



## IN BRIEF

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SB 778 would clarify existing law to provide that a local agency must approve an application that would create accessory dwelling units (“ADUs”) within an existing mixed-use or multifamily building.

## BACKGROUND

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Since 1982 the Legislature has identified ADUs, also known as second units, in-law apartments, or “granny flats,” as a valuable form of housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

The Legislature revised the ADU law in 2016 to address some of the barriers to ADU creation that had been adopted by local governments. Then in 2019, the Legislature passed AB 68 that, among other things, amended subdivision (e) of Section 65852.2 of the Government Code (“Section 65852.2”) to require a local agency to ministerially approve a building permit application within a mixed-use zone for mixed-use or multifamily buildings if that permit would create multiple ADUs within existing spaces that are not used as livable space. That law provides an illustrative, but not exhaustive list, of non-living spaces that includes storage rooms, boiler rooms, attics, basements, or garages.

Although Section 65852.2 does not expressly use the words “commercial or retail space” as part of the illustrative list of convertible non-livable space, the entire section relates to multifamily and mixed-used properties located in mixed-use zones, which was intended to mean that all non-livable (e.g., commercial and retail) spaces within those properties are eligible for an ADU conversion. A reasonable interpretation of existing law concludes that commercial or retail space is eligible for ministerial approval of an ADU conversion because those spaces are non-living spaces within a building zoned for mixed-use.

## THE PROBLEM

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Unfortunately, a number of California jurisdictions have failed to interpret Section 65852.2(e)’s provisions

to require ministerial approval of ADU conversions of commercial and retail space for multifamily and mixed-use properties within a mixed-use zone as provided by AB 68.

Clear guidance on the right of an owner in these buildings to create additional residential living spaces is vital to fulfill California’s stated goal to increase housing supply. One of the quickest ways to ease California’s housing burden is to increase the number of ADUs.

## THE SOLUTION

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SB 778 would specify that a local agency is required to permit an ADU within an existing mixed-use or multifamily structure, and that the ADU may be constructed within portions of the structure used for commercial space, industrial space, retail space, or any other vacant space if each unit complies with state building standards for dwellings. Commercial space must have been vacant for 6 months to be eligible. The bill would further revise these provisions by requiring that the local agency allow up to 25% of the number of existing multifamily dwelling units to be converted to accessory dwelling units.

The COVID-19 pandemic has caused unprecedented delays, disruptions, and uncertainty on construction projects. Travel restrictions, social distancing, and quarantines are necessary but increasingly disrupting supply chains, contractor workforces, and governmental personnel’s availability for project inspections, with resulting delays and increased costs. While California has continued to allow for construction activities during this pandemic, various local governments within the state have adopted different and, at times, more restrictive guidelines limiting ongoing construction to housing.

## SUPPORT

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## FOR MORE INFORMATION

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