

AMENDED IN ASSEMBLY APRIL 28, 2016

AMENDED IN ASSEMBLY APRIL 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2406

Introduced by Assembly Member Thurmond

February 19, 2016

An act to amend Section 65852.2 of, and to add Section 65852.22 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2406, as amended, Thurmond. Housing: junior accessory dwelling units.

The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of 2nd units in single-family and multifamily residential areas, as prescribed.

This bill would, in addition, authorize a local agency to provide by ordinance for the creation of junior accessory dwelling units, as defined, in single-family residential zones. The bill would require the ordinance to include, among other things, standards for the creation of a junior accessory dwelling unit, required deed restrictions, and occupancy requirements. The bill would prohibit an ordinance from requiring, as a condition of granting a permit, water and sewer connection fees or additional parking requirements.

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

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) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance may do any 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.

(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

1 without discretionary review pursuant to this subdivision unless
2 it adopts an ordinance in accordance with subdivision (a) or (c)
3 within 120 days after receiving the application. Notwithstanding
4 Section 65901 or 65906, every local agency shall grant a variance
5 or special use permit for the creation of a second unit if the second
6 unit complies with all of the following:

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

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

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

10 (D) The second unit is either attached to the existing dwelling
11 and located within the living area of the existing dwelling or
12 detached from the existing dwelling and located on the same lot
13 as the existing dwelling.

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

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

18 (G) Requirements relating to height, setback, lot coverage,
19 architectural review, site plan review, fees, charges, and other
20 zoning requirements generally applicable to residential construction
21 in the zone in which the property is located.

22 (H) Local building code requirements which apply to detached
23 dwellings, as appropriate.

24 (I) Approval by the local health officer where a private sewage
25 disposal system is being used, if required.

26 (2) No other local ordinance, policy, or regulation shall be the
27 basis for the denial of a building permit or a use permit under this
28 subdivision.

29 (3) This subdivision establishes the maximum standards that
30 local agencies shall use to evaluate proposed second units on lots
31 zoned for residential use which contain an existing single-family
32 dwelling. No additional standards, other than those provided in
33 this subdivision or subdivision (a), shall be utilized or imposed,
34 except that a local agency may require an applicant for a permit
35 issued pursuant to this subdivision to be an owner-occupant.

36 (4) No changes in zoning ordinances or other ordinances or any
37 changes in the general plan shall be required to implement this
38 subdivision. Any local agency may amend its zoning ordinance
39 or 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 which conforms to the requirements of this
4 subdivision shall not be considered to exceed the allowable density
5 for the lot upon which it is located, and shall be deemed to be a
6 residential use which is consistent with the existing general plan
7 and zoning designations for the lot. The second units shall not be
8 considered in the application of any local ordinance, policy, or
9 program to limit residential growth.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (k) This section shall not apply to the regulation of junior
32 accessory dwelling units, as set forth in Section 65852.22.

33 SEC. 2. Section 65852.22 is added to the Government Code,
34 immediately following Section 65852.2, to read:

35 65852.22. (a) A local agency may, by ordinance, provide for
36 the creation of junior accessory dwelling units in single-family
37 residential zones. The ordinance may require a permit to be
38 obtained for the creation of a junior accessory dwelling unit, and
39 shall do all of the following:

1 (1) Limit the number of junior accessory dwelling units to one
2 per residential lot zoned for single-family residences with a
3 single-family residence already built on the lot.

4 (2) Require owner-occupancy in the single-family residence in
5 which the junior accessory dwelling unit will be permitted. The
6 owner may reside in either the remaining portion of the structure
7 or the newly created junior accessory dwelling unit. Owner
8 occupancy shall not be required if the owner is another
9 governmental agency, land trust, or housing organization.

10 (3) Require the recordation of a deed restriction, which shall
11 run with the land, shall be filed with the permitting agency, and
12 shall include both of the following:

13 (A) A prohibition on the sale of the junior accessory dwelling
14 unit separate from the sale of the single-family residence, including
15 a statement that the deed restrictions may be enforced against
16 future purchasers.

17 (B) A restriction on the size and attributes of the junior accessory
18 dwelling unit that conforms with this section.

19 (4) Require a permitted junior accessory dwelling unit to be
20 constructed within the existing walls of the structure, and require
21 the inclusion of an existing bedroom.

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

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

29 (A) A sink with maximum width and length dimensions of 16
30 inches and a maximum waste line diameter of 1.5 inches.

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

33 (C) A food preparation counter and storage cabinets that are of
34 reasonable size in relation to the size of the junior accessory
35 dwelling unit.

36 (b) (1) An ordinance shall not:

37 (A) Require additional parking as a condition of granting a
38 permit.

39 (B) Authorize the imposition of a water connection fee as a
40 condition to granting a permit.

1 (C) Authorize the imposition of a sewer connection fee as a
2 condition to granting a permit.

3 (2) This subdivision shall not be interpreted to prohibit the
4 requirement of an inspection, including the imposition of a fee for
5 that inspection, to determine whether the junior accessory dwelling
6 unit is in compliance with applicable building standards.

7 (c) For the purposes of any fire or life protection ordinance or
8 regulation, a junior accessory dwelling unit shall not be considered
9 a separate or new dwelling unit. This section shall not be construed
10 to prohibit a city, county, city and county, or other local public
11 entity from adopting an ordinance or regulation relating to fire and
12 life protection requirements within a single-family residence that
13 contains a junior accessory dwelling unit so long as the ordinance
14 or regulation applies uniformly to all single-family residences
15 within the zone regardless of whether the single-family ~~resident~~
16 *residence* includes a junior accessory dwelling unit or not.

17 (d) For purposes of this section, the following terms have the
18 following meanings:

19 (1) “Junior accessory dwelling unit” means a unit that is no
20 more than 500 square feet in size and contained entirely within an
21 existing single-family structure. A junior accessory dwelling unit
22 may include separate sanitation facilities, or may share sanitation
23 facilities with the existing structure.

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