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Changes to Statewide ADU Law Due to SB-897 and AB-2221

The California legislature passed and the Governor signed two bills, SB-897 and AB-2221, that both relate to local permitting of accessory dwelling units (ADUs). These two bills make substantial revisions to state law, and are likely to require local jurisdictions to review and readopt any local ordinances related to ADUs. The laws go into effect January 1, 2023, and will collectively impose the following changes to state-wide ADU law:

- That ADU ordinances only impose **objective** standards on accessory dwelling units that can include, but are not limited to, parking, height, setback, landscape, 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 Historical Resources. Such standards must be “standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.”
- That an accessory dwelling unit that is detached from the proposed or existing primary dwelling unit may be constructed in a detached garage.
- That construction of an accessory dwelling unit shall not constitute a Group R occupancy change under the local building code, absent express written findings by the building official that the construction of the unit could have a specific, adverse impact on public health and safety. However, a public agency can still find a change in occupancy, for purposes of applying building code requirements, if the space was previously unhabitable or was only permitted for nonresidential use and was converted.
- The construction of an ADU will not trigger requirements to add fire sprinklers in any existing primary dwelling.
- Any denial of a junior ADU or ADU application requires provision of a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant within the 60 day time-frame to act on a permit application.
- A local jurisdiction must require a demolition permit to replace a

detached garage with an ADU, but must issue the permit concurrently with the building permit for the ADU. An applicant cannot be required to provide written notice or post a placard for such demolitions, unless they are in a historic district.

- Revised minimum height limits, that must allow the following heights for ADUs:
 - 18 feet for a detached ADU on a lot within one-half mile walking distance of a major transit stop or high quality transit corridor, with an allowance of an additional two feet to accommodate a roof pitch aligned with the primary dwelling unit.
 - 18 feet for a detached ADU on a lot with an existing or proposed multi-family, multi-story dwelling.
 - 25 feet or the height limit under the local zoning ordinance, for an ADU attached to a primary dwelling, although a local agency can ensure the ADU does not exceed two stories.
- Front setback requirements cannot be used to prohibit construction of an ADU, where there is no other alternative to allow for construction of an 800 square foot ADU that meets height limits and complies with four foot side and rear setbacks.
- Local agencies are prohibited from imposing any parking standards on an accessory dwelling unit that is included in an application to create a new single-family dwelling unit or a new multifamily dwelling on the same lot, provided that the ADU meets other specified requirements.
- Local agencies cannot require the modification of existing multi-family dwellings with side or rear setbacks of less than four feet as a condition of approving ADUs.
- Local agencies are expressly prohibited from denying an application to create an accessory dwelling unit due to the correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety and are not affected by the construction of the accessory dwelling unit. This includes corrections to the primary dwelling unit, unless the correction is necessary to protect health and safety.
- Local agencies are prohibited from denying building permits for an unpermitted ADU constructed before January 1, 2018, due to violations of building standards or non-compliance with ADU laws, unless the agency finds that correction of a violation is specifically necessary to protect health and safety of the occupants or public. However, this protection does not apply to buildings deemed substandard under the State Housing Law.

As a result of these two bills, local jurisdictions should begin to review

their existing ADU ordinances and consider adopting appropriate revisions to go into effect by January 1, 2023.