STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY EDMUND G. BROWN JR., *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

MEMORANDUM

DATE: May 29, 2018

TO: Planning Directors and Interested Parties

FROM: Zachary Olmstead, Deputy Director
Division of Housing Policy Development

SUBJECT: **Local Agency Accessory Dwelling Units**
Chapter 594, Statutes of 2017 (Senate Bill 229) and
Chapter 602, Statutes of 2017 (Assembly Bill 494)

This memorandum is to inform you of the amendments to California law, effective January 1, 2018, regarding the creation of accessory dwelling units (ADU). Chapter 594, Statutes of 2017 (Senate Bill 229) and Chapter 602, Statutes of 2017 (Assembly Bill 494) build upon recent changes to ADU law (Government Code (GC) Section 65852.2) and further address barriers to the development of ADUs.

SB 229 and AB 494, among other changes, addresses the following:

- Clarifies an ADU can be created through the conversion of a garage, carport or covered parking structure.
- Requires special districts and water corporations to charge a proportional fee scale based upon the ADUs size or its number of plumbing fixtures.
- Reduces the maximum number of parking spaces for an ADU to one space.
- Allows replacement parking spaces to be located in any configuration, as a result, of a parking structure conversion to an ADU.
- Authorizes the Department of Housing and Community Development to review and comment on ADU ordinances.
- Defines the term "tandem parking" to mean two or more automobiles.

For assistance, please see the amended statute in Attachment A. In addition, pursuant to GC Section 65852.2(h), adopted ADU ordinances shall be submitted to HCD within 60 days of adoption. For more information and updates, please contact Greg Nickless, Housing Policy Analyst, at 916-274-6244.

ATTACHMENT A

TITLE 7, DIVISION 2, CHAPTER 4, ARTICLE 2

SB 229 and AB 494 Accessory Dwelling Units (65852.2)

Section 65852.2 of the Government Code is amended to read:

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in ~~single-family and multifamily residential zones.~~ *areas zoned to allow single-family or multifamily use.* The ordinance shall do all of the following:

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

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, 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 Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

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

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit ~~is not intended for sale~~ *may be rented* separate from the primary ~~residence and~~ *residence, but* may ~~be rented.~~ *not be sold or otherwise conveyed separate from the primary residence.*

(ii) The lot is zoned ~~for~~ *to allow* single-family or multifamily use and ~~contains an existing,~~ *includes a proposed or existing* single-family dwelling.

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

(iv) The ~~increased floor~~ *total* area of *floorspace of* an attached accessory dwelling unit shall not exceed 50 percent of the ~~existing living area, with a maximum increase in floor area of~~ *proposed or existing primary dwelling living area or* 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to ~~a~~ *an accessory dwelling unit or to a portion of an* accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

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

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per ~~bedroom.~~ *bedroom, whichever is less.* These spaces may be provided as tandem parking on ~~an existing~~ *a* driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety ~~conditions, or that it is not permitted anywhere else in the jurisdiction.~~ *conditions.*

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling *unit or converted to an accessory dwelling* unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(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, within 120 days after receiving the application. 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 an accessory dwelling unit.

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

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

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that ~~contains an~~ *includes a proposed or* existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

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

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

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the *proposed or* existing *primary* dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the *proposed or* existing primary residence or an ~~existing~~ accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a ~~single-family residential zone~~ *zone for single-family use* one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, *including, but not limited to, a studio, pool house, or other similar structure,* has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. *A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.*

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered ~~new residential uses~~ *by a local agency, special district, or water corporation to be a new residential use* for the purposes of calculating ~~local agency~~ connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local ~~agency~~ *agency, special district, or water corporation* shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local ~~agency~~ *agency, special district, or water corporation* may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. *The department may review and comment on this submitted ordinance.*

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

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

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

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

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

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

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

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(6) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act *of 1976* (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.