

AMENDED IN SENATE AUGUST 19, 2016

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. *Existing law authorizes the ordinance to designate areas within the jurisdiction of the local agency where 2nd units may be permitted, to impose specified standards on 2nd units, and to provide that 2nd units do not exceed allowable density and are a residential use, as specified.*

This bill would replace the term “second unit” with “accessory dwelling unit.” The bill would, instead, require a local agency to provide by ordinance for the creation of 2nd units in these zones: the ordinance to include the elements described above and would also require the ordinance to require accessory dwelling units to comply with specified conditions. This bill would require ministerial, nondiscretionary approval of an accessory dwelling unit under an existing ordinance. The bill would also specify that a local agency may reduce or eliminate

parking requirements for any ~~2nd~~ *accessory dwelling* 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 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~~, *may*, by ordinance,
4 provide for the creation of ~~second~~ *accessory dwelling* units in
5 single-family and multifamily residential zones. The ordinance
6 shall do all of the following:

7 (A) Designate areas within the jurisdiction of the local agency
8 where ~~second~~ *accessory dwelling* units may be permitted. The
9 designation of areas may be based on criteria, that may include,
10 but are not limited to, the adequacy of water and sewer services
11 and the impact of ~~second~~ *accessory dwelling* units on traffic ~~flow~~.
12 *flow and public safety.*

13 (B) Impose standards on ~~second~~ *accessory dwelling* units that
14 include, but are not limited to, parking, height, setback, lot
15 coverage, landscape, architectural review, maximum size of a unit,
16 and standards that prevent adverse impacts on any real property
17 that is listed in the California Register of Historic Places. ~~However,~~
18 ~~notwithstanding subdivision (d), a local agency shall not impose~~
19 ~~parking standards for a second unit that is located within one-half~~
20 ~~mile of public transit or shopping or is within an architecturally~~
21 ~~and historically significant historic district.~~

22 (C) Notwithstanding subparagraph (B), a local agency may
23 reduce or eliminate parking requirements for any ~~second~~ *accessory*
24 *dwelling* unit located within its jurisdiction.

25 (D) Provide that ~~second~~ *accessory dwelling* units do not exceed
26 the allowable density for the lot upon which the ~~second~~ *accessory*
27 *dwelling* unit is located, and that ~~second~~ *accessory dwelling* units
28 are a residential use that is consistent with the existing general
29 plan and zoning designation for the lot.

30 (E) *Require the accessory dwelling units to comply with all of*
31 *the following:*

32 (i) *The unit is not intended for sale separate from the primary*
33 *residence and may be rented.*

34 (ii) *The lot is zoned for single-family or multifamily use.*

35 (iii) *The accessory dwelling unit is either attached to the existing*
36 *dwelling or located within the living area of the existing dwelling*
37 *or detached from the existing dwelling and located on the same*
38 *lot as the existing dwelling.*

- 1 (iv) *The increased floor area of an attached accessory dwelling*
2 *unit shall not exceed 50 percent of the existing living area.*
- 3 (v) *The total area of floorspace for a detached accessory*
4 *dwelling unit shall not exceed 1,200 square feet.*
- 5 (vi) *No passageway shall be required in conjunction with the*
6 *construction of an accessory dwelling unit.*
- 7 (vii) *No setback shall be required for an existing garage that is*
8 *converted to a accessory dwelling unit, and a setback of no more*
9 *than five feet from the side and rear lot lines shall be required for*
10 *an accessory dwelling unit that is constructed above a garage.*
- 11 (viii) *Local building code requirements that apply to detached*
12 *dwelling, as appropriate.*
- 13 (ix) *Approval by the local health officer where a private sewage*
14 *disposal system is being used, if required.*
- 15 (x) (I) *Parking requirements for accessory dwelling units shall*
16 *not exceed one parking space per unit or per bedroom. These*
17 *spaces may be provided as tandem parking on an existing*
18 *driveway.*
- 19 (II) *Offstreet parking shall be permitted in setback areas in*
20 *locations determined by the local agency or through tandem*
21 *parking, unless specific findings are made that parking in setback*
22 *areas or tandem parking is not feasible based upon specific site*
23 *or regional topographical or fire and life safety conditions, or that*
24 *it is not permitted anywhere else in the jurisdiction.*
- 25 (xi) *When a garage, carport, or covered parking structure is*
26 *demolished in conjunction with the construction of an accessory*
27 *dwelling unit, and the local agency requires that those offstreet*
28 *parking spaces be replaced, the replacement spaces may be located*
29 *in any configuration on the same lot as the accessory dwelling*
30 *unit, including, but not limited to, as covered spaces, uncovered*
31 *spaces, or tandem spaces, or by the use of mechanical automobile*
32 *parking lifts.*
- 33 (2) *The ordinance shall not be considered in the application of*
34 *any local ordinance, policy, or program to limit residential growth.*
- 35 (3) *When a local agency receives its first application on or after*
36 *July 1, 2003, for a permit pursuant to this subdivision, the*
37 *application shall be considered ministerially without discretionary*
38 *review or a hearing, notwithstanding Section 65901 or 65906 or*
39 *any local ordinance regulating the issuance of variances or special*
40 *use—permits. permits, within 120 days after receiving the*

1 *application*. A local agency may charge a fee to reimburse it for
2 costs that it incurs as a result of amendments to this paragraph
3 enacted during the 2001–02 Regular Session of the Legislature,
4 including the costs of adopting or amending any ordinance that
5 provides for the creation of second *accessory dwelling* units.

6 ~~(b) (1) When a local agency has not adopted an ordinance~~
7 ~~governing second units in accordance with subdivision (a) receives~~
8 ~~its first application on or after July 1, 1983, for a permit pursuant~~
9 ~~to this subdivision, the local agency shall accept the application~~
10 ~~and approve or disapprove the application ministerially without~~
11 ~~discretionary review pursuant to this subdivision unless it adopts~~
12 ~~an ordinance in accordance with subdivision (a) within 120 days~~
13 ~~after receiving the application. Notwithstanding Section 65901 or~~
14 ~~65906, every local agency shall grant a variance or special use~~
15 ~~permit for the creation of a second unit if the second unit complies~~
16 ~~with all of the following:~~

17 ~~(A) The unit is not intended for sale and may be rented.~~

18 ~~(B) The lot is zoned for single-family or multifamily use.~~

19 ~~(C) The lot contains an existing single-family dwelling.~~

20 ~~(D) The second unit is either attached to the existing dwelling~~
21 ~~and located within the living area of the existing dwelling or~~
22 ~~detached from the existing dwelling and located on the same lot~~
23 ~~as the existing dwelling.~~

24 ~~(E) The increased floor area of an attached second unit shall~~
25 ~~not exceed 30 percent of the existing living area.~~

26 ~~(F) The total area of floorspace for a detached second unit shall~~
27 ~~not exceed 1,200 square feet.~~

28 ~~(G) Requirements relating to height, setback, lot coverage,~~
29 ~~architectural review, site plan review, fees, charges, and other~~
30 ~~zoning requirements generally applicable to residential construction~~
31 ~~in the zone in which the property is located, except as follows:~~

32 ~~(i) No passageway or pathway clear to the sky between the~~
33 ~~second unit and a public street shall be required in conjunction~~
34 ~~with the construction of a second unit.~~

35 ~~(ii) No setback more than five feet from the side and rear lot~~
36 ~~line shall be required for a second unit constructed above a garage~~
37 ~~located on an alley.~~

38 ~~(H) Local building code requirements that apply to detached~~
39 ~~dwellings, as appropriate.~~

1 ~~(1) Approval by the local health officer where a private sewage~~
2 ~~disposal system is being used, if required.~~

3 *(4) Any existing ordinance governing the creation of accessory*
4 *dwelling units by a local agency or any such ordinance adopted*
5 *by a local agency subsequent to the effective date of the act adding*
6 *this paragraph shall provide an approval process that includes*
7 *only ministerial provisions for the approval of accessory dwelling*
8 *units and shall not include any discretionary processes, provisions,*
9 *or requirements for those units except as otherwise provided in*
10 *this subdivision. In the event that a local agency has an existing*
11 *accessory dwelling unit ordinance that fails to meet the*
12 *requirements of this subdivision, that ordinance shall be null and*
13 *void upon the effective date of the act adding this paragraph and*
14 *that agency shall thereafter apply the standards established in this*
15 *subdivision for the approval of accessory dwelling units, unless*
16 *and until the agency adopts an ordinance that complies with this*
17 *section.*

18 ~~(2)~~

19 (5) No other local ordinance, policy, or regulation shall be the
20 basis for the denial of a building permit or a use permit under this
21 subdivision.

22 ~~(3)~~

23 (6) This subdivision establishes the maximum standards that
24 local agencies shall use to evaluate proposed ~~second~~ *accessory*
25 *dwelling* units on lots zoned for residential use that contain an
26 existing single-family dwelling. No additional standards, other
27 than those provided in this ~~subdivision or subdivision (a),~~
28 *subdivision*, shall be utilized or imposed, except that a local agency
29 may require an applicant for a permit issued pursuant to this
30 subdivision to be an owner-occupant.

31 ~~(4) No changes in zoning ordinances or other ordinances or any~~
32 ~~changes in the general plan shall be required to implement this~~
33 ~~subdivision. A~~

34 (7) A local agency may amend its zoning ordinance or general
35 plan to incorporate the policies, procedures, or other provisions
36 applicable to the creation of ~~second~~ *accessory dwelling* units if
37 these provisions are consistent with the limitations of this
38 subdivision.

39 ~~(5) A second~~

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

9 (b) *When a local agency that has not adopted an ordinance*
10 *governing accessory dwelling units in accordance with subdivision*
11 *(a) receives its first application on or after July 1, 1983, for a*
12 *permit pursuant to this subdivision, the local agency shall accept*
13 *the application and approve or disapprove the application*
14 *ministerially without discretionary review pursuant to subdivision*
15 *(a) within 120 days after receiving the application.*

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

24 ~~(d) (1) Parking requirements for second units shall not exceed~~
25 ~~one parking space per unit or per bedroom. Off-street parking shall~~
26 ~~be permitted in setback areas in locations determined by the local~~
27 ~~agency or through tandem parking, unless specific findings are~~
28 ~~made that parking in setback areas or tandem parking is not feasible~~
29 ~~based upon specific site or regional topographical or fire and life~~
30 ~~safety conditions, or that it is not permitted anywhere else in the~~
31 ~~jurisdiction.~~

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

39 (e)

1 (d) Fees charged for the construction of ~~second~~ *accessory*
 2 *dwelling* units shall be determined in accordance with Chapter 5
 3 (commencing with Section 66000).

4 ~~(f)~~

5 (e) This section does not limit the authority of local agencies to
 6 adopt less restrictive requirements for the creation of ~~second units~~.
 7 *accessory dwelling units, provided those requirements comply*
 8 *with subdivision (a).*

9 ~~(g)~~

10 (f) Local agencies shall submit a copy of the ordinances adopted
 11 pursuant to subdivision (a) to the Department of Housing and
 12 Community Development within 60 days after adoption.

13 ~~(h)~~

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

15 (1) “~~Living area,~~” *area*” means the interior habitable area of a
 16 dwelling unit including basements and attics but does not include
 17 a garage or any accessory structure.

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

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

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

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

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

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

36 ~~(i)~~

37 (h) Nothing in this section shall be construed to supersede or in
 38 any way alter or lessen the effect or application of the California
 39 Coastal Act (Division 20 (commencing with Section 30000) of
 40 the Public Resources Code), except that the local government shall

1 not be required to hold public hearings for coastal development
2 permit applications for ~~second~~ *accessory dwelling* units.

3 SEC. 2. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 a local agency or school district has the authority to levy service
6 charges, fees, or assessments sufficient to pay for the program or
7 level of service mandated by this act, within the meaning of Section
8 17556 of the Government Code.

O