



MEMORANDUM

CITY OF SAUSALITO

TO: ADU Regulations Working Group

FROM: Lilly Schinsing, Associate Planner

DATE: March 19, 2012

SUBJECT: Accessory Dwelling Unit—State Law Summary

California Second-Unit Legislation was enacted in 1982 and amended in 1986, 1990 and 2002 to encourage the creation of second units (or Accessory Dwelling Units) and to allow municipal governments to establish their own ordinance in accordance with state law.

What is an ADU?

"Second unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It includes 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.

What are the limitations of the ADU regulations?

The regulations may do any of the following (summarized, see Code Section references for exact language):

- (A) Designate areas within the jurisdiction of the city 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. (Government Code §65852.2.a(1)(A))
- (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. (Government Code §65852.2.a(1)(B))

TO: ADU Regulations Working Group
FROM: Lilly Schinsing, Associate Planner
DATE: March 19, 2012
SUBJECT: Accessory Dwelling Unit—State Law Summary
PAGE: 2 of 3

Size. The regulations may establish minimum and maximum unit size requirements for both attached and detached ADUs, however, no minimum or maximum size for an ADU is allowed which does not permit at least an efficiency unit to be constructed. (Government Code §65852.2.d)

State law default standards:

- Attached units: not to exceed 30% of the existing living area of the main house
- Detached units: not to exceed 1,200 square feet

Parking. The regulations may not require more than one parking space per unit or one parking space per bedroom. Additional parking is allowed to be required if a finding is made that the additional parking requirements are directly related to the use of the ADU and are consistent with existing neighborhood standards. The parking is allowed in setback areas or through tandem parking, unless specific findings are made. (Government Code §65852.2.e)

- (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. (Government Code §65852.2.a(1)(C))

What is the process for approving new ADUs?

Ministerial Review. Second-unit law was created and amended within the context of providing "...a minimum of limitation...", so localities "...may exercise the maximum degree of control over local zoning matters..." (Government Code 65800). Second unit law requires localities to consider applications for the development of second-units **ministerially** with the intent to create second-units and not constrain their development.

"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out.

As explicitly stated in the provisions of 65852.2(a), a city may require second-units to comply with development standards such as height, setback and architectural review. At the same time, architectural review should be handled in a ministerial fashion without discretionary public hearings or review. Architectural review in a ministerial fashion includes architectural standards and design guidelines with clear, fixed and objective standards. These standards should provide a predictable concept of appropriate

TO: ADU Regulations Working Group
FROM: Lilly Schinsing, Associate Planner
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SUBJECT: Accessory Dwelling Unit—State Law Summary
PAGE: 3 of 3

second-unit development. For example, the compatibility of the materials with the existing structure, exterior color, subordinate bulk or compatible exterior surface texture are architectural standards that can be applied in a ministerial manner, especially with the aid of design review guidelines. Architectural review standards should not impede the creation of second-units and should not detrimentally affect the feasibility or affordability of second-units.

Optional Discretionary Review. If a local ordinance is consistent with second-unit law and consistent with the intent of the law, a local government **could also adopt** an ancillary set of broader standards under which second-units **might be allowed under a discretionary review process as exceptions to existing zoning**. While the statute does not preclude a broader and more flexible set of standards, cities must be very careful that any criteria or process for a secondary set of standards is only **ancillary to the ministerial consideration** required by state law.

Attachment: Government Code Sections 65852.150 - 65852.2

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1 AB 1866
2 Government Code Sections 65852.150 - 65852.2
3 Secondary Dwelling Units
4

5 65852.150. The Legislature finds and declares that second units are a valuable form of
6 housing in California. Second units provide housing for family members, students, the
7 elderly, in-home health care providers, the disabled, and others, at below market prices
8 within existing neighborhoods. Homeowners who create second units benefit from
9 added income, and an increased sense of security.

10 It is the intent of the Legislature that any second-unit ordinances adopted by local
11 agencies have the effect of providing for the creation of second units and that provisions
12 in these ordinances relating to matters including unit size, parking, fees and other
13 requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably
14 restrict the ability of homeowners to create second units in zones in which they are
15 authorized by local ordinance.

16
17 65852.2.

18 (a) (1) Any local agency may, by ordinance, provide for the creation of second units
19 in single-family and multifamily residential zones. The ordinance may do any of
20 the following:

21 (A) Designate areas within the jurisdiction of the local agency where
22 second units may be permitted. The designation of areas may be based
23 on criteria, that may include, but are not limited to, the adequacy of water
24 and sewer services and the impact of second units on traffic flow.

25 (B) Impose standards on second units that include, but are not limited to,
26 parking, height, setback, lot coverage, architectural review, maximum size
27 of a unit, and standards that prevent adverse impacts on any real property
28 that is listed in the California Register of Historic Places.

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

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

35 (3) When a local agency receives its first application on or after July 1, 2003, for a
36 permit pursuant to this subdivision, the application shall be considered
37 ministerially without discretionary review or a hearing, notwithstanding Section
38 65901 or 65906 or any local ordinance regulating the issuance of variances or
39 special use permits. Nothing in this paragraph may be construed to require a
40 local government to adopt or amend an ordinance for the creation of second
41 units. A local agency may charge a fee to reimburse it for costs that it incurs as a
42 result of amendments to this paragraph enacted during the 2001-02 Regular
43 Session of the Legislature, including the costs of adopting or amending any
44 ordinance that provides for the creation of second units.

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

1 second unit complies with all of the following:

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

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

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

5 (D) The second unit is either attached to the existing dwelling and located
6 within the living area of the existing dwelling or detached from the existing
7 dwelling and located on the same lot as the existing dwelling.

8 (E) The increased floor area of an attached second unit shall not exceed
9 30 percent of the existing living area.

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

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

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

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

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

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

28 (4) No changes in zoning ordinances or other ordinances or any changes in the
29 general plan shall be required to implement this subdivision. Any local agency
30 may amend its zoning ordinance or general plan to incorporate the policies,
31 procedures, or other provisions applicable to the creation of second units if these
32 provisions are consistent with the limitations of this subdivision.

33 (5) A second unit which conforms to the requirements of this subdivision shall not
34 be considered to exceed the allowable density for the lot upon which it is located,
35 and shall be deemed to be a residential use which is consistent with the existing
36 general plan and zoning designations for the lot. The second units shall not be
37 considered in the application of any local ordinance, policy, or program to limit
38 residential growth.

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

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

50 (e) Parking requirements for second units shall not exceed one parking space per
51 unit or per bedroom. Additional parking may be required provided that a finding is made
52 that the additional parking requirements are directly related to the use of the second unit
53 and are consistent with existing neighborhood standards applicable to existing dwellings.

1 Off-street parking shall be permitted in setback areas in locations determined by the
2 local agency or through tandem parking, unless specific findings are made that parking in
3 setback areas or tandem parking is not feasible based upon specific site or regional
4 topographical or fire and life safety conditions, or that it is not permitted anywhere else in
5 the jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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