

# SB 229

## WHAT YOU SHOULD KNOW California's Accessory Dwelling Unit Laws

### What are the new laws?

Two bills designed to address California's housing crisis by making it easier for property owners to build accessory dwelling units (ADUs) have been signed into law. Accessory dwelling units come in many shapes and sizes, but are generally defined as attached or detached residential dwelling units which provide complete independent living facilities for one or more persons. SB 1069 became law this year, and SB 229 was signed by the Governor on October 8, 2017.

### Is my agency affected?

SB 1069 applied to "local agencies", defined as cities and counties. Because SB 1069 was adopted in 2016, the requirements for cities and counties took effect on January 1, 2017. SB 229 expanded the applicability of the relevant provisions to include special districts. This change to incorporate special districts will take effect on January 1, 2018.

### How does this new law impact my agency?

SB 229 and SB 1069 dealt with a wide variety of land use and permitting issues related to the approval of ADUs. However, the provisions that pertain specifically to water and wastewater agencies are found in Government Code section 65852.2(f). These provisions limit the circumstances and manner in which local agencies may charge connection fees or capacity charges to their customers when ADUs are built. More specifically, the legislation creates a dual system of regulating ADUs:

- If the unit is contained within the existing space of a single-family residence or accessory structure (i.e. adds no new square footage), the local agency cannot impose a new connection fee or capacity charge. **(Government Code section 65852.2(f)(2)(A).)**
- For all other ADUs, consistent with [Government Code] Section 66013, the local agency may still: (1) require a new or separate utility connection directly between the accessory dwelling unit and the utility and (2) levy a connection fee or capacity charge that is proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures. This fee or charge shall not exceed the reasonable cost of providing this service. **(Government Code section 65852.2(f)(2)(B).)**

### Are the laws retroactive?

No. As applied to special districts, the law becomes effective January 1, 2018 and applies prospectively to how agencies charge connection fees and capacity charges in future years. No refund of past connection fees or capacity charges was contemplated under this bill.





### **Does this impact how my agency charges for monthly wastewater service?**

No. This bill only deals with the initial collection of connection fees and capacity charges for accessory dwelling units. It does not impact your agency's ability to charge more for ongoing wastewater service to the property with an ADU (consistent with existing law), or impose other requirements not otherwise prohibited under the legislation.

### **What about existing, illegal ADUs?**

The legislation does not specify how to deal with existing ADUs that were not formally approved through appropriate processes. We advise consulting your agency's legal counsel regarding the applicability of this law to existing ADUs if the issue arises.

### **What about Prop 218 and Prop 26?**

The issue of how to comply with these new connection fee/capacity charge requirements while maintaining compliance with Propositions 218 and 26 was not resolved by the legislation, and is highly dependent on local circumstances. Many local agency attorneys have expressed concern that it may be challenging to comply with these new requirements while still meeting the agency's constitutional obligations of proportionality pursuant to Propositions 218 and 26. We advise agencies with questions on this issue to discuss the relationship of this new law to other existing obligations with your agency's legal counsel.

### **Does CASA have any additional resources on this issue?**

Yes. CASA offered a panel on SB 1069 and SB 229 at its annual conference in August of 2017. The presentations featured the perspectives of two attorneys familiar with the new legislation as well as a rate consultant familiar with these matters. These materials are available at <http://casaweb.org/calendar/speaker-presentations>

### **What should my agency do in response to these new requirements?**

As noted above, the answer to this question depends upon your local circumstances. The first step is to consult your legal counsel about your agency's connection fee and capacity charge ordinance or policy to determine whether it is in compliance with the new law.

