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**SENATE COMMITTEE ON HOUSING**  
**Senator Scott Wiener, Chair**  
**2023 - 2024 Regular**

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**Bill No:** AB 976 **Hearing Date:** 6/20/2023  
**Author:** Ting  
**Version:** 2/14/2023  
**Urgency:** No **Fiscal:** No  
**Consultant:** Mehgie Tabar

**SUBJECT:** Accessory dwelling units: owner-occupancy requirements

**DIGEST:** This bill makes permanent the existing prohibition on local government's ability to require owner-occupancy on a parcel containing an Accessory Dwelling Unit (ADU).

**ANALYSIS:**

*Existing law:*

- 1) Defines an ADU as an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It must include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated on.
- 2) Requires a local agency to ministerially approve, within specified timelines, an application for a building permit within a residential or mixed-use zone to create one or more ADUs that meet all state and local requirements.
- 3) Authorizes a local agency to establish local development standards for both attached and detached ADUs, except that they cannot establish the following:
  - a) A minimum square footage requirement for either an attached or detached ADU that prohibits an efficiency unit.
  - b) A maximum square footage requirement for either an attached or detached ADU that is less than 850 square feet, or 1,000 square feet for an ADU that provides more than one bedroom.
  - c) A height limit of less than 16 to 25 feet, depending on the specified circumstance; and
  - d) Specified requirements that preclude development of an ADU of at least 800 square feet and that four-foot side and rear yard setbacks, including

minimum or maximum size, limits on lot coverage, limits on floor area ratio, requirements for open space, requirements for front setbacks, and minimum lot size.

- 4) Authorizes starting January 1, 2025, a local agency to impose an owner-occupant requirement on a parcel containing an ADU.

**This bill:**

- 1) Makes permanent the existing prohibition on local government's ability to require owner-occupancy on a parcel containing an ADU.

**COMMENTS:**

- 1) *Author's statement.* "ADU's have been critical to promoting infill development, building generational wealth for homeowners, and bolstering efforts for older Californians to age in place. Owner occupancy requirements threaten the existing financing market for ADU construction and would have detrimental effects to the construction of affordable units in desirable neighborhoods. AB 976 removes the owner occupancy sunrise on ADUs which provides consistency for the emerging ADU market and encourages the continued growth of infill development."
- 2) *Second Units as a Solution to the Housing Crisis?* California's high — and rising — land costs necessitate dense housing construction for a project to be financially viable and for the housing to ultimately be affordable to lower-income households. Yet, recent trends in California show that new housing has not commensurately increased in density. In a 2016 analysis, the Legislative Analyst's Office (LAO) found that the housing density of a typical neighborhood in California's coastal metropolitan areas increased only by four percent during the 2000s. In addition, the pattern of development in California has changed in ways that limit new housing opportunities. A 2016 analysis by BuildZoom found that new development has shifted from moderate but widespread density to pockets of high-density housing near downtown cores surrounded by vast swaths of low-density single-family housing. Specifically, construction of moderately-dense housing (2 to 49 units) in California peaked in the 1960s and 1970s and has slowed in recent decades.

Recently, there has been a national trend to allow for more "gentle density" (e.g., ADUs, duplexes, four-plexes, townhomes, and other moderately dense developments that were common before the imposition of zoning). In recent years, the Legislature has taken a more active role in facilitating such gentle density. In 2016, AB 2299 (Bloom) and SB 1069 (Wieckowski), permitted

ADUs by right on all residentially-zoned parcels in the state. By permitting an ADU as a second unit on all single-family lots, these laws effectively doubled their allowed density.

Prior to the Legislature requiring ministerial approval of ADUs in 2017, ADUs were less than one percent of permitted new construction. Now they are approximately 10%, at over 9,600 completed units in 2022. Additionally, because ADUs are typically smaller than the average home in a community, they tend to be more affordable than other market-rate units. A survey of ADU owners found that, in the Bay Area, ADUs rents were affordable to households making the median income.

- 3) *ADUs and Ownership.* AB 2299 and SB 1069 allowed local governments to limit the ministerial approval process to ADUs where the property owner lives in the primary unit. Proponents argued this requirement helps ensure oversight of the ADU and increases the potential for it to be rented out at an affordable rate to family and friends. They have also raised concerns that removing owner occupancy would lead to more speculative development of ADUs by large corporations.

In 2019, SB 13 (Wieckowski) removed the ability of local governments to require that the primary unit be owner-occupied until January 1, 2025. This bill would remove the "sunrise" provision of SB 13, and thus remove the ability for local governments to require owner-occupancy of the primary unit beginning January 1, 2025. Existing data supports eliminating these requirements. Data from City of Los Angeles found that only eight percent of ADUs were developed by investors that purchased a home and immediately added an ADU. By contrast, despite the lack of owner-occupancy requirements, 71% of ADUs built in Los Angeles have a primary unit that is owner-occupied.

By contrast, allowing owner-occupancy requirements on ADUs could increase the difficulty in finding financing for ADUs. Owner-occupancy requirements may create more risk for a bank, which forces them to create more onerous terms for financing ADU construction.

- 4) *Double-referral.* This bill is also referred to the Senate Committee on Governance and Finance.

#### **RELATED LEGISLATION:**

**AB 1033 (Ting, 2023)** — allows ADU units to be sold separately from the primary property. *This bill is also being heard at this hearing.*

**SB 13 (Wieckowski, Chapter 653, Statutes of 2019) and AB 881 (Bloom, Chapter 659, Statutes of 2019)** — eliminated, for five years, the potential for local agencies to place owner-occupancy requirements on the units.

**SB 1069 (Wieckowski, Chapter 720, Statutes of 2016) and AB 2299 (Bloom, Chapter 735, Statutes of 2016)** —required a local government to ministerially approve ADUs if the unit complies with certain parking requirements, the maximum allowable size of an attached ADU, and setback requirements. Also allows a local government to require owner-occupancy of the primary unit.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: No        Local: No

**POSITIONS:** (Communicated to the committee before noon on Wednesday, June 14, 2023.)

**SUPPORT:**

California YIMBY (Sponsor)  
Abodu  
Bequall  
City of San Jose  
East Bay for Everyone  
East Bay YIMBY  
Facebook, INC.  
Grow the Richmond  
How to ADU  
Inland So Cal Housing Collective  
Inspired ADUs  
Mountain View YIMBY  
Napa-solano for Everyone  
North Bay Leadership Council  
Northern Neighbors SF  
Oak Impact Group  
Peninsula for Everyone  
People for Housing Orange County  
Progress Noe Valley  
Rebuilding Green  
Samara Living, INC.  
San Francisco Bay Area Planning and Urban Research Association (SPUR)  
San Francisco YIMBY  
Santa Cruz YIMBY  
Santa Rosa YIMBY

Slo YIMBY  
SnapADU  
South Bay YIMBY  
Southern California Rental Housing Association  
Southside Forward  
Todd Jersey Architecture  
Ventura County YIMBY  
Villa  
YIMBY Action  
Yimbyadu, INC. "jumpstart ADU"

**OPPOSITION:**

None received.

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