is*
31 *demolished in conjunction with the construction of a second unit,*
32 *and the local agency requires that those off-street parking spaces*
33 *be replaced, the replacement spaces may be located in any*
34 *configuration on the same lot as the second unit, including, but*
35 *not limited to, as covered spaces, uncovered spaces, or tandem*
36 *spaces, or by the use of mechanical automobile parking lifts.*

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

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

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

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

7 (1) "Living area," means the interior habitable area of a dwelling
8 unit including basements and attics but does not include a garage
9 or any accessory structure.

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

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

14 (4) "Second unit" means an attached or a detached residential
15 dwelling unit which provides complete independent living facilities
16 for one or more persons. It shall include permanent provisions for
17 living, sleeping, eating, cooking, and sanitation on the same parcel
18 as the single-family dwelling is situated. A second unit also
19 includes the following:

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

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

24 (i) Nothing in this section shall be construed to supersede or in
25 any way alter or lessen the effect or application of the California
26 Coastal Act (Division 20 (commencing with Section 30000) of
27 the Public Resources Code), except that the local government shall
28 not be required to hold public hearings for coastal development
29 permit applications for second units.

30 SEC. 2. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 a local agency or school district has the authority to levy service
33 charges, fees, or assessments sufficient to pay for the program or
34 level of service mandated by this act, within the meaning of Section
35 17556 of the Government Code.

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