

BOARD of SUPERVISORS



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MEMORANDUM

TO: John Rahaim, Director, Planning Department
Jonas Ionin, Director of Commission Affairs, Planning Commission

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

DATE: September 4, 2018

SUBJECT: DUPLICATED LEGISLATION

The Board of Supervisors' duplicated this legislation from File No. 180268, on July 32, 2018:

File No. 180798

Ordinance amending the Planning Code to 1) authorize expansion of an Accessory Dwelling Unit (ADU) within the buildable area, 2) authorize the Zoning Administrator to waive or modify bicycle parking requirements for an ADU, 3) exempt from the permit notification requirement ADUs constructed within the defined existing built envelope, and 4) allow conversion of an existing stand-alone garage, storage structure, or other auxiliary structure to an ADU and expansion of the existing building envelope to add dormers; 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; adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302; and directing the Clerk to send a copy of this Ordinance to the California Department of Housing and Community Development.

If you have any additional 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: Scott Sanchez, Planning Department
Lisa Gibson, Planning Department
AnMarie Rodgers, Planning Department
Dan Sider, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Laura Lynch, Planning Department
Devyani Jain, Planning Department

1 [Planning, ~~Building~~ Codes - Accessory Dwelling Units]

2

3 **Ordinance amending the Planning Code to 1) authorize expansion of an Accessory**
 4 **Dwelling Unit (ADU) within the buildable area, 2) authorize the Zoning Administrator to**
 5 **waive or modify bicycle parking requirements for an Accessory Dwelling Unit (ADU), 3)**
 6 **~~allow more than one unauthorized unit constructed without a permit to be legalized, 3)~~**
 7 **4) exempt from the permit notification requirement ADUs constructed within the**
 8 **defined existing built envelope, and 4) allow conversion of an existing stand-alone**
 9 **garage, or storage structure, or other auxiliary structure to an ADU and expansion of**
 10 **the existing building envelope to add dormers, ~~and 6) eliminate allow payment of an in~~**
 11 **~~lieu fee for the an ADU's street tree requirement for an ADU, and 6) allow one ADU to~~**
 12 **~~be added to a new residential building of three units or less as a component of the new~~**
 13 **~~construction; amending the Building Code to provide for a preapplication plan review~~**
 14 **for ADUs; affirming the Planning Department's determination under the California**
 15 **Environmental Quality Act; making findings of consistency with the General Plan, and**
 16 **the eight priority policies of Planning Code, Section 101.1; adopting findings of public**
 17 **necessity, convenience, and welfare under Planning Code, Section 302; and directing**
 18 **the Clerk to send a copy of this Ordinance to the California Department of Housing and**
 19 **Community Development.**

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

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

1
2 Section 1. Findings.

3 (a) The Planning Department has determined that the actions contemplated in this
4 ordinance comply with the California Environmental Quality Act (California Public Resources
5 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
6 Supervisors in File No. 180268 and is incorporated herein by reference. The Board affirms
7 this determination.

8 (b) On June 21, 2018, the Planning Commission, in Resolution No. 20213, adopted
9 findings that the actions contemplated in this ordinance are consistent, on balance, with the
10 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
11 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
12 Board of Supervisors in File No. 180268, and is incorporated herein by reference.

13 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
14 ordinance will serve the public necessity, convenience, and welfare for the reasons stated in
15 Planning Commission Resolution No. 20213.

16 ~~(d) Pursuant to Charter Section D3.750-5, the Building Inspection Commission~~
17 ~~considered this ordinance at a duly noticed public hearing held on _____, 2018.~~

18
19 Section 2. The Planning Code is hereby amended by revising Sections 102, 136,
20 138.1, 140, 155.1, 207, 207.3, 307, and 317, to read as follows:

21 **SEC. 102. DEFINITIONS.**

22 * * * *

23 **Dwelling Unit, Accessory.** Also known as a Secondary Unit or In-Law Unit, is a
24 Dwelling Unit that is constructed *either* entirely within the existing built envelope, the "living
25 area" as defined in State law, or the buildable area of an existing building in areas that allow

1 residential use; or is constructed within the existing built envelope ~~or buildable envelope~~ of an
 2 existing and authorized auxiliary structure on the same lot.

3 * * * *

4 **SEC. 136. OBSTRUCTIONS OVER STREETS AND ALLEYS AND IN REQUIRED**
 5 **SETBACKS, YARDS, AND USABLE OPEN SPACE.**

Streets and Alleys	Set-backs	Yards	Usable Open Space
		X	<p>8 * * * *</p> <p>9 (c) The permitted obstructions shall be as follows:</p> <p>10 * * * *</p> <p>11 <u>(32) Infill under decks and cantilevered rooms when</u></p> <p>12 <u>adding an Accessory Dwelling Unit; provided, however, that</u></p> <p>13 <u>such infill shall comply with Section 207(c)(4) or Section</u></p> <p>14 <u>207(c)(6) of this Code, whichever is applicable; and provided</u></p> <p>15 <u>further that if the ADU is proposed for a single-family home,</u></p> <p>16 <u>the rear yard must be 25% of the lot depth but in no case</u></p> <p>17 <u>less than 15 feet.</u></p> <p>18 * * * *</p>

20
 21 **SEC. 138.1. STREETScape AND PEDESTRIAN IMPROVEMENTS.**

22 * * * *

23 (c) **Required streetscape and pedestrian improvements.** Development projects
 24 shall include streetscape and pedestrian improvements on all publicly accessible rights-of-way
 25 directly fronting the property as follows:

1 (1) **Street trees.** Project Sponsors shall plant and maintain street trees as
2 set forth in Article 16, Sections 805(a) and (d) and 806(d) of the Public Works Code; ~~provided,~~
3 ~~however, that where a property owner is either (A) adding an Accessory Dwelling Unit~~
4 ~~pursuant to Section 207(c)(4) or 207 (c)(6) of this Code or (B) legalizing a Dwelling Unit~~
5 ~~pursuant to Section 207.3 of this Code, the owner may elect to pay the in-lieu fee authorized~~
6 ~~by Section 807(f) of the Public Works Code a street tree or trees shall not be required for an~~
7 ~~ADU authorized to be constructed pursuant to Section 207(c)(4) or 207(c)(6) of this Code.~~

8 * * * *

9 **SEC. 140. ALL DWELLING UNITS IN ALL USE DISTRICTS TO FACE ON AN OPEN**
10 **AREA.**

11 * * * *

12 (c) **Exceptions.**

13 (1) For historic buildings identified in Section 307(h), and for the conversion
14 of a nonconforming use in an existing building to a Residential Use in a district where the
15 Residential Use is principally permitted, the requirements of this Section 140 may be modified
16 or waived pursuant to the procedures and criteria set forth in Sections 307(h) and 329. This
17 administrative exception does not apply to new additions to historic buildings.

18 (2) For Accessory Dwelling Units, the requirements of this Section 140 may be
19 modified or waived pursuant to the procedures and criteria set forth in Sections 307(l) and
20 207(c)(4)(G).

21
22
23 **155.1. BICYCLE PARKING: DEFINITIONS AND STANDARDS.**

24 * * * *

1 (b) **Standards for Location of Bicycle Parking Spaces.** These standards apply to
2 all bicycle parking subject to Section 155.2, as well as bicycle parking for City-owned and
3 leased buildings, parking garages and parking lots subject to Section 155.3. Bicycle racks
4 shall be located in highly visible areas as described in subsections below in order to maximize
5 convenience and minimize theft and vandalism. For Accessory Dwelling Units, the requirements
6 of this subsection (b) may be modified or waived pursuant to the procedures and criteria set forth in
7 Sections 307(l) and 207(c)(4)(G).

8 * * * *

9 (c) **Design Standards for Bicycle Parking Spaces.** These design standards apply
10 to all bicycle parking spaces subject to Sections 155.2 and 155.3. Bicycle parking shall follow
11 the design standards established in Zoning Administrator Bulletin No. 9, which includes
12 specific requirements on bicycle parking layout and acceptable types of Class 1 and Class 2
13 bicycle parking spaces. For Accessory Dwelling Units, the requirements of this subsection (c) may
14 be modified or waived pursuant to the procedures and criteria set forth in Sections 307(l) and
15 207(c)(4)(G).

16 * * * *

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

18 * * * *

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

21 * * * *

22 (4) **Accessory Dwelling Units in Multifamily Buildings; Accessory**
23 **Dwelling Units in Single-Family Homes That Do Not Strictly Meet the Requirements in**
24 **Subsection (c)(6).**

1 (A) **Definition.** An “Accessory Dwelling Unit” (ADU) is defined in
2 Section 102.

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

- 8 (i) only one ADU will be constructed;
- 9 (ii) the ADU will be located on a lot that is zoned for single-
10 family or multifamily use and contains an existing single-family dwelling;
- 11 (iii) the ADU will be constructed entirely within the “living area”
12 (as defined in subsection (c)(6)(B)(iii)) or the buildable area of an existing single-family home,
13 or *constructed* within the built envelope of an existing and authorized auxiliary structure on the
14 same lot; provided, however, that (A) when a stand-alone garage, storage structure, or other
15 auxiliary structure is being converted to an ADU, an expansion to the envelope is allowed to
16 add dormers even if the stand-alone garage, storage structure, or other auxiliary structure is in
17 the required rear yard and (B) 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 (iv) the ADU will strictly meet the requirements set forth in
22 subsection (c)(6) without requiring a waiver of Code requirements pursuant to subsection
23 (c)(4)(G); and
- 24 (v) the permit application does not include seismic upgrade
25 work pursuant to subsection (c)(4)(F).

1 ~~provided, however, that the Department shall not approve an application for construction of an~~
2 ~~Accessory Dwelling Unit in any building regulated by this subsection (c)(4) where a tenant has been~~
3 ~~evicted pursuant to Administrative Code Sections 37.9(a)(9) through 37.9(a)(14) under a notice of~~
4 ~~eviction served within 10 years prior to filing the application for a building permit to construct the~~
5 ~~ADU or where a tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) under a~~
6 ~~notice of eviction served within five years prior to filing the application for a building permit to~~
7 ~~construct the ADU. This provision shall not apply if the tenant was evicted under Section 37.9(a)(11) or~~
8 ~~37.9(a)(14) and the applicant(s) either (A) have certified that the original tenant reoccupied the unit~~
9 ~~after the temporary eviction or (B) have submitted to the Department and to the Rent Board a~~
10 ~~declaration from the property owner or the tenant certifying that the property owner notified the tenant~~
11 ~~of the tenant's right to reoccupy the unit and the tenant chose not to reoccupy it.~~

12 (C) **Controls on Construction.** An Accessory Dwelling Unit is
13 permitted to be constructed under the following conditions:

14 (i) For lots that have four existing Dwelling Units or fewer, one
15 ADU is permitted; for lots that have more than four existing Dwelling Units or are undergoing
16 seismic retrofitting under subsection (c)(4)(F) below, there is no limit on the number of ADUs
17 permitted; provided, however, that the Department shall not approve an application for construction
18 of an Accessory Dwelling Unit in any building regulated by this subsection (c)(4) where a tenant has
19 been evicted pursuant to Administrative Code Sections 37.9(a)(9) through 37.9(a)(14) under a notice of
20 eviction served within 10 years prior to filing the application for a building permit to construct the
21 ADU or where a tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) under a
22 notice of eviction served within five years prior to filing the application for a building permit to
23 construct the ADU. This provision shall not apply if the tenant was evicted under Section 37.9(a)(11)
24 or 37.9(a)(14) and the applicant(s) either (A) have certified that the original tenant reoccupied the unit
25 after the temporary eviction or (B) have submitted to the Department and to the Rent Board a

1 declaration from the property owner or the tenant certifying that the property owner notified the tenant
2 of the tenant's right to reoccupy the unit and the tenant chose not to reoccupy it.

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

1 ~~(iii)~~ — One ADU over the density limits in this Code is allowed in a
2 newly built residential structure of three units or less as a component of the new construction.

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

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

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

18 (vi) (iv) A building undergoing seismic retrofitting may be eligible
19 for a height increase pursuant to ~~S~~subsubsection (c)(4)(F) below.

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

23 (viii) (vi) An Accessory Dwelling Unit shall not be permitted in any
24 building in a Neighborhood Commercial District or in the Chinatown Community Business or
25

1 Visitor Retail Districts if it would eliminate or reduce a ground-story retail or commercial
2 space;

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

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

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

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

24 (ii) may expand a noncomplying structure, as defined in
25 Section 180(a)(2) of this Code and further regulated in Sections 172, 180, and 188, without

1 obtaining a variance for increasing the discrepancy between existing conditions on the lot and
2 the required standards of this Code.

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

9 (iv) pursuant to subsection (4)(C)(i), there is no limit on the
10 number of ADUs that are permitted to be added in connection with a seismic retrofit.

11 (G) **Waiver of Code Requirements; Applicability of Rent**

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

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

1 (i) a statement that the ADU(s) are not subject to the Costa
2 Hawkins Rental Housing Act (California Civil Code Section 1954.50) because, under Section
3 1954.52(b), the owner has entered into this agreement with the City in consideration for a
4 complete or partial waiver of the density limits, and/or off-street parking, bicycle parking, rear
5 yard, exposure_ or open space standards of this Code or other direct financial contribution or
6 other form of assistance specified in California Government Code Sections 65915 et seq.
7 ("Agreement"); and

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

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

13 (iv) The property owner and the Planning Director (or ~~his~~ the
14 Director's designee), on behalf of the City, will execute the Agreement, which shall be
15 reviewed and approved by the City Attorney's Office. The Agreement shall be executed prior
16 to the City's issuance of the First Construction Document for the project, as defined in Section
17 107A.13.1 of the San Francisco Building Code.

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

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

25 (l) **Monitoring Program.**

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

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

18 (iii) **Department Report.** The Department shall publish a report
19 annually until April 1, 2019, that describes and evaluates the types of units being developed
20 and their affordability rates, as well as their use as Short-Term Residential Rentals. The report
21 shall contain such additional information as the Director or the Board of Supervisors
22 determines would inform decision makers and the public on the effectiveness and
23 implementation of this subsection (c)(4) and include recommendations for any amendments to
24 the requirements of this Section 207(c)(4). The Department shall transmit this report to the
25

1 Board of Supervisors for its review and public input. In subsequent years, this information on
2 Accessory Dwelling Units shall be reported annually in the Housing Inventory.

3 * * * *

4 (6) **Accessory Dwelling Units in Existing Single-Family Homes.**

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

14 (B) **Lots Zoned for Single-Family or Multifamily Use and Containing an**
15 **Existing Single-Family Home; Controls on Construction.** An Accessory Dwelling Unit
16 located in a residential zoning district and constructed pursuant to this subsection (c)(6) shall
17 meet all of the following:

18 (i) The ADU will strictly meet the requirements set forth in this
19 subsection (c)(6)(~~BE~~) without requiring a waiver of Code requirements pursuant to subsection
20 (c)(4)(G).

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

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

1 structure on the same lot. "Living area" means (as defined in Section 65852.2(i)(1) of the
2 California Government Code) "the interior habitable area of a dwelling unit including
3 basements and attics, but does not include a garage or any accessory structure."

4 (iv) If contained within the existing space of a single-family residence
5 or accessory structure, the ADU must have independent exterior access from the existing
6 residence or accessory structure, and side and rear setbacks sufficient for fire safety.

7 (v) If construction of the ADU will have adverse impacts on a property
8 listed in the California Register of Historic Places or any other known historical resource, the
9 Department shall require modification of the proposed project to the extent necessary to
10 prevent or mitigate such impacts.

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

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

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

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

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

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

5 (C) **Permit Application Review and Approval.** Except as authorized by
6 subsections (c)(6)(B)(v) and (vi), the Department shall approve an application for a permit to
7 construct an Accessory Dwelling Unit within 120 days from receipt of the complete application,
8 without modification or disapproval, if the proposed construction fully complies with the
9 requirements set forth in subsection (c)(6)(~~BC~~).

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

14 (E) **Rental; Restrictions on Subdivisions.**

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

18 (ii) Notwithstanding the provisions of Article 9 of the Subdivision
19 Code, a lot with an Accessory Dwelling Unit authorized under this subsection (c)(6) shall not
20 be subdivided in a manner that would allow for the ADU to be sold or separately financed
21 pursuant to any condominium plan, housing cooperative, or similar form of separate
22 ownership; ~~provided, however, that this prohibition on separate sale or finance of the ADU shall not~~
23 ~~apply to a building that within three years prior to July 11, 2016, was an existing condominium with no~~
24 ~~Rental Unit as defined in Section 37.2(r) of the Administrative Code, and also within 10 years prior to~~
25

1 *July 11, 2016 had no evictions pursuant to Sections 37.9(a) through 37.9(a)(14) of the Administrative*
2 *Code.*

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

8 **SEC. 207.3. AUTHORIZATION OF DWELLING UNITS CONSTRUCTED WITHOUT A**
9 **PERMIT IN AN EXISTING BUILDING ZONED FOR RESIDENTIAL USE.**

10 Notwithstanding Section 207.2 or any other provision of this Code, certain dwelling
11 units that were constructed without benefit of permit in an existing residential building or in an
12 ancillary structure located on the same lot may be granted legal status subject to the
13 conditions and procedures set forth below. For purposes of this Section 207.3, a dwelling unit
14 shall not include single room occupancy units.

15 (b) **Scope.**

16 (1) Except as provided in subsection (2) below, this Section 207.3 shall apply
17 to an existing building or an ancillary structure on the same lot, that is located in a district
18 where residential use is principally permitted, and that has one or more dwelling units that
19 were constructed prior to January 1, 2013 without benefit of permit and used as residential
20 space. ~~One~~ One Any of the unauthorized dwelling units ~~per~~ on the lot ~~that~~ meeting this
21 threshold requirement and the requirements of this Section may be granted legal status under
22 this Section, regardless of the density limits of the zoning district.

23 * * * *

1 **SEC. 307. OTHER POWERS AND DUTIES OF THE ZONING ADMINISTRATOR.**

2 In addition to those specified in Sections 302 through 306 of this Code, the Zoning
3 Administrator shall have the following powers and duties in administration and enforcement of
4 this Code.

5 * * * *

6 (l) **Exceptions from Certain Specific Code Standards Through Administrative**
7 **Review for Accessory Dwelling Units Constructed Pursuant to Section 207(c)(4) of this**
8 **Code.** The Zoning Administrator may allow complete or partial relief from the density limits
9 and from the *off-street* parking, *bicycle parking*, rear yard, exposure, and/or open space
10 requirements of this Code when modification of the requirement would facilitate the
11 construction of an Accessory Dwelling Unit, as defined in Section 102 and meeting the
12 requirements of Section 207(c)(4) of this Code.

13 (1) **Exposure.** The exposure requirements of Section 140 apply, except that
14 subsection (a)(2) may be satisfied through windows facing an open area that is at least 225
15 square feet, with no horizontal direction being less than nine feet, and 15 feet in every horizontal
16 direction that is not required to expand on subsequent floors. Permitted obstructions that are
17 outlined in Section 140 and fire escapes, not projecting more than 4 feet 6 inches, would be allowed in
18 such open area. In considering any request for complete or partial relief from these Code
19 requirements, the Zoning Administrator shall facilitate the construction of such Accessory
20 Dwelling Units to the extent feasible and shall consider any criteria elsewhere in this Section
21 307 that he or she determines to be applicable. Nothing in this Section shall be interpreted as
22 allowing for an existing *nonconforming non-conforming* use to be deemed conforming.

23 (2) **Bicycle Parking.** The requirements of Sections 155.1 and 155.2 shall apply,
24 except that (A) in a building with no new corridors, an existing three-foot corridor may satisfy the

1 requirement of a legal nonconforming access corridor for purposes of bicycle parking access in
2 existing buildings and (B) vertical bicycle parking may satisfy up to 100% of required bicycle parking.

3 **SEC. 317. LOSS OF RESIDENTIAL AND UNAUTHORIZED UNITS THROUGH**
4 **DEMOLITION, MERGER AND CONVERSION.**

5 * * * *

6 (c) **Applicability; Exemptions.**

7 (1) Any application for a permit that would result in the Removal of one or
8 more Residential Units or Unauthorized Units is required to obtain Conditional Use
9 authorization. For Unauthorized Units, this Conditional Use authorization will not be required for
10 Removal if the Zoning Administrator has determined in writing that the unit cannot be legalized
11 under any available applicable provision of this Code. The application for a replacement building
12 or alteration permit shall also be subject to Conditional Use requirements.

13 * * * *

14 (g) **Conditional Use Criteria.**

15 * * * *

16 (6) **Removal of Unauthorized Units.** In addition to the criteria set forth in
17 Subsections (g)(1) through (g)(4) above, the Planning Commission shall consider the criteria
18 below in the review of applications for removal of Unauthorized Units:

19 (A) ~~whether the Unauthorized Unit or Units are eligible for legalization~~
20 ~~under Section 207.3 of this Code;~~

21 ~~(B)~~ whether the costs to legalize the Unauthorized Unit or Units under
22 the Planning, Building, and other applicable Codes is reasonable based on how such cost
23 compares to the average cost of legalization per unit derived from the cost of projects on the
24 Planning Department's Master List of Additional Dwelling Units Approved required by Section
25 207.3(k) of this Code;

1 (BC) whether it is financially feasible to legalize the Unauthorized Unit or
2 Units. Such determination will be based on the costs to legalize the Unauthorized Unit(s)
3 under the Planning, Building, and other applicable Codes in comparison to the added value
4 that legalizing said Units would provide to the subject property. The gain in the value of the
5 subject property shall be based on the current value of the property with the Unauthorized
6 Unit(s) compared to the value of the property if the Unauthorized Unit(s) is/are legalized. The
7 calculation of the gain in value shall be conducted and approved by a California licensed
8 property appraiser. Legalization would be deemed financially feasible if gain in the value of
9 the subject property is equal to or greater than the cost to legalize the Unauthorized Unit.

10 (CD) If no City funds are available to assist the property owner with the
11 cost of legalization, whether the cost would constitute a financial hardship.

12
13 Section 3. As introduced, this ordinance proposed revising Building Code Sections
14 106A.4.9 and 106A.4.9.1. At the Land Use and Transportation Committee meeting of July 9,
15 2018, the Committee amended the ordinance to remove those sections.

16
17 Section 4. Effective Date. This ordinance shall become effective 30 days after
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
20 of Supervisors overrides the Mayor's veto of the ordinance

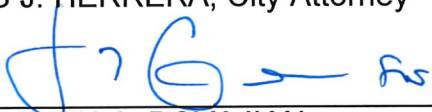
21
22 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
23 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
24 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
25 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

3
4 Section 6. Directions to Clerk. The Clerk of the Board of Supervisors is hereby directed
5 to submit a copy of this ordinance to the California Department of Housing and
6 Community Development within 60 days following adoption pursuant to Section 65852.2(h) of
7 the California Government Code.

8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By:



12 JUDITH A. BOYAJIAN
13 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Accessory Dwelling Units]

Ordinance amending the Planning Code to 1) authorize expansion of an Accessory Dwelling Unit (ADU) within the buildable area, 2) authorize the Zoning Administrator to waive or modify bicycle parking requirements for an ADU, 3) exempt from the permit notification requirement ADUs constructed within the defined existing built envelope, and 4) allow conversion of an existing stand-alone garage, storage structure, or other auxiliary structure to an ADU and expansion of the existing building envelope to add dormers; 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; adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302; and directing the Clerk to send a copy of this Ordinance to the California Department of Housing and Community Development.

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 (c)(6) apply only to existing single-family homes that strictly meet the state law's ADU requirements. An ADU must be constructed entirely within the existing built envelope, "living area," or buildable area of an existing building or within the existing built envelope of an existing and authorized auxiliary structure on the same lot. Sections 207(c)(4) and 307(l) authorize the Zoning Administrator to modify or waive the density limits, parking, rear yard, exposure, or open space standards of the Code in order to facilitate the construction of an ADU. Section 207.3 authorizes the legalization of one dwelling unit per lot that was constructed prior to January 1, 2013 without the required permit.

Section 136 sets forth the allowable obstructions over Streets and Alleys and in required setbacks, yards, and usable open space. Section 138.1 establishes the requirements for streetscape and pedestrian improvements, including the obligation to plant and maintain street trees; pursuant to the Article 2 Zoning Control Tables, planting street trees is required for projects in areas zoned for residential use. Section 140 requires all Dwelling Units to face/have exposure to an open area that meets specified minimum requirements. Section 155.1 contains the requirements and standards for bicycle parking. Section 317, among other things, requires a Conditional Use authorization for the Removal of an unauthorized dwelling unit.

Amendments to Current Law

Section 102 is amended to make the definition consistent with the language in Sections 207(c)(4) and (c)(6). Section 207(c)(4) is amended to provide that construction of an ADU is not subject to Section 311 notification if it is entirely within the “built envelope” of the existing structure, which is defined to include a cantilevered room and other specified areas, or if the envelope of a converted stand-alone garage, storage structure, or other existing auxiliary structure is expanded to add dormers for the ADU. Section 207.3 is amended to allow the legalization of more than one unauthorized unit on the lot if the unit can meet all the Code requirements.

Section 136 is amended to allow infilling under decks and cantilevered rooms when adding an Accessory Dwelling Unit provided that if the ADU is proposed for a single-family home, the rear yard must be 25% of the lot depth but in no case less than 15 feet. Section 138.1 is amended to allow payment of an in lieu fee for an ADU’s street tree requirement. Sections 140, 155.1, and 307(l) are amended to authorize the Zoning Administrator to modify or waive the exposure and bicycle parking requirements in order to facilitate the construction of an ADU. Section 317 is amended to provide that if an unauthorized unit can be legalized under any available provision of the Code, its Removal requires a Conditional Use authorization.

Background Information

The State Legislature has declared that second units (ADUs) are a valuable form of housing in California for many reasons. They are also an affordable type of housing because they do not include the costs of purchasing land or require major new infrastructure. In San Francisco, an ADU can be added to an existing building without changing the character of the neighborhood. San Francisco first enacted an ADU ordinance in 2015 and since then has updated its ADU program in response to amendments to the state law. The proposed amendments will facilitate the construction of ADUs in San Francisco.

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