

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection  
Kevin Guy, Director, Office of Short-Term Rental Administration and Enforcement  
Joanne Hayes-White, Chief, Fire Department  
Olson Lee, Director, Mayor's Office of Housing and Community Development  
Robert Collins, Executive Director, Rent Board

FROM: *ll*  
*ll* Alisa Somera, Legislative Deputy Director  
Land Use and Transportation Committee

DATE: February 6, 2017

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on January 31, 2017:

**File No. 170125**

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

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: [alisa.somera@sfgov.org](mailto:alisa.somera@sfgov.org).

c: William Strawn, Department of Building Inspection  
Carolyn Jayin, Department of Building Inspection  
Kelly Alves, Fire Department  
Eugene Flannery, Mayor's Office of Housing and Community Development  
Kate Hartley, Mayor's Office of Housing and Community Development

1 [Planning Code - Construction of Accessory Dwelling Units]

2  
3 **Ordinance amending the Planning Code to bring the requirements and procedures for**  
4 **authorizing the construction of Accessory Dwelling Units (ADUs) in single-family**  
5 **homes into conformity with the new mandates of state law; affirming the Planning**  
6 **Department's determination under the California Environmental Quality Act; making**  
7 **findings of consistency with the General Plan, and the eight priority policies of**  
8 **Planning Code, Section 101.1, and findings of public convenience, necessity, and**  
9 **welfare under Planning Code, Section 302; and directing the Clerk to send a copy of**  
10 **this Ordinance to the California Department of Housing and Community Development**  
11 **after adoption pursuant to state law requirements.**

12  
13 **NOTE: Unchanged Code text and uncodified text** are in plain Arial font.  
14 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
15 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
16 **Board amendment additions** are in double-underlined Arial font.  
17 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
18 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
19 subsections or parts of tables.

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

21 Section 1. General Findings.

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

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

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

10  
11 Section 2. Specific Findings.

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

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

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

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

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

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

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

20 \* \* \* \*

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

23 \* \* \* \*

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

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

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

12 (i) only one ADU will be constructed;

13 (ii) the ADU will be located on a lot in a single-family zoning district;

14 (iii) the ADU will be constructed entirely within the "living area" (as  
15 defined in subsection (c)(6)(C)(i)) of an existing single-family home or within the built envelope of an  
16 existing and authorized auxiliary structure on the same lot;

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

19 (v) the permit application does not include seismic upgrade work  
20 pursuant to subsection (c)(4)(F);

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

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

3 \* \* \* \*

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

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

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

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

23 \* \* \* \*

24 (6.5) **Accessory Dwelling Units in ~~RH-1(D)~~ Single-Family Zoning Districts**  
25 **(RH-1, RH-1(D), and RH-1(S)).**

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

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

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

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

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

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

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



1 (iv) If construction of the ADU will, in the opinion of the Department,  
2 have adverse impacts on a property listed in the California Register of Historic Places, the Department  
3 may require modification of the proposed project to the extent necessary to prevent or mitigate such  
4 impacts.

5 (v) The Department may apply any Residential Design Guideline that  
6 is generally applicable in San Francisco to the proposed construction of an ADU.

7 (vi) No setback is required for an existing garage that is converted to  
8 an ADU.

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

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

16 **(D) Permit Application Review and Approval.** Except as authorized by  
17 subsections (c)(6)(C)(iv) and (v), the Department shall approve an application for a permit to construct  
18 an Accessory Dwelling Unit within 120 days from receipt of the application, without modification or  
19 disapproval, if the proposed construction fully complies with the requirements set forth in subsection  
20 (c)(6)(C).

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

25 **(F) Rental; Restrictions on Subdivisions.**

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

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 be  
6 subdivided in a manner that would allow for the ADU to be sold or separately financed pursuant to any  
7 condominium plan, housing cooperative, or similar form of separate ownership; provided, however,  
8 that this prohibition on separate sale or finance of the ADU shall not apply to a building that within  
9 three years prior to July 11, 2016, was an existing condominium with no Rental Unit as defined in  
10 Section 37.2(r) of the Administrative Code, and also within 10 years prior to July 11, 2016 had no  
11 evictions pursuant to Sections 37.9(a) through 37.9(a)(14) of the Administrative Code.

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

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

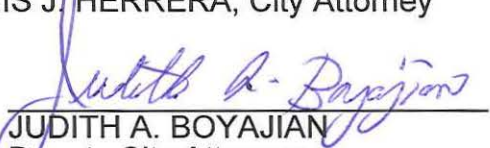
22  
23 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

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

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

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

12 By:

  
13 JUDITH A. BOYAJIAN  
14 Deputy City Attorney

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## LEGISLATIVE DIGEST

[Planning Code - Construction of Accessory Dwelling Units]

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

### Existing Law

Planning Code Section 207(c)(4) regulates the construction of Accessory Dwelling Units (ADUs) in San Francisco. It allows ADUs to be constructed on any lot in the City where residential use is allowed. One ADU may be constructed in buildings that have four existing units or fewer and there is no numerical limit on the number that may be constructed in buildings with more than four existing units. With the exception of properties in RH-1(D) zoning districts, which are regulated by Section 207(c)(5) and allowed only as mandated by California's second unit law (Government Code Section 65852.2), the same controls on construction apply to all ADUs.

### Amendments to Current Law

This ordinance groups all single-family zoning districts together in a new Planning Code Section 207(c)(6). There are no changes to the requirements for the construction of an ADU in an RH-1(D) zoning district, which is still regulated entirely by the provisions of Government Code Section 65852.2. Single-family homes in other single-family zoning districts (RH-1 and RH-1(S)) that (1) fully meet the requirements of subsection (c)(6), (2) do not need any waivers of Planning Code requirements by the Zoning Administrator, and (3) are not also performing seismic upgrade work may receive a ministerially-approved permit. A single-family home in an RH-1 or RH-1(S) zoning district that cannot meet these requirements continues to be regulated by Section 207(c)(4).

### Background Information

On January 1, 2017, SB 1069 and AB 2299, both amending California's law on second units (now called "accessory dwelling units") went into effect. An existing local ordinance must fully comply with the new requirements or is considered by the state to be null and void. Planning Code Section 207(c)(4) is being amended to bring San Francisco's ADU requirements into conformity with the new state law mandates.

Pursuant to Government Code Section 65852.2, a local jurisdiction must ministerially approve one ADU if it (1) is contained within the existing space of a single-family residence or accessory structure that is in a single-family residential zone, (2) has independent exterior access from the existing residence, and (3) has side and rear setbacks sufficient for fire safety. The state imposes limits on other local requirements including parking, fire sprinklers, and utility connections. A local jurisdiction may enact less restrictive requirements but may not enact more restrictive standards than the maximum standards of Government Code Section 65852.2.

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