

2023 Changes to CA ADU Law

As of Jan 1, 2023, these updates to California Gov Code related to ADUs and JADUs became state law.

Bedroom Count Changes

A city or county can't require public hearings as a condition for adapting existing residential space to increase the bedroom count within the conditions below:

- **No Public Hearings for Increasing Bedroom Count** when the land is zoned for residential use and the project proposes to add no more than two bedrooms to an existing dwelling unit

Conflict Between State Law & Local Ordinances

- **State Law Supersedes:** CA Gov Code Sections relevant to ADU and JADU law shall supersede a conflicting local ordinance. The sections do not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs or JADUs

Fire Sprinklers

Updates effective January 1 2023 related to fire sprinkler requirements and ADUs:

- **Adding an ADU Does Not Trigger Fire Sprinkler Requirement in Primary Dwelling:** The construction of an accessory dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling

Front Setbacks

- **Front Setbacks Can't Prevent State Minimum ADUs:** Front setbacks were added to the list of standards that can't be imposed if they will prevent an ADU of 800 sf or less with 4-ft setbacks

Height

State minimum ADUs (800 sf or less with 4-ft setbacks) and ADUs covered by approved & adopted local ADU ordinances must be allowed 16' minimum height, with new minimum heights for ADUs meeting the qualifications below:

- **Detached ADUs:** A height of 16 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit

- **Detached ADUs near Transit:** A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed single family or multifamily dwelling unit that is within one-half of one mile walking distance of a major transit stop or a high-quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code. A local agency shall also allow an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit
- **Detached ADUs where primary residence is more than one story (single-family and multifamily):** A height of 18 feet for a detached accessory dwelling unit on a lot with an existing or proposed multifamily, multistory dwelling
- **Attached ADUs:** A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling. This clause shall not require a local agency to allow an accessory dwelling unit to exceed two stories

JADUs with Shared Bath

- **JADU Entrances:** For junior ADUs that share their bath facilities with the main dwelling, an entrance must be provided into the main living area of the home

Nonconforming & Noncompliant Conditions

In the circumstances below, existing dwellings where ADUs are proposed can't be required to correct nonconforming or noncompliant status as a condition of ADU or JADU permit approval:

- **Existing Unpermitted Structures Not Affecting Proposed ADU:** A local agency can't require correction of unpermitted structures on the same property as a proposed ADU project, if they don't present a threat to public health or safety, or affect the construction of the ADU
- **Existing Building Standards Violations:** A local agency can't require the correction of a violation on the primary dwelling unit as a condition of ADU/JADU permit approval, provided that correcting the violation is not necessary to protect health and safety
- **Residences Exceeding Height Allowances:** ADU permits for existing single- or multifamily residences can't be denied due to those existing dwellings exceeding zoning height limits
- **Nonconforming Zoning Conditions:** A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an ADU or JADU under subdivision (e), the correction of nonconforming zoning conditions

Parking

In the circumstances below, parking standards can't be required for ADUs under new state rules, whether or not the jurisdiction has an approved local ADU ordinance:

- **Parking Standards Can't Be Required for ADUs Near Transit**, where the accessory dwelling unit is located within one-half mile walking distance of a public transit or a high-quality transit corridor
- **Parking Standards Can't Be Required for ADUs in Architectural or Historic Districts**, where the accessory dwelling unit is located within a district of architecturally and historically significant historic district
- **Parking Standards Can't Be Required for JADUs, Interior Conversion ADUs or Accessory Structure Conversion ADUs**, where the accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure
- **Parking Standards Can't Be Required on Streets with Permitted Parking**, when on-street parking permits are required but not offered to the ADU occupant
- **Parking Standards Can't Be Required Near Car Shares**, when there is a car share vehicle located within one block of the ADU
- **Parking Standards Can't Be Required for ADUs Included in New Projects**, where the project meets any of the above qualifications (includes single- and multifamily residences)

Permit Streamlining

Updates to state law intended to speed the ministerial permitting process for ADU applicants:

- **60 Day Clock to Approve or Deny Applications:** Jurisdictions will now have 60 days to approve or deny ADU and JADU applications, not just 'act on' them, as the previous language stated. After 60 days, applications will be 'deemed approved'
- **Denials Must Include Full Comments:** If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit, the permitting agency must return in writing 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 same timeframes
- **60 Day Clock Applies to All Agencies:** All agencies with authority to review ADU/JADU applications must now comply with the 60-day timeline. The new code defines "permitting agency" as any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts
- **Concurrent Review of Demolitions & Garage Conversion ADUs:** Demolition permits for a detached garage that is to be replaced with an accessory dwelling unit must be reviewed with the application for the accessory dwelling unit and issued at the same time
- **No Zoning Reviews for State Minimum ADUs:** Zoning clearance or zoning review not permitted for subdivision (e) state minimum ADUS of 800 sf or less with 4-foot setbacks
- **No Written Notices or Posted Placards for Garage Conversions Outside of Historic Districts:** Jurisdictions can't require applicants to post written notices or signs for the demolition of a detached garage that is to be replaced with an accessory dwelling unit, unless the property is located within an architecturally and historically significant historic district

Unpermitted ADUs Built Before 2018

For ADUs and JADUs constructed before January 1, 2018, where health and safety standards are met, the local agency shall not deny an application to legalize an unpermitted unit due to the following conditions:

- **Units Not Meeting Building Standards:** The accessory dwelling unit is in violation of building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, but health and safety basic standards are met, ADU permit can't be denied
- **Units Not Compliant with State or Local ADU Ordinance:** If the accessory dwelling unit doesn't comply with state or local ADU ordinance, but if health and safety basic standards are met, ADU permit can't be denied

Updated Definitions

- **Objective Standards** means 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.
- **Permitting Agency** means any entity that is involved in the review of a permit for an accessory dwelling unit or junior accessory dwelling unit and for which there is no substitute, including, but not limited to, applicable planning departments, building departments, utilities, and special districts.
- **Statewide Exemption ADU**, found in Government Code section 65852, subdivision (e), is an ADU of up to 800 square feet, 16 feet in height (18 feet near transit or when the primary dwelling has more than one story, 25 feet or the underlying zoning height limit, whichever is lower, for an attached ADU), as potentially limited by a local agency, and with four-foot side and rear yard setbacks. State ADU Law requires that no lot coverage, floor area ratio, open space, front setback or minimum lot size will preclude the construction of a statewide exemption ADU. Further, State ADU Law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance.