



LEXSTAT CAL GOVT CODE 65852.2

DEERING'S CALIFORNIA CODES ANNOTATED  
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AND 7, AND URGENCY LEGISLATION THROUGH CH 4 OF THE 2010 REGULAR SESSION

GOVERNMENT CODE  
Title 7. Planning and Land Use  
Division 1. Planning and Zoning  
Chapter 4. Zoning Regulations  
Article 2. Adoption of Regulations

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

*Cal Gov Code § 65852.2 (2009)*

**§ 65852.2. Second residential units**

(a)

(1) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance may do any of the following:

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

(B) Impose standards on second units that include, but are not limited to, parking, height, setback, lot coverage, 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.

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

(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. Nothing in

this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of second units. 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 second units.

**(b)**

**(1)** When a local agency which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use permit for the creation of a second unit if the second unit complies with all of the following:

**(A)** The unit is not intended for sale and may be rented.

**(B)** The lot is zoned for single-family or multifamily use.

**(C)** The lot contains an existing single-family dwelling.

**(D)** The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

**(E)** The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area.

**(F)** The total area of floorspace for a detached second unit shall not exceed 1,200 square feet.

**(G)** Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

**(H)** Local building code requirements which apply to detached dwellings, as appropriate.

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

**(2)** 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.

**(3)** This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision (a), 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.

**(4)** No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second units if these provisions are consistent with the limitations of this subdivision.

**(5)** A second unit which conforms to the requirements of this subdivision 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 which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) No local agency shall adopt an ordinance which totally precludes second units within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting the ordinance.

(d) A local agency may establish minimum and maximum unit size requirements for both attached and detached second units. No minimum or maximum size for a second unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings which does not permit at least an efficiency unit to be constructed in compliance with local development standards.

(e) Parking requirements for second units shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the use of the second unit and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street 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.

(f) Fees charged for the construction of second units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

(h) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(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) "Second 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. A second unit also includes the following:

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

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

(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 (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 second units.

#### **HISTORY:**

Added Stats 1982 ch 1440 § 2, operative July 1, 1983. Amended Stats 1986 ch 156 § 1, operative April 1, 1987;

Stats 1990 ch 1150 § 2 (AB 3529); Stats 1994 ch 580 § 2 (AB 3198); Stats 2002 ch 1062 § 2 (AB 1866).

**NOTES:**

**Amendments:**

**1986 Amendment:**

(1) Amended the introductory clause of subd (a) by (a) substituting "local agency may, by ordinance," for "city, including a chartered city, county, or city and county, may by ordinance"; and (b) adding "all of"; (2) substituted "within the jurisdiction of the local agency where second units may be" for "in the jurisdiction where second units are" in subd (a)(1); (3) substituted "a" for "the" before "unit" at the end of subd (a)(3); (4) amended subd (a)(4) by substituting (a) "local agency may find that second units" for "city including a chartered city, county or city and county may, in its discretion, find that second units provided for"; (b) "the second unit is located, and" for "it is located, and find"; and (c) "that" for "which" after "residential use"; (5) substituted "local agency" for "city, including a chartered city, county, or city and county" in subd (a)(6) and near the beginning of subd (b); (6) amended the first sentence of subd (b) by (a) deleting the comma after "(a) or (c)"; (b) substituting "local agency" for "jurisdiction" after "subdivision, the"; and (c) substituting "the application" for "it" after "disapprove"; (7) substituted the introductory clause of subd (b) for the former introductory clause which read: "Notwithstanding the provisions of Section 65901, each city, including a charter city, county, or city and county shall grant a special use or a conditional use permit for the creation of a second residential unit if it complies with the following."; (8) substituted "dwelling" for "detached unit" at the end of subd (b)(3); (9) amended subd (b)(4) by (a) adding "either"; (b) substituting "dwelling and" for "residence and is"; and (c) adding "or detached from the existing dwelling and located on the same lot as the existing dwelling"; (10) substituted subd (b)(5) for former subd (b)(5) which read: "(5) Whenever an increase in floor area is involved, it shall not exceed 10 percent of the existing living area."; (11) added subd (b)(6); (12) redesignated former subs (b)(6)-(b)(8) to be subs (b)(7)-(b)(9); (13) substituted "detached" for "additions to existing single-family" in subd (b)(8); (14) deleted the former second paragraph of subd (b) which read: "As used in this subdivision, 'living area' means the interior inhabitable area of a dwelling unit including basements and attics and shall not include a garage or any accessory structure."; (15) amended the third paragraph of subd (b) by (a) substituting "local agencies" for "cities, including charter cities, counties, and cities and counties"; (b) deleting "residential" after "proposed second"; (c) substituting "dwelling" for "detached unit" at the end of the first sentence; (d) substituting "subdivision or subdivision (a)" for "section"; (e) substituting "except that a local agency may require" for "unless there is a requirement that"; and (f) substituting "to" for "shall" before "be an" near the end of the second sentence; (16) substituted the fourth paragraph of subd (b) for the former fifth paragraph which read: "This section shall not be construed to limit the authority of cities, counties, and cities and counties which adopt less restrictive requirements for the creation of second residential units."; (17) amended the fifth paragraph of subd (b) by (a) deleting "the provisions of" after "to implement" in the first sentence; (b) substituting "local agency" for "city, county, or city and county"; and (c) deleting "residential" after "of second" in the second sentence; (18) deleted "residential" after "A second" in the last paragraph of subd (b); (19) amended subd (c) by substituting (a) "local agency" for "city, including a charter city, county, or city and county" near the beginning of the subdivision; (b) "the ordinance" for "such action" after "acknowledging that"; and (c) "the" for "such an" after "adopting" near the end of the subdivision; (20) substituted subs (d) and (e) for former subs (d) and (e) which read: "(d) As used in the section, a 'second unit' is either a detached or attached 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 or parcels as the primary unit is situated. (e) This section shall become operative on July 1, 1983."; and (21) deleted former subd (f) which read: "(f) Jurisdictions which adopt ordinances pursuant to subdivision (a) or (c) shall submit a copy of such ordinances to the Department of Housing and Community Development within 60 days. The department shall submit a report to the Legislature, which shall transmit the report to the appropriate committees of the Legislature by January 1, 1984. The report shall evaluate the implementation of this section by local governments and suggest any appropriate legislative changes."

**1990 Amendment:**

Substituted **(1)** "30 percent" for "15 percent" in subd (b)(5) and **(2)** "1,200 square feet" for "640 square feet" in subd (b)(6).

**1994 Amendment:**

**(1)** Substituted ". The ordinance:" for "consistent with all of the following provisions:" at the end of subd (a); **(2)** amended subd (a)(1) by **(a)** substituting "May designate areas" for "Areas may be designated" in the beginning; and **(b)** adding the last sentence; **(3)** substituted subds (a)(2)--(a)(4) for former subds (a)(2)--(a)(4) which read: "(2) The designation of areas may be based on criteria, which may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow. "(3) Standards may be imposed on second units which include, but are not limited to, parking, height, setback, lot coverage, architectural review, and maximum size of a unit. "(4) A local agency may find that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot."; **(4)** deleted "The second units created" before "Shall not be" in the beginning of subd (a)(5); **(5)** deleted former subd (a)(6) which read: "(6) A local agency may establish a process for the issuance of a conditional use permit for second units."; **(6)** redesignated former subds (b) and (b)(1)--(b)(9) to be subd (b)(1) and (b)(1)(A)--(b)(1)(I); **(7)** substituted "The increased" for "Any increase in the" in subd (b)(1)(E); **(8)** substituted "Requirements relating" for "Any construction shall conform" in subd (b)(1)(G); **(9)** designated the former first, second, fourth, and fifth paragraphs in subd (b)(1)(I) to be subds (b)(2), (b)(3), (b)(4), and (b)(5); **(10)** deleted the former first paragraph in subd (b)(3) which read: "This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units."; **(11)** substituted "or" for "and" after "within single--family" in subd (c); **(12)** added subds (d)--(g); **(13)** redesignated former subds (d) and (e) to be subds (h) and (i); **(14)** added subd (i)(3); **(15)** redesignated former subd (i)(3) to be subd (i)(4); **(16)** added the last sentence in subd (i)(4); and **(17)** added subd (i)(4)(A) and (i)(4)(B).

**2002 Amendment:**

**(1)** Added subdivision (a)(1) designation; **(2)** added "may do any of the following:" at the end of subd (a)(1); **(3)** redesignated former subds (a)(1)-(a)(5) to be subds (a)(1)(A)-(a)(2); **(4)** amended subd (a)(1)(A) by **(a)** deleting "May" at the beginning of the first sentence; and **(b)** substituting "that" for "which" after "criteria," in the second sentence; **(5)** amended subd (a)(1)(B) by **(a)** deleting "May" at the beginning of the subdivision; **(b)** substituting "that" for "which" after "units"; **(c)** deleting "and" after "review,,"; and **(d)** adding ", and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places"; **(6)** deleted "May" at the beginning of subd (a)(1)(C); **(7)** deleted former subd (a)(4) which read: "(4) May establish a process for the issuance of a conditional use permit for second units."; **(8)** added "The ordinance" at the beginning of subd (a)(2); **(9)** added subd (a)(3); **(10)** amended subd (b)(1) by **(a)** deleting "conditional use" before "permit"; **(b)** adding "ministerially without discretionary review"; **(c)** substituting "Section 65901 or 65906" for "Section 65901"; **(d)** adding "variance or" after "grant a"; and **(e)** deleting "use or a conditional" after "special"; **(11)** substituted "floorspace" for "floor space" in subd (b)(1)(F); and **(12)** added subd (j).

**Note**

Stats 1982 ch 1440 provides:

SECTION 1. (a) The Legislature finds and declares that there is an tremendous unmet need for new housing to shelter California's population. The unmet housing needs will be further aggravated by the severe cutbacks in federal housing programs.

(b) The Legislature finds and declares that California's existing housing resources are vastly underutilized due in large part to the changes in social patterns. The improved utilization of this state's existing housing resources offers an innovative and cost-effective solution to California's housing crisis.

(c) The Legislature finds and declares that the state has a role in increasing the utilization of California's housing resources and in reducing the barriers to the provision of affordable housing.

(d) The Legislature finds and declares that there are many benefits associated with the creation of second-family residential units on existing single-family lots, which include:

- (1) Providing a cost-effective means of serving development through the use of existing infrastructures, as contrasted to requiring the construction of new costly infrastructures to serve development in undeveloped areas.
- (2) Providing relatively affordable housing for low- and moderate-income households without public subsidy.
- (3) Providing a means for purchasers of new or existing homes, or both, to meet payments on high interest loans.
- (4) Providing security for homeowners who fear both criminal intrusion and personal accidents while alone.

**Cross References:**

Amendments to adopted general plan: Gov C § 65358.

Powers and duties of board of zoning adjustment or zoning administrator; Hearing and deciding applications for permits and variances: Gov C § 65901.

Projects to which division on environmental quality is not applicable: Pub Res C § 21080.

**Collateral References:**

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 579 "Zoning And Planning".

8 Witkin Summary (10th ed) Constitutional Law §§ 1039, 1050, 1053.

12 Witkin Summary (10th ed) Real Property §§ 824, 825.

Zoning: Zoning ordinance invalid when adopted without public notice more than 120 days after conditional use permit application: 16 CEB Real Prop L Rep 164.

**Law Review Articles:**

Affordable housing: an attorney's guide to key issues and governing statutes (Part I). 16 CEB Real Prop L Rep 329.

**Hierarchy Notes:**

Tit. 7 Note

Tit. 7, Div. 1 Note

Tit. 7, Div. 1, Ch. 4 Note

Tit. 7, Div. 1, Ch. 4, Art. 2 Note

## NOTES OF DECISIONS

Under Gov. Code, § 65852.2 ("granny flat" statute), providing that if local governments do not enact ordinances allowing and regulating "second units" in single-family zones, then they must grant a conditional use permit for second units that meet the requirements enumerated in the statute, a city subject to the statute could not require additional parking as a condition to the permit, since it was not required by the statute. A provision in the statute (Gov. Code, § 65852.2, subd. (b)(7)), providing "any construction" shall conform to other zoning requirements generally applicable, did not impliedly include additional parking. Parking was expressly mentioned in another provision of the statute, and when the Legislature has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded. Moreover, the legislative history showed the bill was specifically amended to delete a provision allowing local governments to demand additional parking. Also, as applied to the existing second units, the subdivision was inapplicable as its reference to "any construction" could not reasonably be applied to existing buildings. *Wilson v. City of Laguna Beach* (1992, Cal App 4th Dist) 6 Cal App 4th 543, 7 Cal Rptr 2d 848, 1992 Cal App LEXIS 603, rehearing denied (1992, Cal App 4th Dist) 1992 Cal App LEXIS 724, review denied (1992, Cal) 1992 Cal LEXIS 4130.

A city ordinance banning second unit accessory apartments, enacted in response to a couple's application for a conditional use permit to build such an apartment, was void, where the ordinance was not adopted within the applicable statutory time limit. Gov. Code, § 65852.2, subd. (b), provides that a local agency must approve or disapprove a conditional use permit application unless it adopts an ordinance regulating or precluding accessory apartments within 120 days after first receiving the application. However, the city adopted its ordinance 151 days after the couple submitted its first application. The fact that the couple's initial application was incomplete was not determinative, since the plain language of the statute does not specify a completed application. Moreover, the statute by its very terms focuses on when the city "receives" the first application (Gov. Code, § 65852.2, subd. (b)), rather than when the application is completed, since a conditional use permit procedure can entail conferring with city personnel, along with a process of modifying and adjusting the permit application. *Sounhein v. City of San Dimas* (1992, Cal App 2d Dist) 11 Cal App 4th 1255, 14 Cal Rptr 2d 656, 1992 Cal App LEXIS 1468.

On review of a decision of county supervisors denying an application for a land use permit, the trial court did not err in concluding that the administrative findings of the board of supervisors were supported by substantial evidence. The standards imposed by the applicable county ordinances did not exceed the maximum standards set by Gov. Code, § 65852.2, for second units in residential zones. The statute was adopted to encourage local governments to enact their own ordinances allowing and regulating so-called "granny flat" residential second units in single-family and multi-family zones where they would otherwise be prohibited. The county's second unit ordinance complied with Gov. Code, § 65852.2, subd. (a), which gives local agencies discretion in the specific criteria they may adopt for approving second units. The "maximum standards" set forth in Gov. Code, § 65852.2, subd. (b), are not relevant when a local government has adopted an appropriate ordinance governing second units. *Desmond v. County of Contra Costa* (1993, Cal App 1st Dist) 21 Cal App 4th 330, 25 Cal Rptr 2d 842, 1993 Cal App LEXIS 1308.

Gov. Code, § 65852.2, sometimes referred to as the "granny flat" statute, was a result of the Legislature's declaration that the supply of housing in California was insufficient to meet demand and the imbalance was likely to become worse in the foreseeable future. The statute encourages local governments to enact their own ordinances allowing and regulating "second units" in single-family and multifamily zones where they otherwise would be prohibited. If the local governments do not enact such ordinances, then they must grant conditional use permits for any second units that meet the requirements enumerated in the statute. The evident intent of the Legislature in enacting § 65852.2 was to increase the state's supply of affordable housing without dramatically changing the character and stability of existing family neighborhoods. The legislative history of § 65852.2 indicates that the purpose of its owner-occupancy requirement is to protect neighborhood stability and the character of existing family neighborhoods and to discourage speculation and absentee ownership. *Sounhein v. City of San Dimas* (1996, Cal App 2d Dist) 47 Cal App 4th 1181, 55 Cal Rptr 2d 290, 1996 Cal App LEXIS 727.

The trial court properly denied a couple's petition for a writ of mandate to compel a city to vacate owner-occupant conditions attached to a conditional use permit to build a second residential unit on their property that would apply to subsequent owners of the property. The owner-occupied condition of Gov. Code, § 65852.2 (pertaining to second residential units), runs with the land and is correctly imposed on all subsequent users. There is nothing in the legislative history of that statute that suggests any intent to limit the owner-occupant requirement to the initial applicant. In enacting Gov. Code, § 65852.2, the Legislature intended not only to provide more affordable housing, but also to permit homeowners to defer the high cost of home mortgages with additional rental income, permit family members to dwell in close proximity, provide additional security, particularly for the elderly, and preserve the character of existing family neighborhoods. All of these goals are furthered by an interpretation of Gov. Code, § 65852.2, subd. (b), that permits a continuous owner-occupant condition. *Sounhein v. City of San Dimas* (1996, Cal App 2d Dist) 47 Cal App 4th 1181, 55 Cal Rptr 2d 290, 1996 Cal App LEXIS 727.

Description of a proposed subdivision project in an environmental impact report was accurate under Pub Res C § 21065, although there was no mention of the possibility that second units might be built on the lots pursuant to a local ordinance enacted under the authority of Gov C § 65852.2, because this possibility was remote and speculative. *Save Round Valley Alliance v. County of Inyo* (2007, 4th Dist) 157 Cal App 4th 1437, 70 Cal Rptr 3d 59, 2007 Cal App LEXIS 2045.