

1 [Planning Code - Construction of Accessory Dwelling Units]

2

3 **Ordinance amending the Planning Code to bring the requirements and procedures for**
 4 **authorizing the construction of Accessory Dwelling Units (ADUs) in single-family**
 5 **homes into conformity with the new mandates of state law; affirming the Planning**
 6 **Department's determination under the California Environmental Quality Act; making**
 7 **findings of consistency with the General Plan, and the eight priority policies of**
 8 **Planning Code, Section 101.1, and findings of public convenience, necessity, and**
 9 **welfare under Planning Code, Section 302; and directing the Clerk to send a copy of**
 10 **this Ordinance to the California Department of Housing and Community Development**
 11 **after adoption pursuant to state law requirements.**

12

13 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 14 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 15 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 16 **Board amendment additions** are in double-underlined Arial font.
 17 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 18 **Asterisks (* * * *)** indicate the omission of unchanged Code
 19 subsections or parts of tables.

17

18 Be it ordained by the People of the City and County of San Francisco:

19

20 Section 1. General Findings.

21 (a) The Planning Department has determined that the actions contemplated in this
 22 ordinance comply with the California Environmental Quality Act (California Public Resources
 23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
 24 Supervisors in File No. 170125 and is incorporated herein by reference. The Board affirms
 25 this determination.

1 (b) On February 23, 2017, the Planning Commission, in Resolution No. 19859,
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
5 the Board of Supervisors in File No. 170125, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that
7 these Planning Code amendments will serve the public necessity, convenience, and welfare
8 for the reasons set forth in Planning Commission Resolution No. 19859 and incorporates such
9 reasons herein by reference.

10
11 Section 2. Specific Findings.

12 (a) In 1982, the Legislature originally enacted the state's second unit law in
13 response to a serious statewide housing shortage. In California Government Code Section
14 65852.150, the Legislature found and declared that "second units are a valuable form of
15 housing in California" and Section 65852.2 encouraged local governments to enact legislation
16 that allowed and regulated second units within the jurisdiction. The California second unit law
17 has been amended several times since 1982, each time imposing additional limitations on the
18 local regulation of second units.

19 (b) On January 1, 2017, new amendments to California's second unit law (in which
20 second units were renamed accessory dwelling units) went into effect. California Government
21 Code Section 65852.150 was amended to declare that California's housing crisis is now
22 severe. The amendments mandate local governments, including those with a charter, to
23 approve ministerially one accessory dwelling unit in an existing single-family home located in
24 a single-family zoning district, or in a detached structure on the same lot, if the accessory
25 dwelling unit meets the standards enacted by the Legislature.

1 (c) A local government may adopt less restrictive requirements for accessory
2 dwelling units than the mandated state standards. However, a local ordinance that does not
3 include all the provisions required by state law, or that does not otherwise fully comply with
4 the new requirements, is unenforceable unless and until it is amended to comply.

5 (d) This ordinance amends San Francisco’s requirements and procedures for the
6 review and approval of accessory dwelling units in order to bring them into full compliance
7 with the recent state mandates.

8
9 Section 3. The Planning Code is hereby amended by revising Section 207, to read as
10 follows:

11 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

12 (a) **Applicability.** The density of ~~d~~Dwelling ~~#~~Units permitted in the various Districts
13 shall be as set forth in the Zoning Control Table for the district in which the lot is located. The
14 term "Dwelling Unit" is defined in Section 102 of this Code. In districts where no density limit is
15 specified, density shall not be limited by lot area but rather by the applicable requirements and
16 limitations set forth elsewhere in this Code. Such requirements and limitations include, but are
17 not limited to, height, bulk, setbacks, open space, exposure and unit mix as well as applicable
18 design guidelines, elements and area plans of the General Plan and design review by the
19 Planning Department.

20 * * * *

21 (c) **Exceptions to Dwelling Unit Density Limits.** An exception to the calculations
22 under this Section 207 shall be made in the following circumstances:

23 * * * *

1 (4) **Accessory Dwelling Units in Zoning Districts Other Than Single-**
2 **Family Zoning Districts RH-1(D); Accessory Dwelling Units in Single-Family Zoning Districts That**
3 **Do Not Strictly Meet the Requirements in Subsection (c)(6).**

4 (A) **Definition.** An "Accessory Dwelling Unit" (ADU) is defined in
5 Section 102.

6 (B) **Applicability.** ~~Except for lots zoned RH-1(D), which are regulated by~~
7 ~~subsection (c)(5) below, the exceptions permitted by~~ This subsection 207(c)(4) shall apply to the
8 construction of Accessory Dwelling Units on all lots located within the City and County of San
9 Francisco in areas that allow residential use, ~~except that construction of an Accessory Dwelling~~
10 ~~Unit is regulated by subsection (c)(6), and not this subsection (c)(4), if all of the following~~
11 circumstances exist:

- 12 (i) only one ADU will be constructed;
13 (ii) the ADU will be located on a lot in a single-family zoning district;
14 (iii) the ADU will be constructed entirely within the "living area" (as
15 defined in subsection (c)(6)(C)(i)) of an existing single-family home or within the built envelope of an
16 existing and authorized auxiliary structure on the same lot;
17 (iv) the ADU will strictly meet the requirements set forth in subsection
18 (c)(6) without requiring a waiver of Code requirements pursuant to subsection (c)(4)(G); and
19 (v) the permit application does not include seismic upgrade work
20 pursuant to subsection (c)(4)(F);

21 provided, however, that the Department shall not approve an application for construction of
22 an Accessory Dwelling Unit in any building regulated by this subsection (c)(4) where a tenant has
23 been evicted pursuant to Administrative Code Section 37.9(a)(9) through 37.9(a)(14) under a
24 notice of eviction served within 10 years prior to filing the application for a building permit to
25 construct the ADU or where a tenant has been evicted pursuant to Administrative Code

1 Section 37.9(a)(8) under a notice of eviction served within five years prior to filing the
2 application for a building permit to construct the ADU.

3 * * * *

4 (F) **Buildings Undergoing Seismic Retrofitting.** For Accessory
5 Dwelling Units on lots with a building undergoing mandatory seismic retrofitting in compliance
6 with Chapter 4D Section 34B of the Existing Building Code or voluntary seismic retrofitting in
7 compliance with the Department of Building Inspection's Administrative Bulletin 094, the
8 following additional provision applies: If allowed by the Building Code, a building in which an
9 Accessory Dwelling Unit is constructed may be raised up to three feet to create ground floor
10 ceiling heights suitable for residential use. Such a raise in height

11 (i) shall be exempt from the notification requirements of Sections
12 311 and 312 of this Code; and

13 (ii) may expand a noncomplying structure, as defined in Section
14 180(a)(2) of this Code and further regulated in Sections 172, 180, and 188, without obtaining
15 a variance for increasing the discrepancy between existing conditions on the lot and the
16 required standards of this Code.

17 (iii) on lots where an ADU is added in coordination with a building
18 undergoing mandatory seismic retrofitting in compliance with Chapter 4D Section 34 of the
19 Existing Building Code or voluntary seismic retrofitting in compliance with the Department of
20 Building Inspection's Administrative Bulletin 094, the building and the new ADU shall maintain
21 any eligibility to enter the condo-conversion lottery and may only be subdivided if the entire
22 property is selected on the condo-conversion lottery.

23 * * * *

24 (~~6~~ 5) **Accessory Dwelling Units in ~~RH-1(D)~~ Single-Family Zoning Districts**
25 **(RH-1, RH-1(D), and RH-1(S)).**

1 (A) **Definition.** ~~An "Accessory Dwelling Unit" (ADU) is defined in Section 102.~~

2 **Applicability.** This subsection (c)(6) shall apply to the construction of Accessory Dwelling Units (as
3 defined in Section 102) in single-family zoning districts that meet the requirements of this subsection.
4 An ADU constructed pursuant to this subsection is considered a residential use that is consistent with
5 the General Plan and the zoning designation for the lot. Adding one ADU to an existing single-family
6 home shall not exceed the allowable density for the lot. If construction of the ADU will not meet the
7 requirements of this subsection and the ADU cannot be constructed without a waiver of Code
8 requirements pursuant to subsection (c)(4)(G), the ADU is regulated pursuant to subsection (c)(4) and
9 not this subsection (c)(6).

10 (B) **RH-1(D); Controls on Construction.** An Accessory Dwelling Unit
11 in an RH-1(D) zoning district shall be allowed only as mandated by Section 65852.2 of the
12 California Government Code and only in strict compliance with the requirements of that
13 ~~subsection (b) of Section 65852.2,~~ as that state law it is amended from time to time.

14 (C) **RH-1 and RH-1(S); Controls on Construction.** An Accessory Dwelling
15 Unit located in an RH-1 or RH-1(S) zoning district and constructed pursuant to this subsection (c)(6)
16 shall meet all of the following:

17 (i) The ADU will strictly meet the requirements set forth in this
18 subsection (c)(6)(C) without requiring a waiver of Code requirements pursuant to subsection (c)(4)(G);

19 (ii) The permit application does not include seismic upgrade work
20 pursuant to subsection (c)(4)(F).

21 (iii) Only one ADU will be constructed that is entirely within the
22 "living area" of an existing single-family home, or within the built envelope of an existing and
23 authorized auxiliary structure on the same lot. "Living area" means (as defined in Section
24 65852.2(i)(1) of the California Government Code) "the interior habitable area of a dwelling unit
25 including basements and attics, but does not include a garage or any accessory structure."

1 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
2 additions, and Board amendment deletions in accordance with the “Note” that appears under
3 the official title of the ordinance.

4
5 Section 6. Directions to Clerk. The Clerk of the Board of Supervisors is hereby directed
6 to submit a copy of this ordinance to the California Department of Housing and Community
7 Development within 60 days after adoption pursuant to Section 65852.2(h) of the California
8 Government Code.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: _____
13 JUDITH A. BOYAJIAN
14 Deputy City Attorney
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