



# SAN FRANCISCO PLANNING DEPARTMENT

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May 30, 2017

Ms. Angela Calvillo, Clerk  
Honorable Supervisor Aaron Peskin  
Board of Supervisors  
City and County of San Francisco  
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**Re: Transmittal of Planning Department Case Number 2017-005178PCA:  
Amendments to the Accessory Dwelling Unit Program  
Board File No. 170434  
Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo and Supervisor Aaron Peskin,

On May 4, 2017, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed ordinance, sponsored by Supervisor Peskin that would make additional amendments to the City's Accessory Dwelling unit program. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. For ADUs in multi-family buildings, and in single-family homes where waivers from the Planning Code are required (ADUs in single-family homes using the local program) allow taking space from an existing unit in the following circumstances:
  - o If such habitable space is on the ground or basement floors, but no more than 25% of an existing unit's GFA.
  - o If more than 25% of the unit is proposed for conversion to ADU, the Zoning Administrator can provide waiver in the following circumstances:
    - If the space is on the ground floor or below, and
    - If the 25% cap will leave space that is impractical or unusable for other reasonable uses, including – but not limited to - storage or bicycle parking.
    - If using the excess space beyond the 25% cap would help relieve any negative layout issues with the proposed ADU.
2. Do not include a specific timeline for review of all ADUs in multi-family zones or single-family homes where no waivers from the Planning Codes are needed.
3. Allow ADUs in multi-family homes and single-family homes where waivers from the Planning Code are needed to expand into the buildable envelope on the ground floor.
4. Subject ADUs in RH-1(D) districts to the same controls for ADUs in single-family homes in RH-1 and RH-1(S) districts, where no waiver from the Planning Code is required (Section 207.4 (c)(6)(C)) and remove Section 207.4 (c)(6)(B) from the Planning Code. (this recommendation is consistent with recommendation #13 below)

5. In Section 207.4 (c)(6)(C)(viii) make a reference to the applicable sections in the Code that allows replacement of parking with bicycle parking.
6. Clarify in Section 207.4 (c)(6)(D) that the RDG and applicable preservation review period must be completed within the 120-day period required.
7. Clarify in Section 207.4 (c)(6)(C)(iv) that the Department's preservation review would apply to any known historic resources.
8. Simplify the language under Section 207(c)(6)(C)(iii) to say that ADUs can be built anywhere within the buildable envelope of the property including: within an existing structure, an addition to an existing structure, or as a new structure.
9. Clarify in the Planning Code what types of ADUs are subject to Discretionary Review and the 120-day review timeline:
  - o ADUs subject to section 207 (c)(6) where no expansion is proposed must be reviewed ministerially within 120 days from receipt of a complete application and are not subject to discretionary review by the Planning Commission.
  - o ADUs subject to section 207 (c)(6) where expansion is proposed are subject to regular Planning Departmental review, including neighborhood notification and can be reviewed by the Planning Commission under their discretionary review authority. These permits would not have to be completed within 120 days.
10. Eliminate ground floor commercial sites from the legislation and recommend further study on retail spaces.

In addition to the recommendations above, the Commission also recommended that the following additional changes proposed by Supervisor Peskin in a May 4, 2017 memo be included in the Ordinance:

11. Add language in Section 207(c)(4)(B)(5) regarding the temporary eviction exemptions.
  - o Supervisor Peskin proposed the following language: "This provision shall not apply if the tenant was evicted under Section 37.9(a)(11) or 37.9(a)(14) and the applicant(s) either (A) have certified that the original tenant reoccupied the unit after the temporary eviction or (B) have submitted to the Department and to the Rent Board a declaration from the property owner or the tenant certifying that the property owner or the Rent Board notified the tenant by certified mail of the tenant's right to reoccupy the unit within three months after the effective date of the temporary eviction and the tenant chose not to reoccupy it."
  - o The Planning Commission proposed that this language be amended so that it would state that all procedures in this section are to align with the Rent Control Board Regulations and the Rent Control Ordinance.
12. Amend Section 207(c)(4)(C)(i) to calculate the number of ADU's permitted based on units per lot, rather than units per building.
13. Amend Section 207(c)(6)(B) and (C) to align the controls on construction across RH-1, RH-1(S), and RH-1(D) districts. (This recommendation is consistent with recommendation #4 above)
14. Expand the review for historic resources and design guidelines in Section 207(c)(6)(C)(v)-(vi).

Lastly, the Planning Commission expressly recommends that the following modification proposed in Supervisor Peskin’s May 4, 2017 memo not be included in the final ordinance:

- 15. Section 205(c)(4)(C)(i) – pg. 5, lines 21-23 – density appropriateness amendments. These amendments would tie the number of ADUs allowed under the seismic retrofit program to the underlining zoning. The Commission felt that these amendments would undermine the existing seismic retrofit program, which has already created a significant number of ADUs.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

The proposed Ordinance is covered under statutory exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15282(h) issued on February 16, 2017 and Addendum 4 to the Housing Element EIR issued June 15, 2016.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,



Aaron D. Starr  
Manage of Legislative Affairs

- cc:
- Judith A. Boyajian, Deputy City Attorney
  - Lee Hepner, Aide to Supervisor Peskin
  - Kanishka Karunaratne, Aide to Supervisor Farrell
  - Bill Barnes, Aide to Supervisor Sheehy
  - Alisa Somera, Office of the Clerk of the Board

- Attachments :
- Planning Commission Resolution
  - Planning Department Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change

HEARING DATE: MAY 4, 2017  
90 DAY DEADLINE: TBD, 2017

*Date:* April 27, 2017  
*Project Name:* **Amendments to the Accessory Dwelling Unit Program**  
*Case Number:* 2017-005178PCA, [Board File No. 170434]  
*Initiated by:* Supervisors Farrell and Sheehy/ Introduced April 17, 2017  
*Staff Contact:* Kimia Haddadan, Legislative Affairs  
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*Reviewed by:* Aaron Starr, Manager of Legislative Affairs  
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*Recommendation:* **Recommend Approval with Modification**

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### PLANNING & ADMINISTRATIVE CODE AMENDMENTS

Ordinance amending the Planning Code to bring the requirements and procedures for authorizing the construction of Accessory Dwelling Units (ADUs) in single-family homes into conformity with the new mandates of state law.

The proposed Ordinance was created at the Land Use Committee hearing on April 17 by duplicating Supervisor Peskin's Ordinance (File No. 170125), which would bring the City's ADU program into compliance with State Law. The proposed Ordinance before the Commission includes additional amendments to the ADU program, and are discussed further in this report.

#### The Way It Is Now:

##### Eviction Protections:

1. ADUs may not be built in a building with the following no-fault eviction history:
  - i. Owner move-in<sup>1</sup> eviction within five years prior to the permit application date for ADU, or
  - ii. Within 10 years prior to the application of ADUs for condo conversion, demolition, temporary evictions for capital improvements, substantial

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<sup>1</sup> Section 37.9(a)(8) of the Administrative Code

rehabilitation, Ellis Act withdrawals, or temporary eviction due to lead remediation?

Seismic Program Unit Cap:

2. There is no cap on the number of ADUs that may be added in buildings of five or more units. Buildings with four units or less may only add a maximum of one ADU. Buildings eligible for the mandatory seismic retrofitting include five or more units; therefore there is no cap on the number of ADUs that may be added. Buildings that are undergoing the voluntary seismic retrofitting program include four or fewer units and are therefore subject to a cap of one ADU per lot.

Preservation of Commercial Space:

3. Buildings in Neighborhood Commercial Districts may not convert any commercial space to an ADU.

Rooms-Down

4. Currently ADUs may not take space from an existing unit. If a “rooms-down”<sup>3</sup> space was built with proper permits, such space would be considered part of the existing unit and therefore may not be used to convert to an ADU.

Timeline for Review:

5. Currently there is no required timeline for review of ADUs, except for the State Law mandated 120 day review period for ADU’s in single-family homes (this 120 day review period is also included in the original Ordinance introduced by Supervisor Peskin). The Department generally approves a *complete* application for an ADU within 3 to 4 months.

Expanding the Building Envelope

6. Currently property owners can only expand the building envelope to add an ADU in the following circumstances:
  - Infilling an open area under a cantilevered room or room built on columns
  - Infilling under decks, except for decks that encroach into the required rear yard, or decks that are supported by columns or walls other than the building wall to which it is attached and are multi-level or more than 10 feet above grade
  - Infilling a lightwell provided that the infill will be against a blank neighboring wall at the property line and not visible from any off-site location; as these spaces exist

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<sup>2</sup> Administrative Code Sections 37.9(a)(9)-(14) respectively.

<sup>3</sup> Rooms Down refers to a matrix the Planning Department uses when approving permits that seek to remodel the lower floors of generally one and two unit buildings. The use of the matrix is intended to prevent homeowners from adding extra bathrooms and/or wet bars that would make it easy to convert the space into an unwarranted unit. See Exhibit F

as of July 11, 2016 and except for any of these spaces that encroach on the required rear yard

Neighborhood Notification:

7. Currently, ADUs trigger Neighborhood Notification (311) only when they expand the existing building envelope under the three situations explained above in item 6; however, if such expansions are proposed under a permit that doesn't add an ADU, neighborhood notification is not required.

**The Way It Would Be:**

Eviction Protections:

1. Temporary evictions where the tenant was allowed to return once construction was complete would no longer result in a prohibition from adding an ADU. ADUs would still be prohibited from being constructed in buildings with the following no-fault eviction history:
  - a. Owner move-in<sup>4</sup> eviction within five years prior to the ADU permit application date, or
  - b. Within 10 years prior to the ADU application date for condo conversion, demolition, substantial rehabilitation, Ellis Act withdrawals, and all temporary evictions<sup>5</sup> except in cases of where the tenant was allowed to return.

Seismic Program Unit Cap:

2. For buildings undergoing voluntary seismic retrofitting (buildings with 1-4 units), the cap on the number of ADUs would be removed.

Preservation of Commercial Space:

3. Buildings within Neighborhood Commercial Districts would be allowed to convert vacant commercial space to construct an ADU, so long as the commercial space is not street facing. If the space is street facing, no more than 25% the total commercial space on the lot can be converted to an ADU.

Rooms-Down

4. Residential space added by using the "rooms down" matrix would be allowed to be converted to an ADU.

Timeline for Review:

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<sup>4</sup> Section 37.9(a)(8) of the Administrative Code

<sup>5</sup> Administrative Code Sections 37.9(a)(11)-(14) respectively.

5. The Planning Department would be required to review all ADU permits within 120 days from receipt of the application, without modification or disapproval, if the proposed construction fully complies with the Code.

Expanding the Building Envelope

6. ADUs would only be allowed to expand into spaces listed in the ZA bulletin No. 4. This Bulletin lists types of “fill-in” expansions that would be exempted from neighborhood notification. This would mean that ADUs would NOT be allowed to expand under the qualifying decks (decks that are supported by the building walls only and that are not encroaching into the rear yard.) ADUs can still expand into the following spaces:
  - the open area under a cantilevered room or room built on columns
  - lightwell infills provided that the infill will be against a blank neighboring wall at the property line and not visible from any off-site location; as these spaces exist as of July 11, 2016 and except for any of these spaces that encroach on the required rear yard

Neighborhood Notification:

7. Expansion of ADUs, under the limited circumstances listed above, would no longer be subject to neighborhood notification, which is consistent with such expansions in other types of permits where ADUs are not being added.

## **BACKGROUND**

On February 23, the Commission heard an Ordinance introduced by Supervisor Peskin that would bring the local ADU program into compliance with State Law. The Commission recommended approval with modifications. This Ordinance is currently moving forward through the Board of Supervisor approvals. On February 23<sup>rd</sup>, Supervisors Farrell and Sheehy submitted a letter to the Commission that included a set of amendments that they wanted the Planning Commission to consider as they were considering Supervisor Peskin’s Ordinance. At the hearing, the Commission concluded that they did not have enough information or time to consider the amendments proposed by Supervisors Farrell and Sheehy and asked that the recommendations come back to the Commission at a separate hearing. On April 13<sup>th</sup>, the Commission considered the amendments listed in the letter. At that hearing, the Commission concluded they needed the amendments in ordinance form to properly consider them, and requested that the Board duplicate the file and add the proposed amendments as language to the duplicated file. The Commission then continued the item to May 4<sup>th</sup>.

The Land Use Committee of the Board of Supervisors duplicated the file on April 17<sup>th</sup>. This duplicated file includes the same amendments presented in the letter by Supervisors Farrell and Sheehy’s amendment and is the subject of analysis for this report.

## **ISSUES AND CONSIDERATIONS**

### **Eviction Protections**

The Citywide ADU program under Ordinance 162-16 prohibited ADUs in buildings with no-fault eviction history. This prohibition aligned with past City efforts to discourage evictions. In this case the City decided not to provide the ability to add an ADU to those properties. In the report published by the Department for that Ordinance, the Department recommended some flexibility within this prohibition, especially for temporary evictions where the tenants have returned or have been offered to return; however, this recommendation was not adopted by the Planning Commission at the time. Since then, the Department has received inquiries from property owners of buildings that have undergone mandatory seismic retrofitting, where the tenant had to be evicted temporarily. These property owners expressed frustration that they could no longer build an ADU even though their tenants returned or were offered to return after the completion of the mandatory retrofitting. This prohibition created a financial burden on those property owners and arbitrarily withdrew their ability to add an ADU.

### **Seismic Program Unit Cap**

In 2014 Ordinance 30-15 allowed ADUs in buildings undergoing mandatory or voluntary seismic retrofitting. The goal of this effort was to help incentivize both seismic retrofitting as well as creating new housing. To maximize the incentive, this program did not impose a sheer cap on the number of ADUs allowed in a building. Instead, two physical constraints were used to control the number of ADUs: 1) ADU's could only be built within the existing built envelope and; 2) ADU's could not take space from an existing unit. The ADUs in these buildings help offset the cost of retrofitting over the years.

While the mandatory seismic retrofitting program only applies to buildings of five or more units, the voluntary seismic program also applies to buildings with four units or less. In the past couple of years, the majority of ADU applications have been under the mandatory seismic retrofitting program. Only 28 ADU applications have been filed under the voluntary seismic retrofitting program. Of those, only 12 propose more than one ADU in a building with four units or less. Providing a cap on number of ADUs in buildings undergoing voluntary seismic retrofitting could discourage ADUs in those buildings, especially where large unused space can accommodate more than one ADU.

The Citywide ADU program, Ordinance 162-16, intended to keep the ADU program for buildings undergoing seismic retrofitting intact. That Ordinance, however, imposed a general cap of one ADU in buildings with four units or less, without providing an exception for ADUs in buildings undergoing voluntary seismic retrofitting.

### **Preservation of Commercial Space**

The Citywide ADU program imposed an overall ban on use of commercial space in Neighborhood Commercial districts in order to protect small businesses and maintain active retail on the ground floor in these districts. In the report published by the Planning Department for this Ordinance, the Department recommended that some flexibility be allowed in cases where small businesses have excess underutilized space; however, this recommendation was not adopted by the Planning Commission.

### **Rooms-Down**



The ADU program in San Francisco has always included a prohibition on converting existing habitable area space to ADU space. This constraint changed with the State Law, which became effective on January 1, 2017. Although the State Law only regulates single-family homes, it does require that existing habitable area in single-family homes be allowed to be converted to ADU space. The Ordinance sponsored by Supervisor Peskin (Board File No. 170125) incorporated that change by allowing use of space from an existing unit in single-family homes where no waivers from the Planning Code are required.

The proposed Ordinance would extend this provision to multi-family homes and single-family homes where waivers from the Planning Code are needed. It would limit using space from an existing unit to 'Rooms Down' space. This is a space defined in the Zoning Administrator Bulletin No. 1 that includes guidelines to convert ground floor space into habitable space *without* creating a new unit (see Exhibit F). This Bulletin was created at the time when ADUs were prohibited. The guidelines intended to regulate the space so that the ground floor habitable area cannot be used as a separate unit. Anecdotally, many of the existing 'unauthorized units' were created through 'Rooms Down' expansions, even though the City was discouraging them. If those spaces have been used as unauthorized units, the City currently allows them to be legalized through the legalization program.

However, if the property owners were law abiding and did not use their ground floor habitable space, currently the City does not allow for those spaces to be converted to ADUs (only in multifamily homes and single-family homes where waivers from the Planning Code is required).

Since the City has shifted its position towards ADUs and currently encourages their creation, it is timely to allow ground floor habitable spaces to be converted to legal ADUs in multi-family homes or single-family homes. However, it is important to note that limiting this provision to spaces permitted under previous 'Rooms Down' permits is problematic. The Planning Department has not been tracking 'Rooms Down' permits in the permit database as a specific type of permit. Therefore, it is impractical to identify what space was permitted with a 'Rooms Down' permit. Limiting the size of space that can be used from an existing unit is a more straight forward control the space used from an existing unit.

### **Timeline for Review**

Since the launch of the first ADU program, the Planning Department has been evaluating ways to streamline review of applications. Currently the Department has received over 250 ADU applications with 200 of those projects still under review, with a total of over 500 ADUs in the pipeline. Staff generally reviews and approves completed ADU applications within about three to four months. In many cases longer review time is due to planners requesting revisions to comply with the Planning Code. The Department created a detailed handbook, a permit application intake sheet, a new video, as well as a detailed fact sheets to help applicants submit a complete application.

The State Law (SB 1069), effective January 1, 2017, required jurisdictions to complete approval of Code-complying ADUs in single-family homes within 120 days. The Ordinance sponsored by Supervisor Peskin (Board File No. 170125) would legislate this timeline for those ADUs (in single-family homes where no waivers from the Planning Code are needed).

### **Expansions and Neighborhood Notification**

As discussed above, the addition of an ADU is only allowed to expand the building envelope when the expansion would infill under or within certain building features (fill-in under certain cantilevered rooms, certain lightwells). The Planning Code currently requires Neighborhood Notification for ADUs only when this expansion occurs. This is inconsistent with other permits that seek expansion in a similar way, but which are not adding an ADU. These expansions are exempt from neighborhood notification per Zoning Administrator Bulletin No. 4.

In previous reports on ADUs, the Department recommended relaxing this control further. In the case report for the Citywide ADU legislation published on June 9<sup>th</sup>, 2016, the Department included this discussion as follows:

“In some areas of the City, the built form consists of large private open spaces with small building footprints. Limiting the ADU to the existing built envelope in these lots could render adding an ADU infeasible. Residents in these areas of the City also rely more heavily on driving and converting their parking space to an ADU may not be a viable option. About 60% of lots with a residential building are more than 45% open, and about 25% of lots are more than 60% open (more than 45%, or 60% of each lot is open and not developed, respectively). Portions of these open areas that are currently in the buildable envelope of the lot could already be expanded on. The Department receives many applications annually that expand the building, to add a bedroom, create a deck, or additional habitable space. When reviewing these applications, staff considers the effects on adjacent properties, as well as the collective “mid-block open space”: the aggregate of private open spaces in each city block, usually divided up by 10 foot tall wooden fence at property line, providing residents with light, air, visual relief and a psychological comfort zone. The mid-block open space, if landscaped, can also provide habitat for birds and other animals, enriching the City’s biodiversity and wellbeing.

Applications for expansion of a building are generally subject to Neighborhood Notification pursuant to Planning Code Sections 311 and 312. Additionally, expansions over a certain threshold are also reviewed by the Department’s Residential Design Team (RDT). RDT reviews these projects and generally requires modifications to the rear yard expansions to minimize light and privacy impact on the adjacent properties, as well as the mid-block open space. This existing comprehensive due process justifies allowing ADUs to also use space from the buildable envelope, so long as the strict conditions currently exercised are met.”

## RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department’s proposed recommended modifications are as follows:

1. In NC Districts, limit the use of commercial space for ADUs to the following constraints:

- a. Up to 25% of a street facing ground floor commercial space may be converted, maintaining no less than 25' depth from the front façade, and no loss of storefront width.
  - b. Non-street facing or subterranean commercial and/or storage space may be converted only if it is detached (no interior connection) from the use on the above street facing commercial space (no size limit).
- 2. For ADUs in multi-family buildings, and in single-family homes where waivers from the Planning Code are required (ADUs in single-family homes using the local program) allow taking space from an existing unit in the following circumstances:**
- a. If such habitable space is on the ground or basement floors, but no more than 25% of an existing unit's GFA.
  - b. If more than 25% of the unit is proposed for conversion to ADU, the Zoning Administrator can provide waiver in the following circumstances:
    - i. If the space is on the ground floor or below, and
    - ii. If the 25% cap will leave space that is impractical or unusable for other reasonable uses, including – but not limited to - storage or bicycle parking.
    - iii. If using the excess space beyond the 25% cap would help relieve any negative layout issues with the proposed ADU.
- 3. Do not include a specific timeline for review of all ADUs in multi-family zones or single-family homes where no waivers from the Planning Codes are needed.**
- 4. Allow ADUs in multi-family homes and single-family homes where waivers from the Planning Code are needed to expand into the buildable envelope on the ground floor.**
- 5. Alternative to recommendation No. 4: Maintain the limited list of spaces that ADUs expand to in the Code and remove the requirement for neighborhood notifications for those limited spaces.**

The following are the Planning Commission's Recommendations in Resolution NO. 19859 for Supervisor PeSkin's legislation (Board file No. 170125). These recommendations were not incorporated to that Ordinance at the Land Use Committee.

- 6. Subject ADUs in RH-1(D) districts to the same controls for ADUs in single-family homes in RH-1 and RH-1(S) districts, where no waiver from the Planning Code is required (Section 207.4 (c)(6)(C)) and remove Section 207.4 (c)(6)(B) from the Planning Code.**
- 7. In Section 207.4 (c)(6)(C)(viii) make a reference to the applicable sections in the Code that allows replacement of parking with bicycle parking.**
- 8. Clarify in Section 207.4 (c)(6)(D) that the RDG and applicable preservation review period must be completed within the 120 day period required.**
- 9. Clarify in Section 207.4 (c)(6)(C)(iv) that the Department's preservation review would apply to any known historic resources.**

The following are additional clarifying recommendations to the ADU program as it relates to implementation of State Law requirements:

10. **Simplify the language under Section 207(c)(6)(C)(iii) to say that ADUs can be built anywhere within the buildable envelope of the property including: within an existing structure, an addition to an existing structure, or as a new structure.**
11. **Clarify in the Planning Code what types of ADUs are subject to Discretionary Review and the 120 day review timeline:**
  - a. **ADUs subject to section 207 (c)(6) where no expansion is proposed must be reviewed ministerially within 120 days from receipt of a complete application and are not subject to discretionary review by the Planning Commission.**
  - b. **ADUs subject to section 207 (c)(6) where expansion is proposed are subject to regular Planning Departmental review, including neighborhood notification and can be reviewed by the Planning Commission under their discretionary review authority . These permits would not have to be completed within 120 days.**

## **BASIS FOR RECOMMENDATION**

The Department supports the proposed Ordinance as it would further improve the City's ADU program. Many of these recommendations are ones that the Department has supported in the past and we believe will make the City's ADU program more effective and flexible.

1. **In NC Districts, limit the use of commercial space for ADUs to the following circumstances: a) Non-street facing and subterranean space disconnected from the above street facing commercial space, b) No more than 25% of the space in the back, leaving not less than 25' depth from the front façade.** This amendment would create flexibility in the ADU program to use underutilized commercial space while protecting small businesses and without compromising active ground floor in NC districts.
2. **For ADUs in multi-family buildings, and in single-family homes where waivers from the Planning Code are required (ADUs in single-family homes using the local program) allow taking space from an existing unit in the certain circumstances (see Recommendations for more detail).** This amendment would increase the opportunity to create an ADU in a building by using habitable space on the ground floor that was permitted in the past. This would allow families to maintain some storage, bicycle parking, or car parking space, and add an ADU to their building. It is timely to allow these ground floor habitable spaces (aka 'Rooms Down') to be used for creating an ADU, as in the past few years the City's stance towards ADUs has shifted dramatically from prohibiting them to encouraging them. In addition, previously permitted ground floor habitable space is also a very suitable type of space to convert to an ADU. These spaces already include bedrooms and bathrooms, therefore a new ADU may be created with limited additional cost.
3. **Do not include a specific timeline for review of all ADUs in multi-family zones or single-family homes where no waivers from the Planning Codes are needed.** Although the 120 day time limit is appropriate for projects in single-family homes that are not

seeking any Planning waivers, many applications for ADUs are more complicated when submitted for multi-family buildings or when they are seeking waivers from the Planning Code. These complicated projects often require additional review by staff which would be significantly strained if a 120 day time limit was in place.

4. **Allow ADUs in multi-family homes and single-family homes where waivers from the Planning Code are needed to expand into the buildable envelope on the ground floor.** The Department made this recommendation when the Planning Commission reviewed the Citywide ADU Ordinance in the past summer, and still supports this recommendation. The Department's case report published on June 6, 2016 supported this policy per the following: "About 60% of lots have more than 45% of the area open and undeveloped. The Department has received over 1000 permit to expand the building in rear over the past decade. It seems contradictory to allow the expansion of a building where no new unit is produced but to prohibit an expansion of the same size when a new dwelling unit is produced. This recommendation would provide more flexibility in terms of space that could be converted to an ADU. It would also help areas of the city which have less access to transit in maintaining their parking space while adding an ADU. The recommended modification would also limit this expansion to the ground floor only to minimize the effects on the built form, and adjacent properties. Neighborhood notification and RDT review would remain applicable for these expansions."
5. **Alternative to recommendation No. 4: Maintain the list of spaces into which ADUs could expand in the Code and remove the requirement for neighborhood notifications for those limited spaces.** While the Department strongly favors recommendation No. 5 over No.6, this recommendation would provide the bare minimum fix. The Department recommends maintaining the list of spaces eligible for expansion, instead of making a general reference to the ZA bulletin No. 4. The bulletin discusses many topics other than fill-ins; therefore referring to the entire bulletin would make the Code confusing. The only change would be to remove the language that subjects these expansions to neighborhood notification, consistent with other permits.
6. **Subject ADUs in RH-1(D) districts to the same controls for ADUs in single-family homes in RH-1 and RH-1(S) districts, where no waiver from the Planning Code is required (Section 207.4 (c)(6)(C)) and remove Section 207.4 (c)(6)(B) from the Planning Code.** This recommendation would include in the Code detailed State Law compliant provisions for ADUs in RH-1(D) districts consistent with the ones within RH-1 and RH-1(S) districts. Without this recommendation the Department would need to issue a Zoning Administrator Bulletin to implement the State Law for ADUs in RH-1(D) districts. To develop this Bulletin the Department would duplicate the work of this Ordinance in interpreting the same State Law that informed the new controls proposed in this Ordinance.

7. **In Section 207.4 (c)(6)(C)(ix) make a reference to the applicable sections in the Code that allows replacement of parking with bicycle parking.** The Planning Code already allows replacing existing required parking with bicycle parking. Including a reference to this already existing provision would clarify that required replacement parking can be satisfied with bicycle parking.
8. **Clarify in Section 207.4 (c)(6)(D) that the RDG and applicable preservation review period must be completed within the 120 day period required.** The proposed revision would ensure that Department's review, including reviewing based on RDGs and applicable preservation review, would be completed within 120 days and would not exceed that time period as required by State Law.
9. **Clarify in Section 207.4 (c)(6)(C)(iv) that the Department's preservation review would apply to any known historic resources.** The proposed recommendation would ensure that the Department can continue their applicable preservation review to any known historic resources. As written the proposed Ordinance would only allow preservation review to properties listed in the California Register of Historic Places.
10. **Simplify the language under Section 207(c)(6)(C)(iii) to say that ADUs can be built anywhere within the buildable envelope of the property including within an existing structure, an addition to an existing structure, or as a new structure.** Currently, Section 207(c)(6)(C)(iii) provides a list of spaces that can be used for ADUs. This list is sometimes overlapping and confusing. This recommendation would simplify this list without changing the types of eligible spaces already in the Ordinance.
11. **Clarify in the Planning Code what types of ADUs are subject to Discretionary Review and the 120 day review time line:**
  - a. **ADUs subject to section 207 (c)(6) where no expansion is proposed must be reviewed ministerially within 120 days from receipt of a complete application and are not subject to discretionary review by the Planning Commission.**
  - b. **ADUs subject to section 207 (c)(6) where expansion is proposed are subject to regular Planning Departmental review, including neighborhood notification and can be reviewed by the Planning Commission under their discretionary review authority . These permits would not have to be completed within 120 days.**

This recommendation clarifies the provision in State Law that requires ADUs under certain conditions (item a above) to be reviewed ministerially. The recommendation would provide clarity in the Code.

## REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

## **IMPLEMENTATION**

The Department determined that this ordinance will impact our current implementation procedures in the following way:

- The proposed amendments would modify controls for ADUs. This would mean that the Department would need to update the existing ADU fact sheets and staff training materials.

## **ENVIRONMENTAL REVIEW**

The proposed Ordinance is covered under statutory exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15282(h) issued on February 16, 2017 and Addendum 4 to the Housing Element EIR issued June 15, 2016.

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department has not received any comments about this Ordinance.

<b>RECOMMENDATION:</b> <b>Recommendation of Approval with Modification</b>
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### **Attachments:**

- Exhibit A:        Draft Planning Commission Resolution
- Exhibit B:        Resolution for Supervisor Peskin's Original Ordinance No. 19859
- Exhibit C:        Draft Ordinance



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 19908 Planning Code Text Change HEARING DATE: MAY 4, 2017

*Project Name:* Amendments to the Accessory Dwelling Unit Program  
*Case Number:* 2017-005178PCA, [Board File No. 170434]  
*Initiated by:* Supervisors Farrell and Sheehy/ Introduced April 17, 2017  
*Staff Contact:* Kimia Haddadan, Legislative Affairs  
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*Reviewed by:* Aaron Starr, Manager of Legislative Affairs  
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**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT RECOMMENDATIONS DELIVERED IN ADDITION TO A PROPOSED ORDINANCE AMENDING THE PLANNING CODE TO BRING THE REQUIREMENTS AND PROCEDURES FOR AUTHORIZING THE CONSTRUCTION OF ACCESSORY DWELLING UNITS (ADUS) IN SINGLE-FAMILY HOMES INTO CONFORMITY WITH THE NEW MANDATES OF STATE LAW; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1, AND FINDINGS OF PUBLIC CONVENIENCE, NECESSITY, AND WELFARE UNDER PLANNING CODE, SECTION 302; AND DIRECTING THE CLERK TO SEND A COPY OF THIS ORDINANCE TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AFTER ADOPTION PURSUANT TO STATE LAW REQUIREMENTS.**

WHEREAS, On February 23, the Commission heard an Ordinance introduced by Supervisor Peskin that would bring the local ADU program into compliance with State Law. The Commission recommended approval with modifications. This Ordinance is currently moving forward through the Board of Supervisor approvals; and,

WHEREAS, on February 23<sup>rd</sup> and later substituted on April 5, 2017, Supervisor Farrell and Supervisor Sheehy submitted to the Commission a memo for consideration recommending further amendments to an Ordinance introduced by Supervisor Peskin (Board File Number 170125); and,

WHEREAS, on April 17, 2017, at the Land Use Committee of the Board of Supervisors Supervisors Farrell and Sheehy introduced, by duplicating Board File Number 170125, a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 170434, , which would amend the Planning Code's controls for Accessory Dwelling Units; and,

WHEREAS, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed amendments contained in the proposed Ordinance by Supervisor Farrell and Supervisor Sheehy on May 4, 2017; and,



WHEREAS, The proposed Ordinance is covered under statutory exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15282(h) issued on February 16, 2017 and Addendum 4 to the Housing Element EIR issued June 15, 2016; and,

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance sponsored by Supervisor Farrell and Supervisor Sheehy; and,

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed Ordinance. The following are the Planning Commission recommended modifications to Supervisor Farrell and Sheehy's proposed amendments:

1. For ADUs in multi-family buildings, and in single-family homes where waivers from the Planning Code are required (ADUs in single-family homes using the local program) allow taking space from an existing unit in the following circumstances:
  - o If such habitable space is on the ground or basement floors, but no more than 25% of an existing unit's GFA.
  - o If more than 25% of the unit is proposed for conversion to ADU, the Zoning Administrator can provide waiver in the following circumstances:
    - If the space is on the ground floor or below, and
    - If the 25% cap will leave space that is impractical or unusable for other reasonable uses, including – but not limited to - storage or bicycle parking.
    - If using the excess space beyond the 25% cap would help relieve any negative layout issues with the proposed ADU.
2. Do not include a specific timeline for review of all ADUs in multi-family zones or single-family homes where no waivers from the Planning Codes are needed.
3. Allow ADUs in multi-family homes and single-family homes where waivers from the Planning Code are needed to expand into the buildable envelope on the ground floor.
4. Subject ADUs in RH-1(D) districts to the same controls for ADUs in single-family homes in RH-1 and RH-1(S) districts, where no waiver from the Planning Code is required (Section 207.4 (c)(6)(C)) and remove Section 207.4 (c)(6)(B) from the Planning Code. (this recommendation is consistent with recommendation #13 below)
5. In Section 207.4 (c)(6)(C)(viii) make a reference to the applicable sections in the Code that allows replacement of parking with bicycle parking.
6. Clarify in Section 207.4 (c)(6)(D) that the RDG and applicable preservation review period must be completed within the 120-day period required.
7. Clarify in Section 207.4 (c)(6)(C)(iv) that the Department's preservation review would apply to any known historic resources.

8. Simplify the language under Section 207(c)(6)(C)(iii) to say that ADUs can be built anywhere within the buildable envelope of the property including: within an existing structure, an addition to an existing structure, or as a new structure.
9. Clarify in the Planning Code what types of ADUs are subject to Discretionary Review and the 120-day review timeline:
  - o ADUs subject to section 207 (c)(6) where no expansion is proposed must be reviewed ministerially within 120 days from receipt of a complete application and are not subject to discretionary review by the Planning Commission.
  - o ADUs subject to section 207 (c)(6) where expansion is proposed are subject to regular Planning Departmental review, including neighborhood notification and can be reviewed by the Planning Commission under their discretionary review authority. These permits would not have to be completed within 120 days.
10. Eliminate ground floor commercial sites from the legislation and recommend further study on retail spaces.

In addition to the recommendations above, the Commission also recommended that the following additional changes proposed by Supervisor Peskin in a May 4, 2017 memo be included in the Ordinance:

11. Add language in Section 207(c)(4)(B)(5) regarding the temporary eviction exemptions.
  - o Supervisor Peskin proposed the following language: "This provision shall not apply if the tenant was evicted under Section 37.9(a)(11) or 37.9(a)(14) and the applicant(s) either (A) have certified that the original tenant reoccupied the unit after the temporary eviction or (B) have submitted to the Department and to the Rent Board a declaration from the property owner or the tenant certifying that the property owner or the Rent Board notified the tenant by certified mail of the tenant's right to reoccupy the unit within three months after the effective date of the temporary eviction and the tenant chose not to reoccupy it."
  - o The Planning Commission proposed that this language be amended so that it would state that all procedures in this section are to align with the Rent Control Board Regulations and the Rent Control Ordinance.
12. Amend Section 207(c)(4)(C)(i) to calculate the number of ADU's permitted based on units per lot, rather than units per building.
13. Amend Section 207(c)(6)(B) and (C) to align the controls on construction across RH-1, RH-1(S), and RH-1(D) districts. (This recommendation is consistent with recommendation #4 above)
14. Expand the review for historic resources and design guidelines in Section 207(c)(6)(C)(v)-(vi).

Lastly, the Planning Commission expressly recommends that the following modification proposed in Supervisor Peskin's May 4, 2017 memo not be included in the final ordinance:

15. Section 205(c)(4)(C)(i) – pg. 5, lines 21-23 – density appropriateness amendments. These amendments would tie the number of ADUs allowed under the seismic retrofit program to the underlining zoning. The Commission felt that these amendments would undermine the existing seismic retrofit program, which has already created a significant number of ADUs.

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission finds that allowing ADU's to take space from single-family homes and multi-family units would increase the opportunity to create an ADU in a building by using habitable space on the ground floor that was permitted in the past. This would allow families to maintain some storage, bicycle parking, or car parking space, and add an ADU to their building. It is timely to allow these ground floor habitable spaces (aka 'Rooms Down') to be used for creating an ADU, as in the past few years the City's stance towards ADUs has shifted dramatically from prohibiting them to encouraging them. In addition, previously permitted ground floor habitable space is also a very suitable type of space to convert to an ADU. These spaces already include bedrooms and bathrooms, therefore a new ADU may be created with limited additional cost.
2. The Commission finds that allowing ADUs to be to take space from an existing unit under defined circumstances would increase the opportunity to create an ADU. This would allow families to maintain some storage, bicycle parking, or car parking space, and add an ADU to their building. It is timely to allow these ground floor habitable spaces (aka 'Rooms Down') to be used for creating an ADU, as in the past few years the City's stance towards ADUs has shifted dramatically from prohibiting them to encouraging them. In addition, previously permitted ground floor habitable space is also a very suitable type of space to convert to an ADU. These spaces already include bedrooms and bathrooms, therefore a new ADU may be created with limited additional cost.
3. The Commission finds that the 120 day time limit to review ADUs is appropriate for projects in single-family homes that are not seeking any Planning waivers. Many applications for ADUs are more complicated when submitted for multi-family buildings or when they are seeking waivers from the Planning Code. These complicated projects often require additional review by staff which would be significantly strained if a 120 day time limit was in place.
4. The Commission finds that allowing ADUs to expand within the buildable envelope would provide more flexibility. About 60% of lots have more than 45% of the area open and undeveloped. The Department has received over 1000 permit to expand the building in rear over the past decade. It seems contradictory to allow the expansion of a building where no new unit is produced but to prohibit an expansion of the same size when a new dwelling unit is produced. This recommendation would provide more flexibility in terms of space that could be converted to an ADU. It would also help areas of the city which have less access to transit in maintaining their parking space while adding an ADU. The recommended modification would also limit this expansion to the ground floor only to minimize the effects on the built form, and adjacent properties. Neighborhood notification and RDT review would remain applicable for these expansions.

5. The Commission finds that controls for ADUs in RH-1(D) districts should be consistent with the controls for ADUs in RH-1 and RH-1(S) districts. Otherwise the Department would need to issue a Zoning Administrator Bulletin to implement the State Law for ADUs in RH-1(D) districts. To develop this Bulletin the Department would duplicate the work of this Ordinance in interpreting the same State Law that informed the new controls proposed in this Ordinance.

1. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the Objectives and Policies of the General Plan:

**OBJECTIVE 1**

**IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.**

**POLICY 1.5**

**Consider secondary units in community plans where there is neighborhood support and when other neighborhood goals can be achieved, especially if that housing is made permanently affordable to lower-income households.**

*The proposed amendments would expand the ADU program and make addition of ADU's more feasible.*

1. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative impact on neighborhood serving retail uses and would not impact opportunities for resident employment in and ownership of neighborhood-serving retail.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would not have a negative effect on housing or neighborhood character. The new units would be built within the existing building and therefore would impose minimal impact on the existing housing and neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing and aims to create units affordable to moderate and middle income households.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or

neighborhood parking;

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an impact on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have a negative impact on the City's Landmarks and historic buildings as the new units would be added under the guidance of local law and policy protecting historic resources, when appropriate.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an impact on the City's parks and open space and their access to sunlight and vistas.*

2. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance with modifications as described in this Resolution.

I hereby certify that the foregoing Resolution was ADOPTED by the Commission at its meeting on May 4, 2017.



Jonas P. Ionin  
Commission Secretary

AYES: Hillis, Richards, Fong, Johnson, Koppel, Melgar

NOES: Moore

ABSENT: None

ADOPTED: May 4, 2017