

File No. 190590 Committee Item No. 4
 Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
 AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date June 3, 2019

Board of Supervisors Meeting Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral CEQA 120518</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral PC 120518</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral FYI 120518</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>CEQA Determination 122718</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Board Reso No. 118-19</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>PLN Transmittal 040819</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral CEQA 052419</u> |
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Completed by: Erica Major Date May 30, 2019
 Completed by: Erica Major Date _____

1 [Planning, Business and Tax Regulations Codes - Accessory Dwelling Units in New
2 Construction]

3 **Ordinance amending the Planning Code and Business and Tax Regulations Code to**
4 **authorize the addition of an Accessory Dwelling Unit in the construction of a new**
5 **single-family home or multi-family building; clarifying the ministerial approval process**
6 **and creating an expedited Board of Appeals process for certain Accessory Dwelling**
7 **Units in single-family homes meeting specific requirements; amending the**
8 **requirements of the discretionary approval process under which property owners must**
9 **subject certain Accessory Dwelling Units to the Rent Ordinance; affirming the Planning**
10 **Department's determination under the California Environmental Quality Act; making**
11 **findings of consistency with the General Plan and the eight priority policies of Planning**
12 **Code, Section 101.1; and adopting findings of public necessity, convenience, and**
13 **welfare under Planning Code, Section 302.**

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

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

22 Section 1. Findings.

23 (a) The Planning Department has determined that the actions contemplated in this
24 ordinance comply with the California Environmental Quality Act (California Public Resources
25 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms
2 this determination.

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

8 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
9 ordinance will serve the public necessity, convenience, and welfare for the reasons stated in
10 Planning Commission Resolution No. _____.

11
12 Section 2. Article 1 of the Business and Tax Regulations Code is hereby amended by
13 revising Sections 8 and 26, to read as follows:

14
15 **SEC. 8. METHOD OF APPEAL TO THE BOARD OF APPEALS.**

16 (a) Except for variance decisions and permits issued by the Entertainment
17 Commission or its Director, and as otherwise specified in this Section 8, appeals to the Board
18 of Appeals shall be taken within 15 days from the making or entry of the order or decision
19 from which the appeal is taken. Appeals of variance decisions shall be taken within 10 days.

20 (b) Appeals to the Board of Appeals of permit decisions made pursuant to Planning
21 Code Section 343 shall be taken within 10 days of the permit decision. This subsection (b)
22 shall expire on the Sunset Date of Planning Code Section 343, as defined in that Section.
23 Upon the expiration of this subsection, the City Attorney shall cause this subsection to be
24 removed from the Business and Tax Regulations Code.

1 (c) Appeals to the Board of Appeals of permit decisions made pursuant to Planning Code
2 Section 207, subsection(c)(6), shall be taken within 10 days of the permit decision.

3 (ed) Appeals of actions taken by the Entertainment Commission or its Director on the
4 granting, denial, amendment, suspension, or revocation of a permit, or on denial of exceptions
5 from regulations for an Extended-Hours Premises Permit, shall be taken within 10 days from
6 the making of the decision. Nothing in this Section 8 is intended to require an appeal to the
7 Board of Appeals if any provision of Article 15, Article 15.1 (Entertainment Regulations Permit
8 and License Provisions), or Article 15.2 (Entertainment Regulations for Extended-Hours
9 Premises) of the Police Code governing these permits otherwise provides.

10 (de) Appeals shall be taken by filing a notice of appeal with the Board of Appeals and
11 paying to said Board at such time a filing fee as follows:

12 * * * *

13 (8) An exemption from paying the full fee specified in subsections (de)(1)
14 through (7) herein may be granted upon the filing under penalty of perjury of a declaration of
15 indigency on the form provided and approved by the Board. All agencies of the City and
16 County of San Francisco are exempted from these fees.

17 (9) **Additional Requirements.**

18 (A) Notice of appeal shall be in such form as may be provided by the
19 rules of the Board of Appeals.

20 (B) On the filing of any appeal, the Board of Appeals shall notify in writing
21 the department, board, commission, officer, or other person from whose action the appeal is
22 taken of such appeal. On the filing of any appeal concerning a structural addition to an
23 existing building, the Board of Appeals shall additionally notify in writing the property owners
24 of buildings immediately adjacent to the subject building.

1 (C) Except as otherwise specified in this subsection (~~de~~)(9)(C), the Board
2 of Appeals shall fix the time and place of hearing, which shall be not less than 10 nor more
3 than 45 days after the filing of said appeal, and shall act thereon not later than 60 days after
4 such filing or a reasonable time thereafter.

5 (i) In the case of a permit issued by the Entertainment
6 Commission or its Director, the Board of Appeals shall set the hearing not less than 15 days
7 after the filing of said appeal, shall act thereon not more than 30 days after such filing, and
8 shall not entertain a motion for rehearing.

9 (ii) In the case of a decision on a permit application made
10 pursuant to Planning Code Section 343, the Board of Appeals shall set the hearing not less
11 than 10 days after the filing of said appeal, shall act thereon not more than 30 days after such
12 filing, and shall not entertain a motion for rehearing. This subsection (~~de~~)(9)(C)(ii) shall expire
13 on the Sunset Date of Planning Code Section 343, as defined in that Section. Upon the
14 expiration of this subsection, the City Attorney shall cause this subsection to be removed from
15 the Business and Tax Regulations Code.

16 *(iii) In the case of a decision on a permit application made pursuant to*
17 *Planning Code Section 207, subsection (c)(6), the Board of Appeals shall set the hearing not less than*
18 *10 days after the filing of said appeal, shall act thereon not more than 30 days after such filing, and*
19 *shall not entertain a motion for rehearing.*

20 * * * *

21
22 **SEC. 26. FACTS TO BE CONSIDERED BY DEPARTMENTS.**

23 (a) Subject to subsection (b), in the granting or denying of any permit, or the revoking
24 or the refusing to revoke any permit, the granting or revoking power may take into
25 consideration the effect of the proposed business or calling upon surrounding property and

1 upon its residents, and inhabitants thereof; and in granting or denying said permit, or revoking
2 or refusing to revoke a permit, may exercise its sound discretion as to whether said permit
3 should be granted, transferred, denied, or revoked.

4 * * * *

5 (e) Notwithstanding subsection (a), the provisions of Planning Code Section 343 shall
6 govern actions taken on the granting, denial, amendment, suspension, and revocation of
7 permits regulated under that Section 343, not the standards set forth in subsection (a) of this
8 Section 26. This subsection (e) shall become operative upon receipt of preliminary approval of
9 Planning Code Section 343 by the California Department of Housing and Community
10 Development under California Government Code Section 66202. This subsection shall expire
11 by the operation of law in accordance with the provisions of Planning Code Section 343(k).
12 Upon its expiration, the City Attorney shall cause this subsection to be removed from the
13 Business and Tax Regulations Code.

14 (f) Notwithstanding subsection (a), the provisions of Planning Code Section 207, subsection
15 (c)(6), shall govern actions taken on the granting, denial, amendment, suspension, and revocation of
16 permits regulated under that subsection (c)(6), not the standards set forth in subsection (a) of this
17 Section 26.

18
19 Section 3. The Planning Code is hereby amended by revising Sections 102, 207, and
20 311 to read as follows:

21
22 **SEC. 102. DEFINITIONS.**

23 * * * *

24 **Dwelling Unit, Accessory.** Also known as a Secondary Unit or In-Law Unit, is a Dwelling Unit
25 that is constructed either entirely within the existing built envelope, the "living area" as defined

1 in State law, or the buildable area of an existing *or proposed* building in areas that allow
2 residential use; or is constructed within the existing built envelope of an existing and
3 authorized auxiliary structure on the same lot.

4 * * * *

5
6 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

7 * * * *

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

10 * * * *

11 (4) **Local Accessory Dwelling Unit Program: Accessory Dwelling Units in**
12 **Multifamily Buildings; Accessory Dwelling Units in Single-Family Homes That Do Not**
13 **Strictly Meet the Requirements in Subsection (c)(6).**

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

16 (B) **Applicability.** This subsection (c)(4) shall apply to the construction
17 of Accessory Dwelling Units on all lots located within the City and County of San Francisco in
18 areas that allow residential use, except that construction of an Accessory Dwelling Unit is
19 regulated by subsection (c)(6), and not this subsection (c)(4), if all of the following
20 circumstances exist:

- 21 (i) only one ADU will be constructed;
- 22 (ii) the ADU will be located on a lot that is zoned for single-
23 family or multifamily use and contains an existing *or proposed* single-family dwelling;
- 24 (iii) the ADU *is either attached to or* will be constructed entirely
25 within the "living area" (as defined in subsection (c)(6)(B)(iii)) or the buildable area of *an the*

1 proposed or existing primary dwelling single-family home, or constructed within the built envelope
2 of an existing and authorized auxiliary structure on the same lot; provided, however, that (A)
3 when a stand-alone garage, storage structure, or other auxiliary structure is being converted
4 to an ADU, an expansion to the envelope is allowed to add dormers even if the stand-alone
5 garage, storage structure, or other auxiliary structure is in the required rear yard and (B) on a
6 corner lot, a legal stand-alone nonconforming garage, storage structure, or other auxiliary
7 structure may be expanded within its existing footprint by up to one additional story in order to
8 create a consistent street wall and improve the continuity of buildings on the block.

9 (iv) the ADU will strictly meet the requirements set forth in
10 subsection (c)(6) without requiring a waiver of Code requirements pursuant to subsection
11 (c)(4)(G); and

12 (v) the permit application does not include seismic upgrade
13 work pursuant to subsection (c)(4)(F).

14 (C) **Controls on Construction.** An Accessory Dwelling Unit regulated by this
15 subsection (c)(4) is permitted to be constructed in an existing or proposed building under the
16 following conditions:

17 (i) For lots that have four existing Dwelling Units or fewer or where the
18 zoning would permit the construction of four or fewer Dwelling Units, one ADU is permitted; for lots
19 that have more than four existing Dwelling Units or are undergoing seismic retrofitting under
20 subsection (c)(4)(F) below, or where the zoning would permit the construction of more than four
21 Dwelling Units, there is no limit on the number of ADUs permitted; provided, however, that the
22 Department shall not approve an application for construction of an ADU Accessory Dwelling
23 Unit in any building regulated by this subsection (c)(4) where a tenant on the lot has been evicted
24 pursuant to Administrative Code Sections 37.9(a)(9) through (a)(12) and 37.9(a)(14) under a
25 notice of eviction served within 10 years prior to filing the application for a building permit to

1 construct the ADU or where a tenant has been evicted pursuant to Administrative Code
2 Section 37.9(a)(8) under a notice of eviction served within five years prior to filing the
3 application for a building permit to construct the ADU. This provision shall not apply if the
4 tenant was evicted under Section 37.9(a)(11) *or* 37.9(a)(14) and the applicant(s) either (A)
5 have certified that the original tenant reoccupied the unit after the temporary eviction or (B)
6 have submitted to the Department and to the Rent Board a declaration from the property
7 owner or the tenant certifying that the property owner notified the tenant of the tenant's right to
8 reoccupy the unit and the tenant chose not to reoccupy it.

9 (ii) Except as provided in subsections (iii) and (iv) below, an
10 Accessory Dwelling Unit shall be constructed entirely within the buildable area of an existing
11 lot, provided that the ADU does not exceed the existing height of ~~the~~ *an existing* building, or
12 within the built envelope of an existing and authorized stand-alone garage, storage structure,
13 or other auxiliary structure on the same lot, as the built envelope existed three years prior to
14 the time the application was filed for a building permit to construct the ADU. For purposes of
15 this provision, the "built envelope" shall include the open area under a cantilevered room or
16 room built on columns; decks, except for decks that are supported by columns or walls other
17 than the building wall to which they are attached and are multi-level or more than 10 feet
18 above grade; and lightwell infills provided that the infill will be against a blank neighboring wall
19 at the property line and not visible from any off-site location; as these spaces exist as of July
20 11, 2016.- An ADU constructed entirely within the existing built envelope, as defined in this
21 subsection (ii), along with permitted obstructions allowed in Section 136(c)(32), of an existing
22 building or authorized auxiliary structure on the same lot, or where an existing stand-alone
23 garage or storage structure has been expanded to add dormers, is exempt from the
24 notification requirements of Section 311 of this Code unless the existing building or authorized
25 auxiliary structure on the same lot is in an Article 10 or Article 11 District in which case the

1 notification requirements will apply. If an ADU will be constructed under a cantilevered room
2 or deck that encroaches into the required rear yard, a pre-application meeting between the
3 applicant and adjacent neighbors for all the proposed work is required before the application
4 may be submitted.

5 (iii) When a stand-alone garage, storage, or other auxiliary structure is
6 being converted to an ADU, an expansion to the envelope is allowed to add dormers even if
7 the stand-alone garage, storage structure, or other auxiliary structure is in the required rear
8 yard.

9 (iv) On a corner lot, a legal stand-alone nonconforming garage,
10 storage structure, or other auxiliary structure may be expanded within its existing footprint by
11 up to one additional story in order to create a consistent street wall and improve the continuity
12 of buildings on the block.

13 (v) An Accessory Dwelling Unit shall not be constructed using space
14 from an existing Dwelling Unit except that an ADU may expand into habitable space on the
15 ground or basement floors provided that it does not exceed 25% of the gross square footage
16 of such space. The Zoning Administrator may waive this 25% limitation if (a) the resulting
17 space would not be usable or would be impractical to use for other reasonable uses included
18 but not limited to storage or bicycle parking or (b) waiving the limitation would help relieve any
19 negative layout issues for the proposed ADU.

20 (vi) *An existing* building undergoing seismic retrofitting may be eligible
21 for a height increase pursuant to subsection (c)(4)(F) below.

22 (vii) Notwithstanding any other provision of this Code, an Accessory
23 Dwelling Unit authorized under this Section 207(c)(4) may not be merged with an original
24 unit(s).

1 (viii) An Accessory Dwelling Unit shall not be permitted in any building
2 in a Neighborhood Commercial District or in the Chinatown Community Business or Visitor
3 Retail Districts if it would eliminate or reduce a ground-story retail or commercial space.

4 (D) **Prohibition of Short-Term Rentals.** An Accessory Dwelling Unit shall
5 not be used for Short-Term Residential Rentals under Chapter 41A of the Administrative
6 Code, which restriction shall be recorded as a Notice of Special Restriction on the subject lot.

7 (E) **Restrictions on Subdivisions.** Notwithstanding the provisions of Article
8 9 of the Subdivision Code, a lot with an Accessory Dwelling Unit authorized under this Section
9 207(c)(4) shall not be subdivided in a manner that would allow for the ADU to be sold or
10 separately financed pursuant to any condominium plan, housing cooperative, or similar form
11 of separate ownership; provided, however, that this prohibition on separate sale or finance of
12 the ADU shall not apply to a building that (i) within three years prior to July 11, 2016 was an
13 existing condominium with no Rental Unit as defined in Section 37.2(r) of the Administrative
14 Code, and (ii) has had no evictions pursuant to Sections 37.9(a) through 37.9(a)(12) and
15 37.9(a)(14) of the Administrative Code within 10 years prior to July 11, 2016.

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

23 (i) ~~§~~ Shall be exempt from the notification requirements of Section ~~§~~ 311
24 ~~and 312~~ of this Code; and
25

1 (ii) ~~##~~May expand a noncomplying structure, as defined in Section
2 180(a)(2) of this Code and further regulated in Sections 172, 180, and 188, without obtaining
3 a variance for increasing the discrepancy between existing conditions on the lot and the
4 required standards of this Code.

5 (iii) ~~o~~On lots where an ADU is added in coordination with a building
6 undergoing mandatory seismic retrofitting in compliance with Chapter 4D of the Existing
7 Building Code or voluntary seismic retrofitting in compliance with the Department of Building
8 Inspection's Administrative Bulletin 094, the building and the new ADU shall maintain any
9 eligibility to enter the condo-conversion lottery and may only be subdivided if the entire
10 property is selected on the condo-conversion lottery.

11 (iv) ~~p~~Pursuant to subsection (4)(C)(i), there is no limit on the number of
12 ADUs that are permitted to be added in connection with a seismic retrofit.

13 (G) **Waiver of Code Requirements; Applicability of Rent Ordinance.**

14 Pursuant to the provisions of Section 307(l) of this Code, the Zoning Administrator may grant
15 an Accessory Dwelling Unit a complete or partial waiver of the density limits and ~~off-street~~
16 ~~parking~~, bicycle parking, rear yard, exposure, or open space standards of this Code. If the
17 Zoning Administrator grants a complete or partial waiver of the requirements of this Code ~~and~~
18 ~~the subject lot contains any Rental Units at the time an application for a building permit is filed~~
19 ~~for construction of the Accessory Dwelling Unit(s)~~, the property owner(s) shall enter into a
20 Regulatory Agreement with the City under subsection (c)(4)(H) subjecting the ADU(s) to the
21 San Francisco Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the
22 Administrative Code) as a condition of approval of the ADU(s). ~~For purposes of this~~
23 ~~requirement, Rental Units shall be as defined in Section 37.2(r) of the Administrative Code.~~

1 (H) **Regulatory Agreements.** A Regulatory Agreement required by
2 subsection (c)(4)(G) as a condition of approval of an Accessory Dwelling Unit shall contain the
3 following:

4 (i) a statement that the ADU(s) are not subject to the Costa Hawkins
5 Rental Housing Act (California Civil Code Section 1954.50) because, under Section
6 1954.52(b), the owner has entered into this agreement with the City in consideration for a
7 complete or partial waiver of the density limits, and/or ~~off street parking~~, bicycle parking, rear
8 yard, exposure, or open space standards of this Code or other direct financial contribution or
9 other form of assistance specified in California Government Code Sections 65915 et seq.
10 (“Agreement”); and

11 (ii) a description of the complete or partial waiver of Code
12 requirements granted by the Zoning Administrator or other direct financial contribution or form
13 of assistance provided to the property owner; and

14 (iii) a description of the remedies for breach of the Agreement and
15 other provisions to ensure implementation and compliance with the Agreement.

16 (iv) T-he property owner and the Planning Director (or the Director’s
17 designee), on behalf of the City, will execute the Agreement, which shall be reviewed and
18 approved by the City Attorney’s Office. The Agreement shall be executed prior to the City’s
19 issuance of the First Construction Document for the project, as defined in Section ~~Section~~
20 107A.13.1 of the San Francisco Building Code.

21 (v) Following execution of the Regulatory Agreement by all parties
22 and approval by the City Attorney, the Regulatory Agreement or a memorandum thereof shall
23 be recorded against the property and shall be binding on all future owners and successors in
24 interest.
25

1 Any Regulatory Agreement entered into under this Section 207(c)(4) shall not preclude
2 a landlord from establishing the initial rental rate pursuant to Section 1954.53 of the Costa
3 Hawkins Rental Housing Act.

4 (I) **Monitoring Program.**

5 (i) **Monitoring and Enforcement of Unit Affordability.** The
6 Department shall establish a system to monitor the affordability of the Accessory Dwelling
7 Units authorized to be constructed by this subsection 207(c)(4) and shall use such data to
8 enforce the requirements of the Regulatory Agreements entered into pursuant to subsection
9 (c)(4)(H). Property owners shall provide the Department with rent information as requested by
10 the Department. The Board of Supervisors recognizes that property owners and tenants
11 generally consider rental information sensitive and do not want it publicly disclosed. The intent
12 of the Board is for the Department to obtain the information for purposes of monitoring and
13 enforcement but that its public disclosure is not linked to specific individuals or units. The
14 Department shall consult with the City Attorney's Office with respect to the legal requirements
15 to determine how best to achieve the intent of the Board.

16 (ii) **Monitoring of Prohibition on Use as Short Term Rentals.** The
17 Department shall collect data on the use of Accessory Dwelling Units authorized to be
18 constructed by this subsection (c)(4) as Short-Term Residential Rentals, as that term is
19 defined in Administrative Code Section 41A.4, and shall use such data to evaluate and
20 enforce Notices of Special Restriction pursuant to subsection 207(c)(4)(D) and the
21 requirements of Administrative Code Chapter 41A.

22 (iii) **Department Report.** The Department shall publish a report
23 annually until April 1, 2019, that describes and evaluates the types of units being developed
24 and their affordability rates, as well as their use as Short-Term Residential Rentals. The report
25 shall contain such additional information as the Director or the Board of Supervisors

1 determines would inform decision makers and the public on the effectiveness and
2 implementation of this subsection (c)(4) and include recommendations for any amendments to
3 the requirements of this Section 207(c)(4). The Department shall transmit this report to the
4 Board of Supervisors for its review and public input. In subsequent years, this information on
5 Accessory Dwelling Units shall be reported annually in the Housing Inventory.

6 * * * *

7 (6) **State Mandated Accessory Dwelling Unit Program: Accessory Dwelling Units in**
8 **Existing or Proposed Single-Family Homes or in a Detached Auxiliary Structure on the Same**
9 **Lot.**

10 (A) **Applicability.** This subsection (c)(6) shall apply to the construction of
11 Accessory Dwelling Units (as defined in Section 102) in existing or proposed single-family
12 homes or in a detached auxiliary structure on the same lot if the ADU that meets the requirements
13 of this subsection. An ADU constructed pursuant to this subsection is considered a residential
14 use that is consistent with the General Plan and the zoning designation for the lot. Adding one
15 ADU to an existing or proposed single-family home or in a detached auxiliary structure on the same
16 lot does not exceed the allowable density for the lot. If construction of the ADU will not meet
17 the requirements of this subsection and the ADU cannot be constructed without a waiver of
18 Code requirements pursuant to subsection (c)(4)(G), the ADU is regulated pursuant to
19 subsection (c)(4) and not this subsection (c)(6).

20 (B) **Lots Zoned for Single-Family or Multifamily Use and Containing an**
21 **Existing or Proposed Single-Family Home; Controls on Construction.** An Accessory
22 Dwelling Unit located in a residential zoning district on a lot that is zoned for single-family or
23 multifamily use and contains an existing or proposed single-family dwelling and constructed
24 pursuant to this subsection (c)(6) shall meet all of the following:
25

1 (i) The ADU will strictly meet the requirements set forth in this
2 subsection (c)(6)(B) without requiring a waiver of Code requirements pursuant to subsection
3 (c)(4)(G).

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

6 (iii) Only one ADU will be constructed that is either attached to or will be
7 constructed entirely within the "living area" (as defined in subsection (c)(6)(B)(iii)) or within the
8 buildable area of an the proposed or existing primary dwelling single-family home or, except as
9 provided by subsections (c)(6)(x) and (xi) below, within the built envelope of an existing and
10 authorized auxiliary structure on the same lot. "Living area" means (as defined in Section
11 65852.2(i)(1) of the California Government Code) "the interior habitable area of a dwelling unit
12 including basements and attics, but does not include a garage or any accessory structure."

13 (iv) ~~If contained within the existing space of a single-family residence or~~
14 ~~accessory structure, the~~ ADU must have independent exterior access from the existing or
15 proposed primary dwelling residence or existing accessory structure, and side and rear setbacks
16 sufficient for fire safety.

17 (v) ~~If construction of the ADU will have adverse impacts on~~For
18 projects involving a property listed in the California Register of Historic Places, or a property
19 designated individually or as part of a historic or conservation district pursuant to Article 10 or
20 Article 11, the ADU shall comply with any architectural review standards adopted by the
21 Historic Preservation Commission to prevent adverse impacts to such historic resources or
22 any other known historical resource, the Department shall require modification of the
23 proposed project to the extent necessary to prevent or mitigate such impacts. Such projects
24 shall not be required to obtain a Certificate of Appropriateness or a Permit to Alter.
25

1 (vi) The Department shall apply any design guidelines in the Code to
2 the proposed project and review the design of the proposed project to ensure architectural
3 compatibility with existing buildings on the subject lot.

4 (vii) No setback is required for an existing garage that is converted to
5 an ADU.

6 (viii) All applicable requirements of San Francisco's health and safety
7 codes shall apply, including but not limited to the Building and Fire Codes.

8 (ix) No parking is required for the ADU. If existing parking is
9 demolished in order to construct the ADU, only the parking space required by this Code for
10 the existing single-family home must be replaced. If replacement parking is required, it may be
11 located in any configuration on the lot including but not limited to covered, uncovered, or
12 tandem space or by the use of mechanical automobile parking lifts.

13 (x) When a stand-alone garage, storage, or other auxiliary structure is
14 being converted to an ADU, an expansion to the envelope is allowed to add dormers even if
15 the stand-alone garage, storage structure, or other auxiliary structure is in the required rear
16 yard.

17 (xi) On a corner lot, a legal stand-alone nonconforming garage,
18 storage structure, or other auxiliary structure may be expanded within its existing footprint by
19 up to one additional story in order to create a consistent street wall and improve the continuity
20 of buildings on the block.

21 (xii) When the ADU involves expansion of the built envelope of an
22 existing primary dwelling, or an expansion of the built envelope of an existing and authorized
23 stand-alone garage, storage structure, or other auxiliary structure on the same lot, or the
24 construction of a new detached auxiliary structure on the same lot, the total floor area of the
25 ADU shall not exceed 1,200 square feet.

1 (xiii) The total area of floorspace of an accessory dwelling unit
2 proposed to be constructed with a proposed single-family dwelling shall not be less than 50
3 percent of the proposed primary dwelling living area, except that an efficiency unit (as defined
4 in Section 1208.4 of the San Francisco Building Code) that meets all other requirements of
5 this subsection (c)(6) may be constructed pursuant to Section 65852.2(c) of the California
6 Government Code.

7 **(C) Permit Application Review and Approval.** *Except as authorized by*
8 *subsections (c)(6)(B)(v) and (vi),* ~~t~~The Department shall approve an application for a permit to
9 construct an Accessory Dwelling Unit within 120 days from receipt of the complete application,
10 without modification or disapproval, if the proposed construction fully complies with the
11 requirements set forth in subsection (c)(6)(B). *No requests for discretionary review shall be*
12 *accepted by the Planning Department for permit applications meeting the requirements of this*
13 *subsection (c)(6). The Planning Commission shall not hold a public hearing for discretionary review of*
14 *permit applications meeting the requirements of this subsection (c)(6). Permit applications meeting the*
15 *requirements of this subsection (c)(6) shall not be subject to the notification or review requirements of*
16 *Section 311 of this Code.*

17 **(D) Appeal.** *The procedures for appeal to the Board of Appeals of a decision by the*
18 *Department under this subsection (c)(6) shall be as set forth in Section 8 of the Business and Tax*
19 *Regulations Code.*

20 **(DE) Prohibition of Short-Term Rentals.** An Accessory Dwelling Unit
21 authorized under this subsection (c)(6) shall not be used for Short-Term Residential Rentals
22 under Chapter 41A of the Administrative Code. This restriction shall be recorded as a Notice
23 of Special Restriction on the subject lot.

24 **(EF) Rental; Restrictions on Subdivisions.**

1 (i) An ADU constructed pursuant to this subsection (c)(6) may be
2 rented and is subject to all applicable provisions of the Residential Rent Stabilization and
3 Arbitration Ordinance (Chapter 37 of the Administrative Code).

4 (ii) Notwithstanding the provisions of Article 9 of the Subdivision
5 Code, a lot with an Accessory Dwelling Unit authorized under this subsection (c)(6) shall not
6 be subdivided in a manner that would allow for the ADU to be sold or separately financed
7 pursuant to any condominium plan, housing cooperative, or similar form of separate
8 ownership.

9 (~~FG~~) **Department Report.** In the report required by subsection (c)(4)(l)(iii), the
10 Department shall include a description and evaluation of the number and types of units being
11 developed pursuant to this subsection (c)(6), their affordability rates, and such other
12 information as the Director or the Board of Supervisors determines would inform decision
13 makers and the public.

14 15 **SEC. 311. PERMIT REVIEW PROCEDURES**

16 (a) **Purpose.** The purpose of this Section 311 is to establish procedures for reviewing
17 building permit applications to determine compatibility of the proposal with the neighborhood
18 and for providing notice to property owners and residents on the site and neighboring the site
19 of the proposed project and to interested neighborhood organizations, so that concerns about
20 a project may be identified and resolved during the review of the permit.

21 (b) **Applicability.** Except as indicated herein, all building permit applications in
22 Residential, NC, NCT, and Eastern Neighborhoods Districts for a change of use;
23 establishment of a Micro Wireless Telecommunications Services Facility; establishment of a
24 Formula Retail Use; demolition, new construction, or alteration of buildings; and the removal
25 of an authorized or unauthorized residential unit shall be subject to the notification and review

1 procedures required by this Section 311. In addition, all building permit applications that
2 would establish Cannabis Retail or Medical Cannabis Dispensary Uses, regardless of zoning
3 district, shall be subject to the review procedures required by this Section 311.

4 Notwithstanding the foregoing or any other requirement of this Section 311, a change of use
5 to a Child Care Facility, as defined in Section 102, shall not be subject to the review
6 requirements of this Section 311. Notwithstanding the foregoing or any other requirement of this
7 Section 311, building permit applications to construct an Accessory Dwelling Unit pursuant to Section
8 207(c)(6) shall not be subject to the notification or review requirements of this Section 311.

9 * * * *

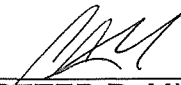
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11 Section 3. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor's veto of the ordinance

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Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

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

By: 
PETER R. MILJANICH
Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning, Business and Tax Regulations Codes - Accessory Dwelling Units in New Construction]

Ordinance amending the Planning Code and Business and Tax Regulations Code to authorize the addition of an Accessory Dwelling Unit in the construction of a new single-family home or multi-family building; clarifying the ministerial approval process and creating an expedited Board of Appeals process for certain Accessory Dwelling Units in single-family homes meeting specific requirements; 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 adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

Planning Code Section 102 defines "Accessory Dwelling Unit" (ADU) and Sections 207(c)(4) and 207(c)(6) establish the requirements for constructing an ADU in areas in San Francisco that are zoned for residential use. The provisions in Section 207(c)(4) apply to the City's local program for construction of ADUs in multi-family buildings and single-family homes that do not meet the state law criteria; the provisions in Section 207(c)(6) apply to existing single-family homes that strictly meet the state law's ADU requirements without requiring a Zoning Administrator waiver of Planning Code provisions.

Under Planning Code Section 207(c)(4)(G), the Zoning Administrator may grant an ADU a complete or partial waiver of certain Planning Code standards. If the Zoning Administrator grants such a waiver, and the lot contains any Rental Units, as that term is defined in Administrative Code Section 37.2(r), the property owner must enter into a regulatory agreement with the City subjecting the ADU to the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Administrative Code Chapter 37).

Planning Code Section 311 establishes the notice requirements and permit review procedures for building permit applications in Residential, NC, NCT, and Eastern Neighborhoods Districts for a change of use, and demolition, new construction, or alteration of buildings. Section 8 et seq. of the Business and Tax Regulations Code establish the procedures for appeals to the Board of Appeals. Section 26 authorizes a permit-issuing agency to take into account the effect of a code-complying project on surrounding property and its residents and exercise its sound discretion in determining whether to grant, deny, or revoke a permit.

Amendments to Current Law

The state law currently requires that a local jurisdiction ministerially approve the addition of one ADU in the new construction of a single-family home that meets all the requirements of state law. The ADU can be within the living area of the primary structure, attached to the primary structure, or in a detached structure on the same lot as the primary structure. This ordinance amends Planning Code Section 207(c)(6) – the City's state mandated ADU program – to reflect the current provisions of state law. This ordinance also amends Planning Code Section 207(c)(4) – the City's local ADU program – to allow construction of an ADU as part of new construction of the primary structure. The definition in Planning Code Section 102 is amended to include new construction. This ordinance exempts building permit applications to construct an ADU under subsection 207(c)(6) from the notification and review requirements of Planning Code Section 311.

This ordinance requires ADUs approved under the City's state-mandated ADU program to comply with ministerial architectural review standards to prevent adverse impacts on certain historic resources. This ordinance also limits the maximum size of ADUs approved under the City's state-mandated ADU program that involve expansions of the building envelope.

This ordinance amends Section 207(c)(4)(G) to require a property owner to enter into a regulatory agreement with the City subjecting the ADU to the Rent Ordinance if the Zoning Administrator grants a waiver of certain Planning Code standards, regardless of whether the lot contains any Rental Units. This ordinance also requires that the total area of floorspace of an ADU proposed to be constructed with a proposed single-family dwelling shall not be less than 50 percent of the proposed primary dwelling living area, except that an efficiency unit (as defined in Section 1208.4 of the Building Code) may be constructed.

This ordinance amends Business and Tax Regulations Code Section 8 and 26 to eliminate the exercise of discretion in the review of permits for the construction of an ADU under Planning Code Section 207(c)(6).

Background Information

The State Legislature has declared that Accessory Dwelling Units are a valuable form of housing in California. They are an affordable type of housing because they do not include the costs of purchasing land or require major new infrastructure. Since adoption, the Legislature has amended state ADU law several times to tighten requirements and make ADU approval less discretionary.

San Francisco first enacted a local ADU ordinance in 2015 and has updated its ADU program several times since then, both in response to amendments to the state law and also to facilitate the construction of ADUs under the City's local program. This legislation will update San Francisco's ADU program to comply with amendments to the state law.

This Legislative Digest reflects amendments made by the Land Use Committee of the Board of Supervisors on May 20, 2019. These amendments include clerical amendments, and

modifications to the City's state-mandated ADU program to: (1) require compliance with architectural review standards to prevent adverse impacts on certain historic resources; (2) limit the maximum size of ADUs involving expansions of the building envelope; and (3) require that the total area of floorspace of an ADU proposed to be constructed with a proposed single-family dwelling shall not be less than 50 percent of the proposed primary dwelling living area, except that an efficiency unit may be constructed. These amendments also the City's discretionary approval process to require a property owner to enter into a regulatory agreement with the City subjecting the ADU to the Rent Ordinance if the Zoning Administrator grants a waiver of certain Planning Code standards, regardless of whether the lot contains any Rental Units.

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ADUs formerly called “in-laws” have been a good way to provide affordable housing in the City

Prior to their legalization, starting with former Supervisor Wiener’s legislation in District 8, you could often find them all over the City in every neighborhood, often in a single family home, with tenants happily living in the “in-law unit”, paying a very reasonable rent commensurate with their income and allowing them to save money.

Rent control of new units in new construction is a good way to continue this historic pattern of these units which existed prior to the extreme speculation in housing that San Francisco has experienced in the last decade.

This will give new generations opportunities to live in San Francisco.

However, ADUs in new construction *must not* encourage speculators to demolish sound, functioning, livable single family housing to add the ADU. This is particularly important in single family housing that is occupied by tenants who would be evicted to allow the construction of ~~the~~ a large single family home with an ADU.

This is an unintended consequence that would actually slow down the production of ADUs per Mayor Breed’s statements as well as her statements concerning the affordability ADUs.

As Mayor Breed stated, ***“I will not let our bureaucracy stand-in the way of building more housing, especially new rent-controlled housing....”***

181150
RECEIVED IN COMMITTEE
05/20/2019

From: Michael Murphy
625 – 6th Avenue
San Francisco, CA 94118

To: Land Use and Transportation Committee
San Francisco Board of Supervisors

Responding to the housing crisis, many cities have adopted ordinances authorizing accessory dwelling units (ADUs) as means of encouraging additional housing in neighborhoods of single-family homes. Portland, Oregon, a city of single-family homes, has experienced great success with this mode of in-filling.¹ In 2016, the California legislature enacted legislation mandating local ordinances following the general pattern of the Portland ordinance. San Francisco acknowledged certain provisions of the state law in an ordinance adopted in 2017 but took no meaningful action to comply with the law by expanding the options for ADUs.²

Ironically, San Francisco took a notably progressive step in 2015 by adopting an ADU Manual that anticipated the 2016 state law by providing clear and detailed guidelines for construction of a certain limited range of ADU prototypes.³ Unlike most city ordinances, the Manual authorized ADUs in both single-family homes and multi-unit buildings. A Planning Department report in June 2018 found that the city had experienced a surge in construction of ADUs in multi-unit buildings but construction of ADUs in single-family homes had lagged – amounting to only 12% of

¹ See (<http://sfcommunityalliance.org/news/neighbors-speak-why-has-portland-led-the-way-on-adus/>)

² Ordinance 95-17.

³ SF-ADU, a guide for homeowners, designers, and contractors considering adding an Accessory Dwelling Unit to an existing residence in San Francisco, sponsored by the San Francisco Planning Department, July, 2015 (hereafter ADU Manual).

ADU permit filings the previous four years.⁴ There were only two filings in the Richmond District where I live.

In this memo, I will show that the stalled progress of ADU construction in single-family homes reflects the practical consequence of failure to comply with state law.

[An ordinance now before the Land Use Committee would cure, or arguably cure, certain relatively minor discrepancies with state law. (file No. 181156) I will describe the potential impact of this proposed 2019 amendment in brackets.]

1. The definition of ADU

The San Francisco Planning Code defines ADUs in a manner that drastically restricts options for single-family homes. Section 102 provides:

(An ADU is) ... a Dwelling unit that is constructed either entirely within the existing built envelope, the 'living area' as defined in State law, or the buildable area of an existing building in areas that allow residential use; or is constructed within the existing built envelope of an existing and authorized auxiliary structure on the same lot.

First, the definition illegally restricts *free-standing* ADUs to “the existing built envelope of an existing and authorized auxiliary structure.” In contrast, Government Code section 65852.2(i)(4) broadly defines an ADU to include any “detached residential dwelling unit” meeting certain requirements.⁵ Subdivision (a)(1)(D)(v) adds: “The total area of floor space for a detached accessory dwelling

⁴ Accessory Dwelling Unit (ADU) Tracking and Monitoring Report, May 31, 2018, San Francisco Planning Department.

⁵ Government Code section 65852.2(i)(4) provides in part: “Accessory dwelling unit means an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons.” See also Government Code section (a)(1)(D)(iii), which states simply that an accessory dwelling may “detached from the existing dwelling and located on the same lot as the existing dwelling.”

unit shall not exceed 1,200 square feet.⁶ Neither provision contains any reference to the “built envelope.”

On its face, the restrictive definition of an ADU in section 102 would go far toward precluding free-standing ADUs in San Francisco. Quite apart from the flimsy nature of most “auxiliary structures,” such as garages and storage sheds, the footprint of an auxiliary structure is ordinarily too small for a tenantable dwelling. A recent amendment to section 207 of the Planning Code adds some needed flexibility but still falls well short of compliance with state law. The amendment provides that a garage converted to an ADU may “add dormers” and a garage or storage shed on a corner may add an additional story to be consistent with the “street wall.”⁷ The Government Code provisions, cited above, do not tie free-standing ADUs to conversion of an existing structure and permit architectural creativity beyond the limited concessions in the amendment.⁸

The strange reference to “the ‘living area’ as defined in State law” in section 102 should be mentioned in passing. The notion that the “living area” as defined in

⁶ Another provision, Government Code section (a)(1)(B)(i), permits some reasonable adjustment of this maximum, as construed by the Accessory Dwelling Unit Memorandum, December 2016, pp. 8-9, of the Department of Housing and Community Development.

⁷ Section 207(c)(6)(B)(x), as amended in 2018, provides: “When a stand-alone garage or other auxiliary structure is being converted to an ADU, an expansion to the envelope is allowed to add dormers ... (xi) On a corner lot, a legal stand-alone nonconforming garage, storage structure or other auxiliary structure may be expanded within its existing footprint by up to one additional story in order to create a consistent street wall and improve the continuity of buildings on the block.” See also Section 207(c)(4)(B)(iii).

⁸ Free-standing ADUs in Portland at times display charming architectural creativity – a quality that surely has much to do with their popularity. See examples in *Jumpstarting the Market for Accessory Dwelling Units*, by Karen Chapple, Jake Wegmann, Farazd Mashhood, and Rebecca Colman, *Terner Center for Housing Innovation* (2017)

state law is equivalent to the “built envelope” in local ordinance may be derived from a very loose reading of section 65852.2(a)(1)(D)(iii),⁹ but the following subdivision (a)(1)(D)(iv) uses the term to provide the base point for calculating the authorized extension of an attached ADU *beyond* the primary dwelling.¹⁰ It provides: “The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.” This subdivision – a key provision in the state law – thus employs the term living area in a sense directly opposed to that attributed to it in section 102.

The term “buildable area of an existing building” was added to section 102 as a concession to the 2016 state law. Since the City’s contention that it complies with the law hangs largely on this phrase, it merits close examination. The phrase has direct reference to Zoning Administrator Bulletin No. 5, which summarizes the setback requirements of Planning Code sections 132, 133 and 134 for particular zoning districts, including RH residential districts.¹¹

The obvious legal flaw of the “buildable area” provision is that it subordinates state law to local ordinances. The 2016 legislation provides a comprehensive scheme to which local ordinances must comply; it states that “no other local ordinance, policy, or regulation shall be the basis for denial of a building

⁹ Government Code section 65852.2(a)(1)(D)(iii) states: The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

¹⁰ The same peculiar misreading of the Government Code is found in section 207(c)(6)(B)(iii).

¹¹ Zoning Administrator Bulletin No. 5 is subtitled “Buildable Area for Lots in RH, RM, RC, and RTO Districts.”

permit.”¹² If a local government fails to enact complying ordinances, a homeowner may apply for an ADU permit in reliance on the state law.¹³ The “buildable area” provision turns this legislative scheme on its head by restricting ADUs to the scope allowed by local ordinances demarcating a buildable area.

This legal error is not purely theoretical: Bulletin No. 5 does not in fact fit within the legislative scheme of the 2016 legislation. First, looking at the Bulletin itself, it may be noted (1) the rear yard setbacks are not adaptable to free-standing ADUs;¹⁴ (2) these setbacks vary with the dimensions off the adjoining property, a concept not found in state law; (3) the rear yard setbacks may be as much as 45% of the total lot depth, thereby obstructing the construction of an ADU; (4) the Bulletin assumes narrow rectangular lots, a configuration that is typical but not universal in San Francisco; (5) the side yard setbacks will impinge on certain ADU designs; and (6) the “pop out” provision conflicts dramatically with Government Code section 65852.2(a)(1)(D)(iv).

Secondly, by referring to local setback restrictions summarized in Bulletin No. 5, the “buildable area” provision bypasses state legislation affecting setbacks. Government Code section 65852.1(a)(1)(D)(vii), mandates setbacks that provide vital leeway for construction of an ADU involving a garage conversion.

Thirdly, while the “buildable area” provision appears to offer an expansion of the area of permitted ADU construction, it conceals a significant contraction of this area. Prior to the amendment adding this provision, section 307(l) of the Planning Code gave the zoning administrator discretion to grant relief from setback

¹² Government Code section 65852.2(a)(5).

¹³ Government Code section 65852.2(b)

¹⁴ The ADU Manual, p.74, adheres to Bulletin 5 in presenting prototype F, thereby undermining the practical value of this prototype.

requirements “when modification of the requirement would facilitate construction of an Accessory Dwelling Unit.” Section 102 now hardens the setback restrictions by embedding them in the definition of an ADU.

But the mostly harmful consequence of the “buildable area” provision is that it has impeded development of feasible prototypes in the ADU Manual for free-standing and attached ADUs. It is true that prototype “F” envisions construction of a free-standing ADU along a rear alley, but there are few such alleys and the construction on subject to drastic setback requirements. The ADU Manual has no prototype at all for attached ADUs. The “buildable area” provision defeats the development of such prototypes because it makes relatively little change in previous restrictions and offers an ill-fitting gantlet of setback requirements designed for other purposes. In contrast, the state legislation provides a template for ADU construction in subsection (a)(1)(D), centering on the size and location of ADUs in relation to the primary dwelling, which opens the door for creative ADU design.

The greatest potential for ADUs in San Francisco lies in attached ADUs consisting of a wing or backyard extension of the primary dwelling. Particularly in the common 25 by 100 foot lots in the western neighborhoods, an ADU can join redundant or little used space in a primary dwelling with a modest extension into the yard, affording added living room as well as light and ventilation. Such extensions can be combined with improvements to the primary dwelling such as a porch, deck, or additional rooms above the ADU.

The most serious defect of the “buildable area” provision is not its obvious illegality or restrictive character but the manner in which it ossifies regulations, intended for other purposes, to obstruct creative use of urban space.

[The amendment now before the Committee contains two references to ADUs “attached to” the primary dwelling, which might be viewed as tentative half-steps toward compliance with state law. See proposed amendments to sections

2079 (c)(4)(B)(iii) and 207(c)(6)(B)(iii). But in the absence of any amendment to section 102, these references appear to relate to ADU applications within the nebulous parameters of the “buildable area” provision and therefore represent no substantive change in the ordinance.]

2. Proposed Single-family Homes

An amendment to Government Code 65852.2 in 2017 expanded the reach of the statute to “*proposed* or existing single-family homes.”¹⁵ As the citation to section 102 above reveals, the San Francisco Planning Code continues to limit authorization of ADUs to an “existing building.”¹⁶ This discrepancy has minor practical importance in San Francisco where there is relatively little new construction of single-family homes, but the city’s failure to comply with the 2017 amendment is worth noting as another example of its consistent disregard for state law.

[The proposed 2019 amendment would cure this discrepancy with state law. (See proposed amendment of section 102 and sections 207(c)(4)(B) and 207(c)(6)(B).)]

3. The Ministerial Approval Requirement

Three provisions of Government Code section 65852.2 mandate ministerial approval of ADU permit applications. Thus subdivision (a)(4) provides in pertinent part:

¹⁵ Government Code section 65852.2(a)(1)(D)(ii) authorizes local governments to provide for the creation of ADUs where a “lot is zoned for single-family or multifamily use and contains a proposed or existing single-family dwelling.”

¹⁶ The provisions relating to ADUs in Planning Code section 207 also refer consistently to “existing” structures. See section 207(c)(4)(B)(ii) (“existing single-family home”), (c)(4)(C)(ii) (“existing building ... existing structure”), (c)(6)(A) (“existing single-family home”), (c)(6)(B)(iii) (“existing single-family home”).

“...an accessory dwelling ordinance ... shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units,... (See also subdivisions (a)(3) and (e).)

The established legal definition of the term “ministerial” refers to a nondiscretionary duty to do a specific act. In this case, the duty would be to approve an ADU application complying with specific guidelines. The 2015 ADU Manual lends itself to such ministerial approval of ADU applications. I will refer to it as the Ordinary Definition. But the parlance of the zoning world may employ a looser definition, such as staff-level approval. It is at least arguable that the statute reflects this popular usage rather than the definition found in decisional and statutory law. I will refer to it as the Loose Definition. But if this definition is to have any meaning, it still must presuppose that an application will be approved in an over-the-counter review by planning department staff free of input from third parties.

The San Francisco ADU ordinance divides ADU permit applications into two tracks. Applications that pass a gantlet of restrictions qualify for expedited review under section 207(c)(6)(C).¹⁷ Those that fail to pass remain subject to discretionary waiver under section 207(c)(4)(G). One particular subject matter, the location of bicycle parking spaces, is also expressly made subject to discretionary waiver under this section.¹⁸

The plain language of section 65852.2(a)(4) requires ministerial approval of *all* ADU applications, not only those that come within an elaborately defined category. To the extent that it retains a category of applications -- and a specific

¹⁷ Section 207(c)(6)(C) provides: “Except as authorized by (c)(6)(B)(v) and (vi), the Department shall approve an application for a permit to construct an Accessory Dwelling Unit within 120 days from receipt of the complete application without modification or disapproval, if the proposed construction complies with the requirements set forth in subsection (c)(6)(B).”

¹⁸ Section 155.1(b) and (c)

subject matter -- subject to discretionary review, the ordinance is obviously in violation of state law.¹⁹

The expedited review provision of the San Francisco ordinance was drafted to provide ostensible compliance with state law by requiring approval of qualifying applications within 120 days “without modification or disapproval” following architectural review to ensure “architectural compatibility with existing buildings.”²⁰ The application must also meet a short list of restrictions that falls far short of providing any comprehensive guidelines for approval. This context of broad architectural review and fragmentary requirements strongly suggests that the provision complies, if at all, with the Loose Definition of the term ministerial approval.

Other provisions reveal that San Francisco in fact continues to exercise discretion over the approval of ADU applications going counter even to the Loose Definition of ministerial approval. Permit applications for attached ADUs and free-standing ADUs are subject to a discretionary review procedure that cannot be reconciled with any definition of ministerial approval.²¹ Homeowners must give notice of their application to neighbors residing within 150 feet and to “relevant

¹⁹ At the Planning Commission hearing on March 7, 2019, the Director of Planning testified that only 2% of ADU applications for single-family homes have come within the discretionary waiver provision of section 207(c)(4). But this percentage understates the actual impact of (c)(4) approvals. Applications coming within (c)(4) are also subject to neighborhood notification under section 311. (See pp 9-10 herein) These dual procedural hurdles operate to strongly discourage ADU applications that do not fall with in section 201(c)(6)(C).

²⁰ Section 207(c)(6)(B)(vi) provides. “The Department shall apply any design guides in the Code to the proposed project and review the design of the proposed project to ensure architectural compatibility with buildings.”

²¹ See Planning Code section 311(b) (“new construction”) and (b)(1) (“increase in exterior dimension of a residential building”).

neighborhood associations.” These third parties then have the right to request the Planning Commission “to exercise discretionary review” of the application in a public hearing.²² A homeowner may appeal an adverse decision to a Board of Appeals.²³

Applications to build ADUs within the existing envelope of the primary dwelling or “an auxiliary structure” are exempt from this burdensome procedure.²⁴ While this dispensation may reflect their less obtrusive nature, it is also consistent with the detailed guidelines for such applications in the ADU Manual. The compatibility of an ADU with adjacent property surely raises valid concerns. The Manual anticipates these concerns with generally applicable guidelines. In this way, it points the way to a fair and efficient procedure, congruent with the Ordinary Definition of ministerial approval, which could be extended to attached and free-standing ADUs.

[The amendment before the Committee would extend this exemption to all ADU applications “meeting the requirements of this subsection (c)(6) “ of section 207. See proposed amendment to section 207(C) and section 311(b). The efficacy of this provision in complying with state law is unclear since subsection (c)(6) is linked to the non-complying provisions of section 102, but the amendment would at least arguably cure this discrepancy with state law for all ADU applications except those falling within section 207(c)(4).]

²² Planning Code section 311(c)(2) and (d). There is a very narrow exemption from the notification requirements when a building is raised to accommodate an ADU during seismic retrofitting. See Section 207(c)(4)(F).

²³ See the section 311 notice prescribed by the Planning Department.

²⁴ The 2018 amendments provide that an application for an ADU within “the existing built envelope ... or authorized auxiliary structure of the same lot, where an existing stand-alone garage or storage structure has been expanded to add dormers, is exempt from the notification requirements of section 311...”

The discretionary review procedure goes hand-in-glove with a requirement of a pre-application meeting that also solicits input from third parties. The requirement, which is found in the permit application form, applies to ADUs involving “new construction” – an expression that covers “detached” ADUs other than those within the footprint of an existing structure – and any “horizontal addition of 10 feet or more” – a phrase that extends to most attached ADUs. Applicants must give notice of the meeting to “neighbors and neighborhood organizations” and submit a prescribed forms attesting to their good faith in conducting the meeting and recording concerns raised by participants. The Planning Department will refuse to accept an application without evidence that the meeting was held and conducted as directed.²⁵

In addition, the possibility of appeal to the Board of Permit Appeals creates a further level of discretionary review. The granting or denial of a ADU permit should, of course, be subject to appeal from arbitrary or illegal action. The pertinent appeal procedure is not found in the Planning Code but rather in the general provisions of Article 1 of the Business and Tax Regulations Code. Section 26(a) of Article 1 states that the Board of Appeals may exercise “its sound discretion as to whether said permit should be granted, transferred, denied, or revoked.”

[The amendment before the Committee would cure this discrepancy with state law. See section 2, adding subsection (f) to Business and Tax Regulation Code section 26.]

4. Historic Preservation

The ADU Manual and certain application forms raise the specter of a burdensome obstacle to ADU approval under the historic preservation provisions of

²⁵ See Planning Code section 207(c)(4)(C)(ii) as amended in 2018.

the California Environmental Quality Act (CEQA).²⁶ The Manual cautions. "if your project involves alteration to a structure ...[that is 50 years old or greater, then there will most likely be additional materials and process involved in order to determine if the proposed work is appropriate."²⁷ CEQA contains, however, a provision expressly exempting any project subject to ministerial approval.²⁸ As noted above, an application for an ADU permit for a single-family home comes squarely within this exemption. San Francisco has not yet included such ADU applications in its listing of ministerial actions exempt from CEQA.²⁹ The failure subjects applicants to a step in the approval process that is not required, but expressly precluded, by state law. The processing of ADU applications under the ministerial approval exemption, however, should not affect the outcome of environmental review.³⁰ The Planning Department bulletin outlining categorical exemptions from CEQA contains other provisions that track the provisions of state law pertaining to both attached ADUs and free-standing ADUs.³¹

²⁶ Public Resources Code section 21084.4. Articles 10 and 11 of the Planning Code will seldom involve a single-family home.

²⁷ ADU Manual, p. 19. See also Environmental Review Process Summary, Planning Department, p. 2 (50-year-old buildings); Application Packet for Environmental Evaluation, Planning Department, p. 2 (45 year-old buildings).

²⁸ See Public Resources Code section 21080(b).

²⁹ See Non-physical and Ministerial Projects not Covered by the California Environmental Quality Act, Planning Department, March 9, 1973.

³⁰ Administrative Code sections 31.06, 31.08 and 31.09.

³¹ Compare Categorical Exemptions from the California Environmental Quality Act, Planning Commission resolution 14952, August 17, 2000, Class 1 (e)(1) and Class 3 with Government Code sections (a)(1)(D)(iv) and (v).

While state law exempts ADU applications for single-family homes from CEQA review, Government Code section 65852.2(a)(1)(B)(i) does allow consideration of the value of historic preservation. First, in a provision that will seldom affect single-family homes in San Francisco, it allows local governments to guard against adverse impacts on property “listed in the California Register of Historic Places.” More importantly, this subsection allows local government to impose standards on ADUs relating to “architectural review.” Such architectural review may – and should – take historic preservation into consideration, but, as explained in part 6 herein, local governments are prohibited by Government Code section 65852.150(b) from adopting standards of architectural review that unreasonably burden, or unreasonably foreclose, opportunities for construction of ADUs in single-family homes. In a hearing on March 6, 2019, the Historic Preservation Commission approved a motion establishing six architectural standards for ADUs. This motion, which made no mention of section 65852.150(b), appears to fall short of meeting the test imposed by state law.

The 2018 amendment of Planning Code section 207 displays vague drafting that raises further concerns. Section 207 (c)(6)(B)(v) states that approval of an ADU application is conditional on a finding that there are no adverse impacts on property “listed in the California Register of Historic Places or *any other known historical resource.*” The scope of the phrase “any other known historical resource” is unclear, but the Executive Summary of the present ordinance appears to suppose that the phrase calls into play the full array of architectural preservation standards adopted by the Historic Preservation Commission.³² Since these standards when

³² Executive Summary, Planning Code Text Amendment re file no.181156, Case No. 2018-016401PCA, p. 4; see also Planning Commission Draft Motion, hearing date March 7, 2019 file no. 181156, p. 2.

adopted could not have contemplated ADUs in single-family homes, they again require review for consistency with Government Code section 65852.150(b).

We do not need to consider the relevance of Planning Code Articles 10 and 11, as they will rarely, if ever, apply to single-family homes.

5. Prohibited Restrictions

Government Code section 65852.2(a)(5) provides that “[n]o other local ordinance, policy, or restriction shall be the basis for the denial of a building permit or a use permit under this subdivision.” The provision appears after the subsections outlining the essential parameters of state standards and after subsection (a)(1)(B)(i) allowing certain limited autonomy to local governments. There may be gray areas in applying this provision, but section 207(c)(4)(C)(i) of the San Francisco Planning Code comes squarely within its prohibition. The provision directs the Planning Department to deny a permit application if the applicant has a record of evictions covered by specified provisions of the rent control ordinance.³³ (Some single-family homes may be covered by the just cause eviction provisions of rent control ordinance.)³⁴

A related provision in section 207 of the Planning Code, coming within the same prohibition, requires the Planning Department to deny a permit for an ADU for a residence that is then rented unless the applicant enters into a “regulatory agreement,” approved by the City Attorney, asserting compliance with an exemption provision of the Costa-Hawkins Act.³⁵ The provision is of highly questionable

³³ Specifically Administrative Code sections 37.9(a)(8) through 37.9(a)(14).

³⁴ See Administrative Code 37.2(h), (r) and (t)(definitions), and section 37.3(d) (referencing Civil Code section 1954.50 et seq); San Francisco Rent Board Topic 017: Overview of Covered and Exempt Units.

³⁵ Planning Code Section 207(c)(4)(G) and (H).

validity on additional grounds. If the ADU comes inescapably within the Costa-Hawkins Act, it is hard to see what good the blessing of the City Attorney will do.

These provisions both have the character of political gestures rather than policy measures, but they again represent evidence that the City Attorney did not advise the Board of Supervisors of the requirements of state law when they enacted an ordinance addressed to ADUs in single-family homes.

6. Open Space and Exposure

We have seen that the “buildable area” language of section 102 leads to setback requirements, adopted before the 2016 ADU legislation, that predictably do not conform to its standards.³⁶ (The 2017 amendment of section 136 adds to the problem.³⁷) Similarly, architectural review standards were adopted without reference to state law relating to ADUs in single-family homes. To this bad fit with state law, one must add the zoning regulations, predating 2016, for usable open space and exposure. The open space requirements of section 135 vary by zone – a pattern not permitted by the state legislation.³⁸ The section makes no accommodation or reference to ADUs but does refer to a seldom used zoning category, RH-1(S), which allows a second minor unit, not larger than 600 square feet, within the envelope of a residence that otherwise conforms to the RH-1(D) classification.³⁹ The state law, as we have seen, is more lenient as to square footage

³⁶ The Setback requirements of Planning Code sections 132, 133, and 134 are summarized in Zoning Administrator Bulletin No. 5.

³⁷ Planning Code section 136(c)(32).

³⁸ See Government Code section 65852.2(a)(1)(D)(ii) which extends the coverage of the statute to all lots containing a single-family homes in areas zoned for single-family or multifamily use. Only single-family homes that constitute nonconforming uses are excluded from the legislation.

³⁹ See Planning Code section 209.1 and Summary of the Planning Code Standards for Residential Districts (corrected to 2008).

and allows attached and free-standing units. The exposure regulation, was, in fact, amended in 2018 to make some accommodation to ADUs but in language that directly conflicts with the state law. The Planning administrator is given discretionary authority to “modify or waive” the applicable exposure restrictions – a violation of the ministerial approval provisions of the state law.⁴⁰

The existing regulation of setbacks, usable open space, exposure and architectural review will often present obstacles for the construction of ADUs in single-family homes, which will vary in importance depending on lot size and configuration, the dimensions of the primary dwelling, and the design of the ADU itself. Free-standing ADUs are likely to be most drastically affected. Open space requirements are also a matter of particular concern.⁴¹ Nevertheless, these regulations serve a legitimate interest in avoiding over-crowding that is recognized by Government Code section 65852.2(a)(1)(B)(i). This section gives local governments authority to “[i]mpose standards on accessory dwelling units that include ... lot coverage,…” The term “lot coverage” may reflect simple provisions that restrict ADUs to a certain percentage of the lot area. With its more complex housing patterns, San Francisco has found it necessary to deal with over-crowding with a composite of rules relating to setbacks, usable open space, exposure and architectural review. Subsection (a)(1)(B)(i) can reasonably be construed to authorize these regulations – or other regulations serving the same function in some form.

Section 65852.2(a)(1)(B)(i), however, is in tension with the succeeding provisions of subsection (a)(1)(D) and, for that matter, with much of the 2016 legislation. If carried to a logical extreme, it would effectively nullify many of the

⁴⁰ See Planning Code section 140(c)(2). Section 307(l)(1) provides a guideline for exercise of this discretion that mitigates, but does not cure, the violation of state law.

⁴¹ See Executive Summary, footnote 32, *supra*, p. 5.

carefully crafted sections of the legislation. To determine the reasonable limits of subsection (a)(1)(B)(i), we must turn to the statement of legislative purpose in Government Code 65852.150. Subsection (a) enumerates the benefits of ADUs and concludes that they are “an essential component of California’s housing supply.” Subsection (b) adds that the intention of the legislature is that the provisions of ADU ordinances must not be “so arbitrary excessive or burdensome so as to restrict the ability of homeowners to create accessory dwelling units.”

The Accessory Dwelling Unit Memorandum (December 2016) of the California Department of Housing and Community Development harmonizes section 65852.2(a)(1)(B)(i) with other provisions of the ADU legislation in a manner consistent with the statement of legislative purpose in section 65852.150(b). It states that local standards “must not be designed or applied in a manner that burdens the development of ADU” or “unreasonably restricts opportunities” for ADU construction. Specifically, standards relating to lot coverage “should not burden the development of ADUs.” As an example of the flexibility of state law, it states that the maximum unit size of 1200 square feet may reasonably be reduced to as little as 800 square feet (a dimension surely more appropriate for San Francisco). This interpretation is entirely reasonable on its merits and carries weight as the interpretation of an administrative agency of a matter within its purview.

As so construed, the planning code sections relating to setbacks, usable open space, exposure and architectural review require some recasting as they apply to ADUs in single-family homes. As a practical matter, this can only be accomplished with clarity and predictability by designing additional prototypes in the ADU Manual for free-standing and attached ADUs. The goal should be to allow creative use of available space without over-crowding. Exactly how this goal can be realized – and precisely when modifications of existing ordinances are needed – is a matter

for architects and planners, not lawyers.⁴² The role of legal analysis is to ensure that housing professionals enjoy the latitude allowed by state law in designing appropriate prototypes.

Conclusion

The path to realizing the considerable potential for new housing appurtenant to single-family homes lies in developing appropriate prototypes for attached and free-standing ADUs in a revised and expanded ADU manual with clear guidelines facilitating ministerial approval of permit applications in the Ordinary Definition of the term. The Planning Department should not be criticized for the failure to develop these prototypes; it has in fact done admirable work in beginning the process of developing a comprehensive ADU Manual. The fault lies entirely with the City Attorney's office, which has constrained the work of the Planning Department and the Land Use Committee with erroneous interpretations – and simple neglect – of state law.

Michael E. Murphy

415 752 733

⁴² The ADU Manual was prepared by an architectural firm, Openscope Studio.



181150
RECEIVED IN COMM

SAN FRANCISCO BOARD OF APPEALS

RESOLUTION ENCOURAGING THE ESTABLISHMENT OF NOTICE REQUIREMENTS TO ALL TENANTS OF A RESIDENTIAL BUILDING WHEN PERMITS ARE ISSUED TO ADD ACCESSORY DWELLING UNITS

WHEREAS, the Board of Appeals was established in 1932 and is authorized by the San Francisco Charter to hear and decide appeals of a wide range of determinations made by other City departments, commissions and agencies, including appeals of building permits; and

WHEREAS, San Francisco has streamlined the process for obtaining permits to build Accessory Dwelling Units ("ADUs"), the Board of Appeals has experienced an increase in appeals of permits obtained by property owners seeking to add Accessory Dwelling Units ("ADUs") to residential buildings, mainly by converting existing garage, storage and parking space; and

WHEREAS, there are no Building or Planning Code provisions which require the property owner to provide notice to all tenants of the issuance of the permits to convert building space to ADUs; and

WHEREAS, the only notice requirements directed to tenants are set forth in the Department of Building Inspection's "Information Sheet No. G-23" as part of the initial screening process before a permit is issued; and

WHEREAS, Information Sheet G-23 only requires the property owner to notify tenants that may lose housing services of their rights under the Rent Ordinance; and

WHEREAS, the Board has heard public testimony from a number of tenants who are either directly or indirectly affected by the addition of ADUs who stated that they did not receive notice of the proposed conversion of space either before or after the issuance of the permits; and

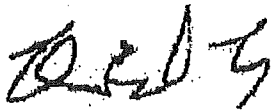
WHEREAS, said permits to build ADUs affect all tenants either directly (through the removal or reduction of housing services such as garage, laundry or storage space) or indirectly by the nature of construction work including, noise, construction workers and a possible reduction in on-street parking spaces when garages are removed; and

WHEREAS, the Board of Appeals believes that residential buildings and their public spaces form a community for the tenants who have made their homes within the building; and

WHEREAS, the Board of Appeals believes that property owners should provide notice to ALL tenants of: (1) the intent to convert space in the building to ADUs prior to permit issuance, and (2) the issuance of permits for ADUs; further, property owners should provide tenants with a set of plans and have a process in place to receive and respond to inquiries from tenants; and

NOW THEREFORE BE IT RESOLVED, that the members of the Board of Appeals encourage members of the San Francisco Board of Supervisors, the San Francisco Building Inspection Commission, and the San Francisco Planning Commission to consider Code revisions that would require property owners to provide plan sets and notice, both prior to and at the time of permit issuance, to all tenants of a residential building, of the intent to convert space in the building to ADUs, regardless of whether housing services will be severed or reduced; and further to require property owners to provide a process to receive and respond to inquiries from tenants.

Adopted by the San Francisco Board of Appeals at its meeting on May 8, 2019.



Richard Swig, President



Julie Rosenberg, Executive Director

AYES: Commissioner Lazarus, Commissioner Honda, Commissioner Tanner and President Swig

NOES: 0

ABSENT: 0

ADOPTED: May 8, 2019

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

December 5, 2018

File No. 181156

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On November 27, 2018, the Supervisor Safai introduced the following proposed legislation:

File No. 181156

Ordinance amending the Planning Code and Business and Tax Regulations Code to authorize the addition of an Accessory Dwelling Unit in the construction of a new single-family home or multi-family building; clarifying the ministerial approval process and creating an expedited Board of Appeals process for certain Accessory Dwelling Units in single-family homes meeting specific requirements; 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 adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a direct or indirect physical change in the environment.

Joy
Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org,
c=US
Date: 2018.12.27 16:20:19 -08'00'



SAN FRANCISCO PLANNING DEPARTMENT

April 8, 2019

Ms. Angela Calvillo, Clerk
Honorable Supervisor Safai
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
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Re: Transmittal of Planning Department Case Number 2018-016401PCA:
Accessory Dwelling Units in New Construction
Board File No. 181156
Planning Commission Recommendation: Approval with Modification
Historic Preservation Commission Recommendation: Approval with
Modification

Dear Ms. Calvillo and Supervisor Safai,

On March 6, 2019 and March 7, 2019, the Historic Preservation Commission and Planning Commission, respectively, conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Safai that would amend Planning Code Sections 102, 207, 311, 1005, and 1110 and Business and Tax Regulations Code Sections 8 and 26. At the hearings the Historic Preservation and Planning Commissions recommended approval with modification.

The Historic Preservation Commission recommended the following modifications:

1. Adopt a maximum size of 1,200 gross square feet for ADUs that are approved under the "No Waiver" program proposed in existing single-family homes.
2. Reduce the amount of required open space specifically for the proposed ADUs in RH-1, RH-1(D), and RH-1(S) Zoning Districts to 125 square feet of private usable open space or at a ratio of 1.33 of common usable open space.

Historic Preservation Review for ADUs in the "No Waiver" program:

3. Amend Section 207(c)(6)(B)(v) to specify that ADU projects will be required comply with architectural review standards to prevent adverse impacts on properties listed in the California Register of Historic Places and properties and districts designated pursuant to Article 10 and Article 11, and that said projects will not be subject to the Certificate of Appropriateness (CoA) or Permit to Alter (PtA) review processes. These projects will be reviewed for compliance with all ADU architectural review standards adopted by the Historic Preservation Commission (HPC), including but not limited to those listed in Resolution No. 1041. Notwithstanding Resolution No. 1041, ADUs in the "No Waiver" program will not be required to obtain Administrative CoAs or Minor PtAs.

4. The HPC will delegate review of "No Waiver" ADUs to staff in properties listed in the California Register of Historic Places and properties and districts designated pursuant to Article 10 and Article 11. This review will occur within the 120-day timeframe under state law.
5. Amend 1005 and 1110 respectively to reference 207(c)(B)(v) for any code-complying Accessory Dwelling Units (ADUs) in single-family residences.
6. Add subsections to Sections 1006.2 and 1111.3 to delegate to staff review of ADUs in the "No Waiver program pursuant to Section 207(c)(6).

Clerical Amendments:

7. Remove off-street parking and bicycle parking references from amended section of the Code.
8. Amend subsection (c)(6)(B)(iii): This section currently cites "(C)(x) and (xi)"; however, it should reference "(B)(x) and (xi)" instead.
9. Amend the "Residential Standards and Uses" Tables in Articles 7 and 8 to reference both 207(c)(4) and 207(c)(6). Also, the "Controls by Story" section should be simplified to read as "P per Planning Code Sections 207(c)(4) and 207(c)(6)".

The Planning Commission recommended all the above modifications except number two.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

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

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
Manager of Legislative Affairs

cc:

Peter Miljanich, Deputy City Attorney
Suhagey Sandoval, Aide to Supervisor
Angela Calvillo, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Historic Preservation Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20403

HEARING DATE MARCH 7, 2019

Project Name: Accessory Dwelling Units in New Construction
Case Number: 2018-016401PCA [Board File No. 181156]
Initiated by: Supervisor Safai / Introduced November 27, 2018
Staff Contact: Veronica Flores, Legislative Affairs
Veronica.Flores@sfgov.org, 415-575-9173
Reviewed by: Aaron D. Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

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RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 207 AND THE BUSINESS AND TAX REGULATIONS CODE TO AUTHORIZE THE ADDITION OF AN ACCESSORY DWELLING UNIT IN THE CONSTRUCTION OF A NEW SINGLE-FAMILY HOME OR MULTI-FAMILY BUILDING; CLARIFYING THE MINISTERIAL APPROVAL PROCESS AND CREATING AN EXPEDITED BOARD OF APPEALS PROCESS FOR CERTAIN ACCESSORY DWELLING UNITS IN SINGLE-FAMILY HOMES MEETING SPECIFIC REQUIREMENTS; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on November 27, 2018 Supervisors Safai introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 181156, which would amend Planning Code Section 207 to authorize the addition of an Accessory Dwelling Unit in the construction of a new single-family home or multi-family building; clarifying the ministerial approval process and creating an expedited Board of Appeals process for certain accessory dwelling units in single-family homes meeting specific requirements; and,

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 14, 2019 and continued to March 7; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c) and 15378; and

WHEREAS, the 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 Commission has reviewed the proposed Ordinance; and

WHEREAS, the Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Commission hereby **approves with modifications** the proposed ordinance. The Commission's proposed modifications are as follows:

1. Adopt a maximum size of 1,200 gross square feet for ADUs that are approved under the "No Waiver" program proposed in existing single-family homes.
2. Historic Preservation Review for ADUs in the "No Waiver" program:
 - a. Amend Section 207(c)(6)(B)(v) to specify that ADU projects will be required comply with architectural review standards to prevent adverse impacts on properties listed in the California Register of Historic Places and properties and districts designated pursuant to Article 10 and Article 11, and that said projects will not be subject to the Certificate of Appropriateness (CoA) or Permit to Alter (PtA) review processes. These projects will be reviewed for compliance with all ADU architectural review standards adopted by the Historic Preservation Commission (HPC), including but not limited to those listed in Resolution No. 1041. Notwithstanding Resolution No. 1041, ADUs in the "No Waiver" program will not be required to obtain Administrative CoAs or Minor PtAs.
 - b. The HPC will delegate review of "No Waiver" ADUs to staff in properties listed on the California Register of Historic Places and properties and districts designated pursuant to Article 10 and Article 11. This review will occur within the 120-day timeframe under state law.
 - c. Amend 1005 and 1110 respectively to reference 207(c)(B)(v) for any code-complying Accessory Dwelling Units (ADUs) in single-family residences.
 - d. Add subsections to Sections 1006.2 and 1111.3 to delegate to staff review of ADUs in the "No Waiver" program pursuant to Section 207(c)(6).
3. Clerical Amendments:
 - a. Remove off-street parking and bicycle parking references from amended section of the Code.
 - b. Amend subsection (c)(6)(B)(iii): This section currently cites "(C)(x) and (xi)"; however, it should reference "(B)(x) and (xi)" instead.
 - c. Amend the "Residential Standards and Uses" Tables in Articles 7 and 8 to reference both 207(c)(4) and 207(c)(6). Also, the "Controls by Story" section should be simplified to read as "P per Planning Code Sections 207(c)(4) and 207(c)(6)".

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 the proposed Ordinance supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans by increasing the potential for new Accessory Dwelling Units.
2. The Commission finds that the proposed Ordinance will help align the Planning Code with the State Law.
3. The Commission finds that the proposed ordinance will further streamline the ADU review process and clarify current processes. Such changes will make the City's ADU program more effective and flexible.
4. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

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.

OBJECTIVE 3

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

Policy 3.4

Preserve "naturally affordable" housing types, such as smaller and older ownership units.

The Ordinance retains existing housing units and prioritizes permanently affordable housing. Additionally, the proposed amendments would expand the ADU program and make the addition of ADU's more feasible.

5. **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 effect on neighborhood serving retail uses and will not have a negative effect on 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 existing housing or 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.

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 adverse effect 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 an adverse effect on the City's Landmarks and historic buildings.

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 adverse effect on the City's parks and open space and their access to sunlight and vistas.

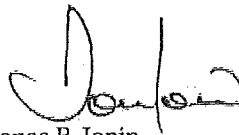
Resolution No. 20403
March 7, 2019

CASE NO. 2018-016401PCA
Accessory Dwelling Units in New Construction

6. **Planning Code Section 302 Findings.** The 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 APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 7, 2019.



Jonas P. Ionin
Commission Secretary

AYES: Melgar, Koppel, Hillis, Johnson, Moore

NOES: Richards

ABSENT: None

ADOPTED: March 7, 2019



SAN FRANCISCO PLANNING DEPARTMENT

Historic Preservation Commission Resolution No. 1032

HEARING DATE MARCH 6, 2019

Project Name: Accessory Dwelling Units in New Construction
Case Number: 2018-016401PCA [Board File No. 181156]
Initiated by: Supervisor Safai / Introduced November 27, 2018
Staff Contact: Verónica Flores, Legislative Affairs
Veronica.Flores@sfgov.org, 415-575-9173
Reviewed by: Aaron D. Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

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415.558.6377

RESOLUTION RECOMMENDING APPROVAL OF A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 207 AND THE BUSINESS AND TAX REGULATIONS CODE TO AUTHORIZE THE ADDITION OF AN ACCESSORY DWELLING UNIT IN THE CONSTRUCTION OF A NEW SINGLE-FAMILY HOME OR MULTI-FAMILY BUILDING; CLARIFYING THE MINISTERIAL APPROVAL PROCESS AND CREATING AN EXPEDITED BOARD OF APPEALS PROCESS FOR CERTAIN ACCESSORY DWELLING UNITS IN SINGLE-FAMILY HOMES MEETING SPECIFIC REQUIREMENTS; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on November 27, 2018 Supervisors Safai introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 181156, which would amend Planning Code Section 207 to authorize the addition of an Accessory Dwelling Unit in the construction of a new single-family home or multi-family building; clarifying the ministerial approval process and creating an expedited Board of Appeals process for certain accessory dwelling units in single-family homes meeting specific requirements; and,

WHEREAS, The Historic Preservation Commission (hereinafter "HPC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 6, 2019; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c) and 15378; and

WHEREAS, the HPC 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 HPC has reviewed the proposed Ordinance; and

WHEREAS, the HPC finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the HPC hereby adopts a recommendation for **approval with modifications** of the proposed ordinance. The HPC's recommended modifications are as follows:

1. Adopt a maximum size of 1,200 gross square feet for ADUs that are approved under the "No Waiver" program proposed in existing single-family homes.
2. Reduce the amount of required open space specifically for the proposed ADUs in RH-1, RH-1(D), and RH-1(S) Zoning Districts to 125 square feet of private usable open space or at a ratio of 1.33 of common usable open space.
3. Historic Preservation Review for ADUs in the "No Waiver" program:
 - a. Amend Section 207(c)(6)(B)(v) to specify that ADU projects will be required comply with architectural review standards to prevent adverse impacts on properties listed in the California Register of Historic Places and properties and districts designated pursuant to Article 10 and Article 11, and that said projects will not be subject to the Certificate of Appropriateness (CoA) or Permit to Alter (PtA) review processes. These projects will be reviewed for compliance with all ADU architectural review standards adopted by the Historic Preservation Commission (HPC), including but not limited to those listed in Resolution No. 1041. Notwithstanding Resolution No. 1041, ADUs in the "No Waiver" program will not be required to obtain Administrative CoAs or Minor PtAs.
 - b. The HPC will delegate review of "No Waiver" ADUs to staff in properties listed in the California Register of Historic Places and properties and districts designated pursuant to Article 10 and Article 11. This review will occur within the 120-day timeframe under state law.
 - c. Amend 1005 and 1110 respectively to reference 207(c)(B)(v) for any code-complying Accessory Dwelling Units (ADUs) in single-family residences.
 - d. Add subsections to Sections 1006.2 and 1111.3 to delegate to staff review of ADUs in the "No Waiver program pursuant to Section 207(c)(6).
4. Clerical Amendments:
 - a. Remove off-street parking and bicycle parking references from amended section of the Code.
 - b. Amend subsection (c)(6)(B)(iii): This section currently cites "(C)(x) and (xi)"; however, it should reference "(B)(x) and (xi)" instead.

- c. Amend the "Residential Standards and Uses" Tables in Articles 7 and 8 to reference both 207(c)(4) and 207(c)(6). Also, the "Controls by Story" section should be simplified to read as "P per Planning Code Sections 207(c)(4) and 207(c)(6)".

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 the proposed Ordinance supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans by increasing the potential for new Accessory Dwelling Units.
2. The Commission finds that the proposed Ordinance will help align the Planning Code with the State Law.
3. The Commission finds that the proposed ordinance will further streamline the ADU review process and clarify current processes. Such changes will make the City's ADU program more effective and flexible.
4. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

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.

OBJECTIVE 3

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

Policy 3.4

Preserve "naturally affordable" housing types, such as smaller and older ownership units.

The Ordinance retains existing housing units and prioritizes permanently affordable housing. Additionally, the proposed amendments would expand the ADU program and make the addition of ADU's more feasible.

5. **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 effect on neighborhood serving retail uses and will not have a negative effect on 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 existing housing or 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.

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 adverse effect 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 an adverse effect on the City's Landmarks and historic buildings.

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 adverse effect on the City's parks and open space and their access to sunlight and vistas.

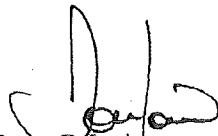
Resolution No. 1032
March 6, 2019

CASE NO. 2018-016401PCA
Accessory Dwelling Units in New Construction

6. **Planning Code Section 302 Findings.** The HPC 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 APPROVAL WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the HPC at its meeting on March 6, 2019.



Jonas P. Ionin
Commission Secretary

AYES: Hyland, Matsuda, Black, Johns, Pearlman, Wolfram

NOES: None

ABSENT: Johnck

ADOPTED: March 6, 2019



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: MARCH 7, 2019
CONTINUED FROM: FEBRUARY 14, 2019
90-DAY DEADLINE: MARCH 5, 2019
EXTENSION DEADLINE: JUNE 3, 2019

1650 Mission St.
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Project Name: Accessory Dwelling Units in New Construction
Case Number: 2018-016401PCA [Board File No. 181156]
Initiated by: Supervisor Safai / Introduced December 5, 2018
Staff Contact: Veronica Flores, Legislative Affairs
Veronica.Flores@sfgov.org, 415-575-9173
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: Approval with Modifications

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code and Business and Tax Regulations Code to authorize the addition of an Accessory Dwelling Unit (ADU) in the construction of a new single-family or multi-family building; clarify the ministerial approval process; and create an expedited Board of Appeals process for certain Accessory Dwelling Units in single-family homes meeting specific requirements.

The Way It Is Now:

1. Under the City's local ADU program (or "Waiver" program), ADUs are permitted in the living area of existing single-family or multi-family buildings or the buildable area of the lot.
2. Under the City's State Mandated ADU program (or "No Waiver" program), ADUs are permitted within existing single-family homes that strictly meet the state law's ADU requirements without requiring a Zoning Administrator waiver of Planning Code provisions. The ADU can be within the existing building or as part of an addition to the existing building within the buildable area of said lot. Currently, only ADUs in the "No Waiver" program that do not include building expansions are ministerial. ADUs in this program that include building expansions are discretionary.
3. ADUs permitted under the "No Waiver" program are subject to neighborhood notification.
4. Appeals for ADUs under the "No Waiver" program are heard per standard appeal processes.

The Way It Would Be:

1. Under the "Waiver" program, ADUs would be permitted in existing or new construction of single-family or multi-family buildings.
2. All ADUs under the "No Waiver" program would be approved ministerially (including said projects with expansions). The ADU can be within the existing building, in an addition to the existing building, or in a new construction building.

3. ADUs under the "No Waiver" program will not be subject to neighborhood notification (including those with building expansions).
4. Appeals for ADUs under the "No Waiver" program will be heard within 10-30 days of the appeal filing.

BACKGROUND

The State Legislature has deemed ADUs a valuable and affordable form of housing in California. The state's ADU laws have been amended several times to revise the requirements and make the approval of an ADU less discretionary.

San Francisco first adopted a local ADU program in 2015 and made several updates since the initial inception both in response to changes to the state law and to improve the City's local ADU program. The proposed ordinance will update San Francisco's ADU programs to comply with amendments to the state law. Additionally, the proposed ordinance clarifies the ministerial approval process and streamlines the appeal process for ADUs under the local program implementing the state law.

ISSUES AND CONSIDERATIONS

Housing Stock

San Francisco and the Bay Area have a housing shortage. The Planning Department is working to meet these housing needs. In the City's Housing Element, Objective One specifically cites ADUs as an effective way to add to the housing stock. The ADU program helps create new dwelling units, mostly through infill efforts. The initial ADU pilot program in the Castro District in 2014 has now grown into the robust ADU programs of today. This is a testament to the success of ADUs and the Ordinance will build on these efforts.

The Housing Element cites Accessory Dwelling Units as an effective and inexpensive way to realize greater housing potential and add to the housing stock.

Housing Affordability and Variety

Currently, the Planning Code does not limit the size of ADUs. Traditionally, ADUs are thought of as subordinate to the primary unit, and are often added to existing buildings by making use of underutilized space resulting in smaller units. These ADU units end up being more affordable due to the size of the unit. Further, Objective One of the City's Housing Element's specifically cites ADUs as an effective and inexpensive way to add the housing stock. In instances where there is a large amount of square footage available to create an ADU, including for projects that include building expansions, the ADUs may no longer be accessory to the primary unit. The Department's concern is that without a size limitation on ADUs, the ADUs could conceivably be larger and thus be unaffordable for future renters.

This concern is amplified when considering that neighborhood notification will be eliminated for ADUs in the "No Waiver" program, including those with building expansions. Neighborhood notification is a way to inform the public about upcoming projects, provide an avenue to provide public comments, and allow the opportunity to file a Request for Discretionary Review. The ordinance eliminates this neighborhood notification for ADUs in the "No Waiver" program. The Department's concern is that without this

neighborhood notification for ministerial projects, we may see ADUs even larger than the primary unit without community members knowing about the project first.

ADU Size Limits:

State Law includes a provision on the maximum size for ADUs. The maximums are as follows:

- For attached ADUs, the ADU shall not exceed 50 percent of the proposed or existing primary dwelling living area or 1,200 square feet.
- For detached ADUs, the ADU shall not exceed 1,200 square feet.

Local agencies are not required to adopt the above square footage limits. However, with the new interpretations regarding neighborhood notification and ministerial projects, the Department is concerned about excessively sized ADUs in the "No Waiver" program. Under state law, the City can set its own size limits, but staff recommends adopting a limit of 1,200 square feet for "No Waiver" ADUs proposed in existing single-family homes.

Staff does not recommend this size limitation to the "Waiver" program, recognizing that different contexts may be appropriate to have these larger ADUs. One example of this includes an older, multi-unit building proposing to convert the ground level parking to ADUs. In this case, there is greater potential to add a variety of different sized units, including units larger than 1,200 square feet. This also results in more family-sized units in the housing stock. Therefore, the Department recommends this size limitation only be placed on those ADUs in the "No Waiver" program.

Timeline for Review:

Since the launch of the initial ADU program, the Planning Department has improved efforts to more effectively and efficiently review ADU permits. To help facilitate review, the Planning Department has created a team of ADU specialists. Effective August 2018, Planning established an ADU counter with dedicated staff at the Department of Building Inspection's (DBI) permit floor. Staff is able to review and issue Plan Check Letters in real time, or within five days, to reduce delays for Planning feedback.

The Planning Department has also collaborated more with other City agencies involved in the review of ADUs and introduced parallel review efforts. One of the biggest time-savings has been the new "Roundtable" review where different City agencies meet and review ADU permits together. This allows for the City to discuss any conflicting policies and provide applicants with consolidated comments.

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. In addition to the efforts listed above, the streamlined appeal review timeline for ADUs in the "No Waiver" program would help the City meet the state's target.

Staff presented the proposed ordinance to the Board of Appeals (BOA) on January 30, 2019. The primary focus included 1) all ADUs under the "No Waiver" program are to be approved ministerially and 2) appeals filed on any ADUs in the "No Waiver" program are to be heard within 10-30 days of appeal filing. The only major legislative question the BOA posed was how the maximum number of days in the appeal timeframe was decided. This 10-30 day appeal timeframe was the proposed number to meet the target 120-day timeline.

General Plan Compliance

The General Plan identifies ADUs as an effective and inexpensive way to increase the housing supply. The Ordinance retains existing housing units and prioritizes permanently affordable housing. Additionally, the proposed amendments would expand the ADU program and streamline the review process.

Implementation

The Department has determined that this ordinance will not impact our current implementation procedures. The changes, in addition to the efforts described above, will allow the Department to review ADUs in a more effective and efficient manner.

RECOMMENDATION

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Adopt a maximum size of 1,200 gross square feet for ADUs that are approved under the "No Waiver" program proposed in existing single-family homes.
2. Reduce the amount of required open space specifically for the proposed ADUs in RH-1, RH-1(D), and RH-1(S) Zoning Districts to 125 square feet of private usable open space or at a ratio of 1.33 of common usable open space.
3. Historic Preservation Review for ADUs in the "No Waiver" program:
 - a. Amend Section 207(c)(6)(B)(v) to specify that ADU projects will be required to comply with architectural review standards to prevent adverse impacts on properties listed in the California Register of Historic Places and properties and districts designated pursuant to Article 10 and Article 11, and that said projects will not be subject to the Certificate of Appropriateness (CoA) or Permit to Alter (PtA) review processes. These projects will be reviewed for compliance with ADU architectural review standards adopted by the Historic Preservation Commission (HPC), including but not limited to those listed in Motion No. XXXX. Notwithstanding Motion No. XXXX, ADUs in the "No Waiver" program will not be required to obtain Administrative CoAs or Minor PtAs.
 - b. The HPC will delegate review of "No Waiver" ADUs to staff in the California Register of Historic Places, and properties designated individually or as part of districts pursuant to Article 10 or 11. This review will occur within the 120-day timeframe under state law.
 - c. Amend Sections 1005 and 1110 to clarify that Section 207(c)(6)(B)(v) applies to any code-complying ADUs in single-family residences.
 - d. Add subsections to Sections 1006.2 and 1111.3 to delegate to staff review of ADUs in the "No Waiver" program pursuant to Section 207(c)(6).
4. Clerical Amendments:
 - a. Remove off-street parking and bicycle parking references from amended section of the Code.
 - b. Amend subsection 207(c)(6)(B)(iii): This section currently cites "(C)(x) and (xi)"; however, it should reference "(B)(x) and (xi)" instead.

- c. Amend the "Residential Standards and Uses" Tables in Articles 7 and 8 to reference both 207(c)(4) and 207(c)(6). Also, the "Controls by Story" section should be simplified to read as "P per Planning Code Sections 207(c)(4) and 207(c)(6)".

BASIS FOR RECOMMENDATION

The Department supports the proposed Ordinance because it supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans. Specifically, the Ordinance increases the potential for Accessory Dwelling Units. While the intent behind the original Ordinance under this file is to bring the local ADU program into compliance with State Law, the additional policy recommendations will further streamline ADU review and clarify current processes. Such changes will make the City's ADU program more effective and flexible.

Recommendation 1: Adopt a maximum size of 1,200 gross square feet for ADUs that are approved under the "No Waiver" program proposed in existing single-family homes.

Currently, the Planning Code does not limit the size of ADUs. ADUs are traditionally more affordable by nature as these are accessory to the existing residential units. Without a size limitation on ADUs, the ADUs can conceivably be more expensive the larger they are. The ordinance would remove the neighborhood notification requirements and discretionary review for ADUs in the "No Waiver" program. The proposed size limitation, which is modeled after the State Law, alleviates the Department's concern about excessively sized ADUs implemented through the "No Waiver" program. Staff is not recommending that the 1,200 square feet limited be placed on the "Waiver" program because the City has more discretion in the approval process, and there may be situations where a hard cap proves undesirable or inefficient. Further, this flexibility provides greater potential to add a variety of different sized units in multi-unit buildings, which would be subject to the "Waiver" program.

Recommendation 2: Reduce the amount of required open space specifically for the proposed ADUs in RH-1, RH-1(D), and RH-1(S) Zoning Districts to 125 square feet of private usable open space or at a ratio of 1.33 of common usable open space.

Several ADUs that would have been eligible for the "No Waiver" program were subject to the "Waiver" program because they could not meet the open space requirement for RH-1 Districts. Residential units in these districts are required to have at least 300 square feet of private open space per unit. In some cases, the open space deficiency is less than 50 square feet. This change would help resolve the issue by reducing the open space requirement specifically for the ADU. The 125 square foot requirement comes from the open space requirements in RH-2 Zoning Districts. The logic is that single-family homes that add an ADU will closely resemble properties in RH-2 Zoning Districts that have maximized their density. Staff finds that since 125 square feet of private open space per unit is adequate in RH-2 Zoning Districts it should be applied to ADUs in the "No Waiver" program. The 300 square feet of open space for the primary units in RH-1, RH-1(D), and RH-1(S) Districts would still apply.

Recommendation 3(a): Amend 207(c)(6)(B)(v) to specify that ADU projects will be required to comply with architectural review standards to prevent adverse impacts on properties listed in the California Register of Historic Places and properties and districts designated pursuant to Article 10 and Article 11, and that said projects will not be subject to the Certificate of Appropriateness (CoA) or Permit to Alter (PtA) review processes. Instead these projects will be reviewed for compliance with ADU architectural

review standards adopted by the Historic Preservation Commission (HPC), including but not limited to those listed in Motion No. XXXX. Notwithstanding Motion No. XXXX, ADUs in the "No Waiver" program will not be required to obtain Administrative CoAs or Minor PtAs.

Section 207(c)(6)(B)(v) ("No Waiver" Program) currently states: "If construction of the ADU will have adverse impacts on a property listed in the California Register of Historic Places or any other known historical resource, the Department shall require modification of the proposed project to the extent necessary to prevent or mitigate such impacts." Staff recommends adding a reference to properties designated pursuant to Articles 10 and 11 in addition to "California Register of Historic Places or any other known historical resource." Subsection (v) should also be revised to appropriately reference the architectural review standards adopted by HPC. Additionally, staff recommends that the language be revised to emphasize "prevent adverse impacts". Amended Section 207(c)(6)(B)(v) would read:

Section 207(c)(6)(B)(v):

(v) ~~If construction of the ADU will have adverse impacts on~~ For projects involving a property listed in the California Register of Historic Places, ~~or a property designated individually or as part of a historic or conservation district pursuant to Article 10 or Article 11, the ADU shall comply with any architectural review standards adopted by the Historic Preservation Commission to prevent adverse impacts to such historic resources, the Department shall require modification of the proposed project to the extent necessary to prevent or mitigate such impacts.~~ Such projects shall not be required to obtain a Certificate of Appropriateness or a Permit to Alter.

Modifications to Article 10 and 11 buildings require CoAs and PtAs, which are additional Planning Department discretionary entitlements. The intention of this Ordinance is to clarify that all ADUs in the "No Waiver" program are subject to ministerial approval. The Department will still review impacts to historical resources as delegated by the Historic Preservation Commission.

Recommendation 3(b): The HPC will delegate review of "No Waiver" ADUs to staff in properties listed in the California Register of Historic Places and properties and districts designated pursuant to Article 10 and Article 11. This review will occur within the 120-day timeframe under state law.

The Planning Department will review "No Waiver" ADUs in Article 10 and 11 buildings for compliance with the architectural review standards listed in Motion No. XXXX. This motion also features other similar minor scopes of work the HPC has delegated to Planning Department staff in Motion No. 0349. This review shall occur within the same 120-day timeframe for ministerial ADUs under the state law.

Recommendation 3(c): Amend Sections 1005 and 1110 to clarify that Section 207(c)(6)(B)(v) applies to any code-complying Accessory Dwelling Units (ADUs) in single-family residences.

Sections 1005 and 1110 should specifically cross-reference Section 207(c)(6)(B)(v).

Recommendation 3(d): Add subsections to Sections 1006.2 and 1111.3 to delegate to staff review of ADUs in the "No Waiver" program pursuant to Section 207(c)(6)

Sections 1006.2 and 1111.3 should specifically cross-reference Section 207(c)(6) and the Architectural Review Standards adopted by HPC. Sections 1006.2 and 1111.3 will be amended to include an additional subsection as follows:

Accessory Dwelling Units Reviewed Pursuant to the "No Waiver" Program. The Historic Preservation Commission may delegate to Department staff the review of an Accessory Dwelling Unit project for which an application has been submitted for approval pursuant

to the "No Waiver" Program set forth in Section 207(c), for compliance with any architectural review standards adopted by the Commission.

Recommendation 4: Clerical Amendments

Recommendation 4(a): Amend 207.

Section 207 still notes parking requirements. The City removed the minimum off-street parking requirements effective January 21, 2019. This change will correct outdated language in the ADU program. Specifically, off-street parking and bicycle parking are listed as potential waivers in Section 207(c)(4)(G); however, parking exceptions are no longer required due to the recent change in parking requirements. Bicycle parking was previously calculated based on the number of required off-street parking spaces. Therefore, bicycle parking exceptions will also be no longer required. (This was an unintended consequence of the parking amendments, but will be corrected in a future ordinance). Also, Section 207(c)(6)(B)(ix) states that the ADU does not require parking and discuss replacement parking. This subsection should be removed altogether to avoid confusion.

Section 207(c)(4)(G):

(G) **Waiver of Code Requirements; Applicability of Rent Ordinance.** Pursuant to the provisions of Section 307(l) of this Code, the Zoning Administrator may grant an Accessory Dwelling Unit a complete or partial waiver of the density limits and ~~off-street parking, bicycle parking,~~ rear yard, exposure, or open space standards of this Code.

Recommendation 4(b): Amend 207(c)(6)(B)(iii).

Section 207(c)(6)(B)(iii) currently cites the wrong subsection. This error should be resolved as shown below:

(iii) Only one ADU will be constructed that is entirely within either the "living area" or the buildable area of an existing single-family home or, except as provided in subsection (C)(x) and (xi) below, within the built envelope of an existing and authorized auxiliary structure on the same lot.

Recommendation 4(c): Amend Articles 7 and 8.

Articles 7 and 8 of the Planning Code include "Residential Standards and Uses" Tables (see example below). Currently, these tables only cite Section 207(c)(4). This change will accurately reference both subsections (c)(4) and (c)(6). Also, the table is very detailed and the narrative description should be simplified to reference the appropriate Planning Code sections since the requirements have and continue to evolve. This will also prevent any future potential conflicting information.

Zoning Category	§ References	Controls		
		Controls by Story		
Residential Uses		1st	2nd	3rd+
Residential Uses	§ 102	P	P	P
Accessory Dwelling Unit Density	§§102, 207(c)(4)	P within the existing building envelope. 1 ADU allowed in buildings with 4 or fewer Dwelling Units. No limit in buildings with 5 or more Dwelling Units. ADUs may not eliminate or reduce ground-story retail or commercial space.		
Dwelling Unit Density	§§ 102, 207	1 unit per 800 square foot lot area, or the density permitted in the nearest Residential District, whichever is greater.		

Executive Summary
Hearing Date: March 7, 2019

CASE NO. 2018-016401PCA
Accessory Dwelling Units in New Construction

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received one letter in support of the Ordinance from the Executive Director of Livable City & Sunday Streets.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Draft Historic Preservation Commission Resolution for ADU Architectural Review Standards
- Exhibit C: Board of Supervisors File No. 181156

1 [Approval of a 90-Day Retroactive Extension for Planning Commission Review of Accessory
2 Dwelling Units in New Construction (File No. 181156)]

3 **Resolution retroactively extending by 90 days the prescribed time within which the**
4 **Planning Commission may render its decision on an Ordinance (File No. 181156)**
5 **amending the Planning Code and Business and Tax Regulations Code to authorize the**
6 **addition of an Accessory Dwelling Unit (ADU) in the construction of a new single-family**
7 **or multi-family building; clarify the ministerial approval process and create an**
8 **expedited Board of Appeals process for certain ADUs in single-family homes meeting**
9 **specific requirements; affirming the Planning Department's California Environmental**
10 **Quality Act determination; making findings of consistency with the General Plan, and**
11 **the eight priority policies of Planning Code, Section 101.1; and adopting findings of**
12 **public convenience, necessity, and welfare under Planning Code, Section 302.**

13
14 WHEREAS, On November 27, 2018, Supervisor Safai introduced legislation amending
15 the Planning Code and Business and Tax Regulations Code to authorize the addition of an
16 Accessory Dwelling Unit (ADU) in the construction of a new single-family or multi-family
17 building; clarify the ministerial approval process and create an expedited Board of Appeals
18 process for certain Accessory Dwelling Units in single-family homes meeting specific
19 requirements, and affirming the Planning Department's California Environmental Quality Act
20 determination; and making Planning Code, Section 302 findings, and making findings of
21 consistency with the General Plan, and the eight priority policies of Planning Code, Section
22 101.1; and

23 WHEREAS, On or about December 5, 2018, the Clerk of the Board of Supervisors
24 referred the proposed Ordinance to the Planning Commission; and
25

1 WHEREAS, The Planning Commission shall, in accordance with Planning Code,
2 Section 306.4(d), render a decision on the proposed Ordinance within 90 days from the date
3 of referral of the proposed amendment or modification by the Board to the Commission; and

4 WHEREAS, Failure of the Commission to act within 90 days shall be deemed to
5 constitute disapproval; and

6 WHEREAS, The Board, in accordance with Planning Code, Section 306.4(d) may, by
7 Resolution, extend the prescribed time within which the Planning Commission is to render its
8 decision on proposed amendments to the Planning Code that the Board of Supervisors
9 initiates; and

10 WHEREAS, Supervisor Safai has requested additional time for the Planning
11 Commission to review the proposed Ordinance; and

12 WHEREAS, The Board deems it appropriate in this instance to grant to the Planning
13 Commission additional time to review the proposed Ordinance and render its decision; now,
14 therefore, be it

15 RESOLVED, That by this Resolution, the Board hereby retroactively extends the
16 prescribed time within which the Planning Commission may render its decision on the
17 proposed Ordinance for approximately 90 additional days, until June 3, 2019.



City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 190225

Date Passed: March 05, 2019


Resolution retroactively extending by 90 days the prescribed time within which the Planning Commission may render its decision on an Ordinance (File No. 181156) amending the Planning Code and Business and Tax Regulations Code to authorize the addition of an Accessory Dwelling Unit (ADU) in the construction of a new single-family or multi-family building; clarify the ministerial approval process and create an expedited Board of Appeals process for certain ADUs in single-family homes meeting specific requirements; affirming the Planning Department's California Environmental Quality Act determination; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public convenience, necessity, and welfare under Planning Code, Section 302.

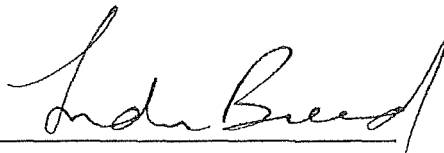
March 05, 2019 Board of Supervisors - ADOPTED

Ayes: 11 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani, Walton and Yee

File No. 190225

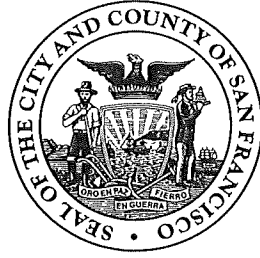
I hereby certify that the foregoing Resolution was ADOPTED on 3/5/2019 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


London N. Breed
Mayor

3/15/19
Date Approved

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

May 24, 2019

File No. 190590

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On May 20, 2019, the Land Use and Transportation Committee duplicated File No. 181156 and further amended the following proposed legislation:

File No. 190590

Ordinance amending the Planning Code and Business and Tax Regulations Code to authorize the addition of an Accessory Dwelling Unit in the construction of a new single-family home or multi-family building; clarifying the ministerial approval process and creating an expedited Board of Appeals process for certain Accessory Dwelling Units in single-family homes meeting specific requirements; amending the requirements of the discretionary approval process under which property owners must subject certain Accessory Dwelling Units to the Rent Ordinance; 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 adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

BOARD of SUPERVISORS



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TDD/TTY No. 554-5227

December 5, 2018

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On November 27, 2018, Supervisor Safai introduced the following legislation:

File No. 181156

Ordinance amending the Planning Code and Business and Tax Regulations Code to authorize the addition of an Accessory Dwelling Unit in the construction of a new single-family home or multi-family building; clarifying the ministerial approval process and creating an expedited Board of Appeals process for certain Accessory Dwelling Units in single-family homes meeting specific requirements; 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 adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

c: John Rahaim, Director of Planning
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
AnMarie Rodgers, Director of Citywide Planning
Scott Sanchez, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

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December 5, 2018

File No. 181156

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On November 27, 2018, the Supervisor Safai introduced the following proposed legislation:

File No. 181156

Ordinance amending the Planning Code and Business and Tax Regulations Code to authorize the addition of an Accessory Dwelling Unit in the construction of a new single-family home or multi-family building; clarifying the ministerial approval process and creating an expedited Board of Appeals process for certain Accessory Dwelling Units in single-family homes meeting specific requirements; 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 adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

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MEMORANDUM

TO: Julie Rosenberg, Executive Director, Board of Appeals

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: December 5, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Safai on November 27, 2018:

File No. 181156

Ordinance amending the Planning Code and Business and Tax Regulations Code to authorize the addition of an Accessory Dwelling Unit in the construction of a new single-family home or multi-family building; clarifying the ministerial approval process and creating an expedited Board of Appeals process for certain Accessory Dwelling Units in single-family homes meeting specific requirements; 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 adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

c: Gary Cantara, Board of Appeals

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

BOARD OF SUPERVISORS
SAN FRANCISCO

Time Stamp: NOV 27 PM 2:32
or meeting date AK

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Supervisor Ahsha Safai


Subject:

Planning, Business and Tax Regulation Codes -- Accessory Dwelling Units in New Construction

The text is listed:

Ordinance amending the Planning Code and Business and Tax Regulations Code to authorize the addition of an Accessory Dwelling Unit in the construction of a new single-family home or multi-family building; clarifying the ministerial approval process and creating an expedited Board of Appeals process for certain Accessory Dwelling Units in single-family homes meeting specific requirements; 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 adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Signature of Sponsoring Supervisor:



For Clerk's Use Only