

**Metropolitan Transportation Commission and the Association of Bay Area Governments
Joint MTC Legislation Committee and
ABAG Legislation Committee**

May 10, 2019

Agenda Item 7c5

SB 13 (Wieckowski): Accessory Dwelling Units

Subject: SB 13 would revise ADU law to require that a local government allow studio and one-bedroom ADUs of at least 850 square feet and two-bedroom or more ADUs of up to 1,000 square feet, and would prohibit ADU owner-occupancy requirements. The bill would limit impact fees imposed by local governments, special districts or water corporations to 25 percent of the impact fees otherwise charged for a new single-family dwelling for ADUs 750 square feet or greater and would waive impact fees for ADUs less than 750 square feet. The bill would also limit to 60 days the time a local agency has to issue an ADU permit after receiving an application and create a 10-yearly amnesty program to incentivize owners of existing unpermitted ADUs to obtain the permits and inspections necessary to legalize the units.

Background: Many Bay Area local governments have taken steps to actively incentivize ADUs and over the past three years a number of bills have been enacted to limit zoning restrictions and expedite ADU approvals. As a result, the number of ADU permit applications received has surged throughout the region, growing 14-fold in San Francisco and more than seven-fold in Oakland between 2015 and 2017. However, according to the Turner Center for Housing Innovation at UC Berkeley, there are still a number of barriers to ADU development, including cost and challenges associated with securing financing – including issues associated with owner-occupancy; banks are less willing to offer a loan to a homeowner to build an ADU if it has an owner-occupancy requirement because the rental income is more limited and in the event of a foreclosure both units cannot be rented.¹

Attachment A compares SB 13 provisions with current law and with AB 68 (Ting), another ADU bill on today's agenda.

Discussion: As the Bay Area's housing crisis deepens, it is becoming increasingly important to consider innovative strategies to increase the Bay Area's housing supply. ADUs can be an important part of the solution, particularly in neighborhoods that are predominantly zoned for and occupied by single-family homes. Statewide single-family detached units make up over 56 percent of the overall housing stock according to the Turner Center. ADUs are inherently more low-impact and energy-efficient than large-scale construction and generally more affordable than other forms of housing. A 2012 study of the East Bay found that the average ADU was advertised at a rental rate that made it affordable to a household earning 62 percent of the area median income. This type of development is consistent with the Bay Area's shared climate and equity goals, as identified in *Plan Bay Area 2040*.

¹ <https://www.sightline.org/2013/03/15/adus-and-donts/>

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Given the potential for ADUs to be a part of the solution to the Bay Area's ongoing housing crisis, we support the policy of removing barriers to ADU production. However, we have concerns that the bill may have the unintended consequence of undermining the inherent affordability of ADUs and we believe it is important that localities have adequate tools, including balanced impact fees and owner-occupancy requirements, to address community impacts related to new housing. We believe the amendments bulleted below and detailed in Attachment B would strengthen the bill.

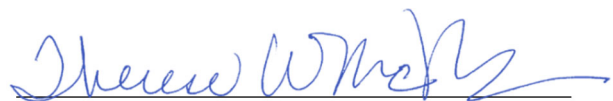
- **Owner-Occupancy** –*Remove the provision prohibiting localities from imposing owner-occupancy requirements on ADUs.*
- **Impact Fees** –*Reduce the impact fee waiver threshold from 750 square feet to 500 square feet, consistent with existing school development fee exemption.*

Staff recognizes that over the past three years there have been successive changes in ADU laws of which Bay Area jurisdictions have had varying capacity to implement. Additional planning resources such as those provided for in SB 2 (Atkins, 2017) and proposed by the Governor in the 2019 budget could support implementation efforts.

Recommendation: Support if Amended

Bill Positions: See Attachment C

Attachments: Attachment A: AB 68 (Ting) and SB 13 (Wieckowski) Comparison Matrix
Attachment B: SB 13 Policy Considerations and Amendment Recommendations
Attachment C: Bill Positions



Therese W. McMillan

AB 68 (Ting) and SB 13 (Wieckowski) Comparison Matrix
As of May 3, 2019

	Current Law	AB 68 (Ting)	SB 13 (Wieckowski)
Bill Status	N/A	Assembly Appropriations	Senate Appropriations
Minimum Lot size	Locally established	Prohibits minimum lot size standards	No change
Setback requirements	Five Feet	Reduces setback requirements to four feet	No change
Owner-Occupancy Requirement	Allows a local agency to require that an applicant be an owner-occupant	No change	Prohibits owner occupancy requirement
Application approvals	Requires ministerial approval of an ADU permit within 120 days	Reduces to 60 days from receipt of a completed application	Reduces to 60 days and deems permit approved if not acted upon within that period
State Oversight	Requires local agencies submit ADU ordinances to HCD within 60 days of adoption	Requires local agencies to submit ADU ordinances to HCD and authorizes HCD to make findings of non-compliance, require correction and work with Attorney General on enforcement	Requires local agencies to submit ADU ordinances to HCD and authorizes HCD to make findings of non-compliance, require correction and work with Attorney General on enforcement
Size Requirements	Requires ADU ordinance that allows an “efficiency unit” (250 – 450 square feet (sf))	Requires an ADU ordinance that establishes minimum or maximum size to allow an ADU of at least 800 sf and 16-feet high	Prohibits an ADU ordinance that does not allow an ADU of at least 850 sf (applies to studios and one-bedroom)/1,000 sf (applies more than one bedroom ADUs)
Zoning	Allowed in areas zoned to allow single family or multifamily dwelling residential use	Removes restriction to residential zones and instead applies to residential and mixed-use zones; Allows for one ADU and one JADU per proposed or existing single family residential unit and two ADUs per proposed or existing multifamily lot	Removes zoning restriction requiring only that the lot “includes a single family dwelling that exists or is proposed on the lot”

	Current Law	AB 68 (Ting)	SB 13 (Wieckowski)
Impact fees	Provides that an ADU shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service; Other fees subject to Fee Mitigation Act	No change	Provides for a tiered structure of fees based on size of ADU
RHNA	Permitted ADUs count toward RHNA numbers; no allowance for ADUs in site inventories	No change	Provides for an amnesty program to permit un-permitted ADUs; Authorizes a local agency to count ADUs for purpose of identifying adequate sites for its housing element
Parking	Restricts the parking standards a locality may impose on an ADU, including prohibiting parking requirements on ADUs located within ½ mile of public transit	Newly prohibits local agencies from requiring replacement parking for spaces that are lost due to construction of ADU (e.g. garage conversion)	Same as AB 68
Building Standard Amnesty	No amnesty	No change	Provides for an amnesty program to permit un-permitted ADUs that do not pose a health and safety risk

Source: Senate Housing Committee Analysis of SB 13, revised and augmented by MTC/ABAG staff

SB 13 Policy Considerations and Amendment Recommendations (*italicized*)

Owner Occupancy

Staff is concerned that the SB 13 provision prohibiting owner-occupancy requirements could have unintended consequences related to ADU affordability. An owner-occupancy requirement can serve as a check on institutional investors or speculators purchasing single family homes at a premium with the intention of renting an ADU at any price the market will bear. Some jurisdictions, including the City of Santa Rosa, waive owner occupancy requirements in exchange for affordability restrictions.

Staff proposes SB 13 be amended to remove the provision prohibiting localities from imposing owner occupancy requirements on ADUs.

Impact Fees

Impact fees are often cited as barriers to ADU development. In order to address this, a number of Bay Area jurisdictions have already taken steps to limit or eliminate impact fees associated with ADUs. However, fees range widely throughout the state. A 2018 analysis from the Senate Transportation and Housing Committee found that local development impact fees for ADUs range from anywhere between \$5,000 and \$60,000.

ADUs typically have a more modest impact on a neighborhood's infrastructure and services than large-scale developments and as such, subjecting ADUs to substantially similar fees makes little policy sense. This is reflected in the current requirement that school districts waive impact fees for new residential developments of 500 square feet or less. Of note, AB 68 and SB 13 would increase the minimum size of an allowable ADU to 800 square feet or more. Larger ADUs would correspond with greater infrastructure impacts.

In considering a similar bill last session (SB 831 (Wieckowski, 2018)) that would have eliminated ADU impact fees, ABAG provided that ADU fees should not be so cost prohibitive as to limit building but that localities should retain the ability to charge reasonable fees to pay for community impacts associated with new housing. The tiered fee schedule proposed by SB 13 is more consistent with the 2018 recommendation, however, SB 13 would still waive impact fees for ADUs up to 750 square feet.

Staff proposes amendments to SB 13 to reduce the impact fee waiver threshold from 750 square feet to 500 square feet, consistent with existing school development fee exemption.

SB 13 (Wieckowski) Positions

Support

Bay Area Council
California Apartment Association
California Chamber of Commerce
Eden Housing
LA-MAS
PrefabADU
Silicon Valley at Home (SV@Home)
Turner Center for Housing Innovation at the University of California, Berkeley

Oppose (unless amended)

American Planning Association, California Chapter
California Association of Counties
League of California Cities
Urban Association of Counties