



City summary of State laws made effective January 2017 for Accessory Dwelling Units (AB 2299 and SB 1069)

State Assembly Bill (AB) 2299 and Senate Bill (SB) 1069 impose greater restrictions on local authority to regulate second units, now called Accessory Dwelling Units or ADUs. While state law is summarized below, it is suggested for people to consult with their design professionals or City staff if there are questions. Soon, the City will consider whether to initiate work on updating City ADU standards to reflect the state laws and to possibly add some City restrictions, where state law allows.

AB 2299 & SB 1069: General ADU restrictions

AB 2299 and SB 1069 amended Government Code Section 65852.2, which include general restrictions on ADUs and local control. These laws nullify, or void, the City's ADU requirements because they're inconsistent with the state laws. If ADUs comply with the state laws, the City must now allow ADUs in single-family and multi-family residential zones on lots with existing single-family residences, including west of I-5. ADUs were prohibited in this area from 1988 until this year, when the laws became effective. The new state restrictions fall into four areas, summarized below: Parking, Types and Size of Units, Approval Process and Timelines, and Water and Sewer Utility Fees.

Parking

The City cannot require parking, if an ADU complies with any of the following:

- Located within ½ mile of "public transit" (*bus, train, and SC ride stops*);
- Located within architecturally and historically significant historic district (*terms are not defined, not applicable to City*);
- The ADU is part of an existing primary residence or an existing accessory structure;
- On-street parking permits are required but not offered to the occupant of the ADU; or
- There is a car share vehicle located within one block of the ADU.

For ADUs not described above, the following restrictions apply when parking may be required:

- Up to one parking space may be required per unit or per bedroom (*this is not a change in San Clemente. Prior to the state law, a similar amount of parking was required*);
- Parking spaces may be uncovered, in tandem, and on a driveway (*prior to the state law, this was not allowed*);
- Parking spaces must be permitted in setback areas, unless it isn't permitted anywhere else in the jurisdiction other areas of the City (*e.g. front yard driveway parking can't meet required parking anywhere in San Clemente, so it also can't for ADUs*).

Types and Size of Units

- An ADU can be either attached to the existing dwelling; located within the living area of the existing dwelling; or detached and located on same lot;
- The increased floor area of attached ADU may not exceed 50 percent of the existing living area¹ (*prior to the state law, 30% maximum was allowed*);
- The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet;

- No passageway shall be required in conjunction with construction of an accessory dwelling unit; and
- No setback shall be required for an existing garage that is converted to an ADU, but Building Code construction requirements still apply. In addition, a setback of no more than five feet from the side and rear lot lines shall be required for an ADU that is constructed above a garage (*prior to law, ADU had to meet standard setbacks in front half of lot and if over 450 square feet in rear half of lot*).

Approval Process and Timelines

- ADUs must be reviewed at a staff level (*e.g. building permit, possibly grading permit*) without a public hearing;
- A building permit is required, including full compliance with applicable Building Codes;
- Fire sprinklers may be required for an ADU, if the San Clemente Building Code requires the residence to have sprinklers (*see Municipal Code Section 17.22.030.D. This is no change from how ADUs were regulated prior to the state law*); and
- Permit applications must be reviewed within 120 days.

Water and Sewer Utility Connection or Capacity Fees

For ADUs proposed within existing structures in single-family residential zones (*i.e. RVL, RL*):

- Cities may not require an applicant to install a new or separate utility connection directly between the ADU and the utility or impose a related connection fee or capacity charge if the ADU is located within the existing space of a single-family residence or the existing space of an accessory structure on a single-family lot; and

For ADUs proposed in new structures or within multi-family zones (*i.e. RML, RM, RH*):

- Cities may require a new or separate utility connection directly between the ADU and the utility. The connection fee or capacity charge 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.

For more information, you may contact Christopher Wright, Associate Planner at 949-361-6193 or wrightc@san-clemente.org.

Last Updated: 8/18/2017

¹ “Living area” is defined as the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure (Section 65852.2(i)(1))