

BOARD of SUPERVISORS



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MEMORANDUM

TO: Robert Collins, Executive Director, Rent Board

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

DATE: September 10, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Breed on September 1, 2020:

File No. 201008

Ordinance amending the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units meeting certain requirements in single-family and multifamily buildings; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

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.

1 [Planning Code - State-Mandated Accessory Dwelling Unit Controls]

2

3 **Ordinance amending the Planning Code to clarify the ministerial approval process for**
 4 **certain Accessory Dwelling Units meeting certain requirements in single-family and**
 5 **multifamily buildings; affirming the Planning Department's determination under the**
 6 **California Environmental Quality Act; and making findings of consistency with the**
 7 **General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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

12

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

14

15 Section 1. Findings.

16 (a) The Planning Department has determined that the actions contemplated in this
 17 ordinance comply with the California Environmental Quality Act (California Public Resources
 18 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
 19 Supervisors in File No. _____ and is incorporated herein by reference. The Board
 20 affirms this determination.

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

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

4
5 Section 2. The Planning Code is hereby amended by revising Sections 102, 207,
6 1005, and 1110 to read as follows:

7
8 **SEC. 102. DEFINITIONS.**

9 * * * *

10 **Dwelling Unit, Accessory.** Also known as a Secondary Unit or In-Law Unit, is a Dwelling Unit
11 that meets all the requirements of subsection 207(c)(4) or subsection 207(c)(6) and that is accessory to
12 at least one other Dwelling Unit on the same lot ~~constructed either entirely within the existing built~~
13 ~~envelope, the “living area” as defined in State law, or the buildable area of an existing or proposed~~
14 ~~building in areas that allow residential use; or is constructed within the existing built envelope of an~~
15 ~~existing and authorized auxiliary structure on the same lot. A detached accessory dwelling unit shall~~
16 not share structural walls with either the primary structure or any other structure on the lot.

17
18 **Dwelling Unit, Junior Accessory.** A Dwelling Unit that meets all the requirements of subsection
19 207(c)(6), and that:

- 20 (a) is accessory to at least one other Dwelling Unit on the same lot;
21 (b) is no more than 500 square feet of Gross Floor Area;
22 (c) is contained entirely within an existing or proposed single-family structure;
23 (d) may include separate sanitation facilities, or may share sanitation facilities with the
24 existing structure;
25 (e) is owner-occupied, unless the owner resides in the remaining portion of the structure;

1 (f) includes an entrance to the Junior Accessory Dwelling Unit that is separate from the
2 main entrance to the proposed or existing single-family structure; and

3 (g) includes an efficiency kitchen that meets the requirements of Government Code Section
4 65852.22(a)(6), including a cooking facility with appliances, and a food preparation counter and
5 storage cabinets that are of reasonable size in relation to the size of the Junior Accessory Dwelling
6 Unit.

7 * * * *

8
9 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

10 * * * *

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

13 * * * *

14 (4) **Accessory Dwelling Units – Local Accessory Dwelling Unit Program;**
15 **Accessory Dwelling Units in Multifamily Buildings and; Accessory Dwelling Units in**
16 **Single-Family Homes That Do Not Strictly Meet the Requirements in subsection (c)(6).**

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

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

24 (i) ~~only one ADU will be constructed;~~

1 (ii) — ~~the ADU will be located on a lot that is zoned for single-family or~~
2 ~~multifamily use and contains an existing or proposed single-family dwelling;~~

3 (iii) — ~~the ADU is either attached to or will be constructed entirely~~
4 ~~within the “living area” (as defined in subsection (c)(6)(B)(iii)) or the buildable area of an the~~
5 ~~proposed or existing primary dwelling single-family home, or constructed within the built envelope of~~
6 ~~an existing and authorized auxiliary structure on the same lot; provided, however, that (A) when a~~
7 ~~stand-alone garage, storage structure, or other auxiliary structure is being converted to an ADU, an~~
8 ~~expansion to the envelope is allowed to add dormers even if the stand-alone garage, storage structure,~~
9 ~~or other auxiliary structure is in the required rear yard and (B) on a corner lot, a legal stand-alone~~
10 ~~nonconforming garage, storage structure, or other auxiliary structure may be expanded within its~~
11 ~~existing footprint by up to one additional story in order to create a consistent street wall and improve~~
12 ~~the continuity of buildings on the block.~~

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

15 (v) — ~~the permit application does not include seismic upgrade work~~
16 ~~pursuant to subsection (c)(4)(F).~~

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

20 (i) For lots that have four existing Dwelling Units or fewer, or where
21 the zoning would permit the construction of four or fewer Dwelling Units, one ADU is
22 permitted, ~~;~~ For lots that have more than four existing Dwelling Units or are undergoing
23 seismic retrofitting under subsection (c)(4)(F) below, or where the zoning would permit the
24 construction of more than four Dwelling Units, there is no limit on the number of ADUs
25 permitted, as long as all other health and safety requirements are met; ~~provided,~~

1 and lightwell infills provided that the infill will be against a blank neighboring wall at the
2 property line and not visible from any off-site location; as these spaces exist as of July 11,
3 2016.: An ADU constructed entirely within the existing built envelope, as defined in this
4 subsection 207(c)(4)(C)(iii), along with permitted obstructions allowed in Section 136(c)(32), of
5 an existing building or authorized auxiliary detached structure on the same lot, or where an
6 existing ~~stand-alone detached~~ garage or storage structure has been expanded to add dormers,
7 is exempt from the notification requirements of Section 311 of this Code unless the existing
8 building or authorized auxiliary detached structure on the same lot is an Article 10 or Article 11
9 individual landmark or is in an Article 10 or Article 11 District, in which case the notification
10 requirements will apply. If an ADU will be constructed under a cantilevered room or deck that
11 encroaches into the required rear yard, a pre-application meeting between the applicant and
12 adjacent neighbors for all the proposed work is required before the application may be
13 submitted.

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

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

22 (vi) ADUs shall comply with any applicable controls in Planning Code Section
23 134(f).

24 (vii) An ~~Accessory Dwelling Unit~~ ADU shall not be constructed using
25 space from an existing Dwelling Unit, except that an ADU may expand into habitable space on

1 the ground or basement floors provided that it does not exceed 25% of the total gross square
2 footage of such space on the ground and basement floors. The Zoning Administrator may waive
3 this 25% limitation if (a) the resulting space would not be usable or would be impractical to
4 use for other reasonable uses, ~~including~~, but not limited to, storage or bicycle parking or (b)
5 waiving the limitation would help relieve any negative layout issues for the proposed ADU.

6 (viii) An existing building undergoing seismic retrofitting may be eligible
7 for a height increase pursuant to subsection (c)(4)(F) below.

8 (ix) Notwithstanding any other provision of this Code, an ~~Accessory~~
9 ~~Dwelling Unit~~ ADU authorized under this Section 207(c)(4) may not be merged with an original
10 unit(s).

11 (xiii) An ~~Accessory Dwelling Unit~~ ADU shall not be permitted in any
12 building in a Neighborhood Commercial District or in the Chinatown Community Business or
13 Visitor Retail Districts if it would eliminate or reduce a ground-story retail ~~or commercial~~ space.

14 (xi) An application for a permit to construct an ADU in a proposed building
15 pursuant to this subsection 207(c)(4)(C) shall not be subject to the notification requirements of Section
16 311 of this Code. The application for a permit to construct the proposed building shall be subject to any
17 applicable notification requirements of Section 311 of this Code.

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

21 (E) **Restrictions on Subdivisions.** Notwithstanding the provisions of Article
22 9 of the Subdivision Code, a lot with an ~~Accessory Dwelling Unit~~ ADU authorized under this
23 Section 207(c)(4) shall not be subdivided in a manner that would allow for the ADU to be sold
24 or separately financed pursuant to any condominium plan, housing cooperative, or similar
25 form of separate ownership, ~~provided, however, that~~ This prohibition on separate sale or

1 finance of the ADU shall not apply to an ADU in a building that (i) ~~within three years prior to July~~
2 ~~11, 2016 was an existing~~consisted entirely of condominium ~~with no Rental Unit as defined in Section~~
3 ~~37.2(r) of the Administrative Code~~units as of July 11, 2013, and (ii) has had no evictions pursuant
4 to Sections 37.9(a) through 37.9(a)(12) and 37.9(a)(14) of the Administrative Code ~~within 10~~
5 ~~years prior to~~since July 11, 2011996. This prohibition on separate sale or finance of the ADU shall
6 not apply to an ADU that meets the requirements of California Government Code Section 65852.26.

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

14 (i) Shall be exempt from the notification requirements of Section 311
15 of this Code; and

16 (ii) May expand a noncomplying structure, as defined in Section
17 180(a)(2) of this Code and further regulated in Sections 172, 180, and 188, without obtaining
18 a variance for increasing the discrepancy between existing conditions on the lot and the
19 required standards of this Code.

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

1 (iv) Pursuant to subsection (4)(C)(i), there is no limit on the number of
2 ADUs that are permitted to be added in connection with a seismic retrofit, as long as all health
3 and safety requirements are met.

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

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

17 (H) **Regulatory Agreements.** A Regulatory Agreement required by

18 subsection (c)(4)(G) as a condition of approval of an Accessory Dwelling Unit shall contain the
19 following:

20 (i) a statement that the ADU(s) are not subject to the Costa Hawkins
21 Rental Housing Act (California Civil Code Section 1954.50) because, under Section
22 1954.52(b), the owner has entered into this agreement with the City in consideration for a
23 complete or partial waiver of the density limits, and/or bicycle parking, rear yard, exposure, or
24 open space standards of this Code or other direct financial contribution or other form of
25

1 assistance specified in California Government Code Sections 65915 et seq. (“Agreement”);
2 and

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

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

8 (iv) The property owner and the Planning Director (or the Director’s
9 designee), on behalf of the City, will execute the Agreement, which shall be reviewed and
10 approved by the City Attorney’s Office. The Agreement shall be executed prior to the City’s
11 issuance of the First Construction Document for the project, as defined in Section 107A.13.1
12 of the San Francisco Building Code.

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

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

20 (I) **Monitoring Program.**

21 (i) **Monitoring and Enforcement of Unit Affordability.** The
22 Department shall establish a system to monitor the affordability of the Accessory Dwelling
23 Units authorized to be constructed by this subsection 207(c)(4) and shall use such data to
24 enforce the requirements of the Regulatory Agreements entered into pursuant to subsection
25 (c)(4)(H). Property owners shall provide the Department with rent information as requested by

1 the Department. The Board of Supervisors recognizes that property owners and tenants
2 generally consider rental information sensitive and do not want it publicly disclosed. The intent
3 of the Board is for the Department to obtain the information for purposes of monitoring and
4 enforcement but that its public disclosure is not linked to specific individuals or units. The
5 Department shall consult with the City Attorney's Office with respect to the legal requirements
6 to determine how best to achieve the intent of the Board.

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

13 (iii) **Department Report.** ~~As part of the annual Housing Inventory, t~~The
14 Department shall ~~publish a~~ report ~~annually until April 1, 2019, that describes and evaluates~~ the
15 types of units being developed ~~pursuant to this subsection 207(c)(4), and~~ their affordability rates,
16 ~~as well as~~ their use as Short-Term Residential Rentals, ~~and. The report shall contain~~ such
17 additional information as the Director or the Board of Supervisors determines would inform
18 decision makers and the public on the effectiveness and implementation of this subsection
19 207(c)(4), and shall include recommendations for any amendments to the requirements of this
20 Section 207(c)(4). ~~The Department shall transmit this report to the Board of Supervisors for its~~
21 ~~review and public input. In subsequent years, this information on Accessory Dwelling Units shall be~~
22 ~~reported annually in the Housing Inventory.~~

23 * * * *

1 (6) Accessory Dwelling Units - State Mandated Accessory Dwelling Unit Program:
2 **Accessory Dwelling Units in Existing or Proposed ~~Single-Family Homes~~Dwellings or in a**
3 **Detached ~~Auxiliary~~ Structure on the Same Lot.**

4 (A) **Applicability.** This subsection 207(c)(6) shall apply to the construction of
5 ~~Accessory Dwelling Units~~ADUs and Junior Accessory Dwelling Units (“JADUs”) (as defined in
6 Section 102) in existing or proposed ~~single-family homes~~dwellings, or in a detached ~~auxiliary~~
7 structure on the same lot, if the ADU meets the applicable requirements of this
8 subsection 207(c)(6). An ADU constructed pursuant to this subsection is considered a
9 residential use that is consistent with the General Plan and the zoning designation for the lot.
10 Adding ~~one~~an ADU or JADU in compliance with this subsection 207(c)(6) to an existing or proposed
11 ~~single-family home or in a detached auxiliary structure on the same lot~~ does not exceed the
12 allowable density for the lot. Unless otherwise specified, for purposes of this subsection 207(c)(6), a
13 “detached” structure or ADU shall not share structural walls with either the primary structure or any
14 other structure on the lot. If construction of the ADU will not meet the requirements of this
15 subsection ~~and the ADU cannot be constructed without a waiver of Code requirements pursuant to~~
16 ~~subsection (c)(4)(G)~~, the ADU is regulated pursuant to subsection 207(c)(4) and not this
17 subsection 207(c)(6).

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

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

1 ~~(ii) — The permit application does not include seismic upgrade work pursuant~~
2 ~~to subsection (c)(4)(F).~~

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

10 (iv) The ADU must have independent exterior access from the existing
11 or proposed primary dwelling or existing accessory structure, and side and rear setbacks
12 sufficient for fire safety.

13 (iv) For projects involving a property listed in the California Register of
14 Historic Places, or a property designated individually or as part of a historic or conservation
15 district pursuant to Article 10 or Article 11, the ADU shall comply with any architectural review
16 standards adopted by the Historic Preservation Commission to prevent adverse impacts to
17 such historic resources. Such projects shall not be required to obtain a Certificate of
18 Appropriateness or a Permit to Alter.

19 ~~(vi) — The Department shall apply any design guidelines in the Code to the~~
20 ~~proposed project and review the design of the proposed project to ensure architectural compatibility~~
21 ~~with existing buildings on the subject lot.~~

22 ~~(vii) — No setback is required for an existing garage that is converted to an~~
23 ~~ADU.~~

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

1 ~~(iv)(x)~~ No parking is required for the ADU. ~~If existing parking is demolished~~
2 ~~in order to construct the ADU, only the parking space required by this Code for the existing single-~~
3 ~~family home must be replaced, except that no replacement parking is required for An ADU approved~~
4 ~~pursuant to subsection 207(c)(6)(D). If replacement parking is required, it may be located in any~~
5 ~~configuration on the lot including but not limited to covered, uncovered, or tandem space or by the use~~
6 ~~of mechanical automobile parking lifts.~~

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

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

14 ~~(x)~~ — ~~When the ADU involves expansion of the built envelope of an existing~~
15 ~~primary dwelling, or an expansion of the built envelope of an existing and authorized stand-alone~~
16 ~~garage, storage structure, or other auxiliary structure on the same lot, or the construction of a new~~
17 ~~detached auxiliary structure on the same lot, the total floor area of the ADU shall not exceed 1,200~~
18 ~~square feet.~~

19 ~~(C)~~ — **Permit Application Review and Approval.** ~~The Department shall approve an~~
20 ~~application for a permit to construct an Accessory Dwelling Unit within 120 days from receipt of the~~
21 ~~complete application, without modification or disapproval, if the proposed construction fully complies~~
22 ~~with the requirements set forth in subsection (c)(6)(B). No requests for discretionary review shall be~~
23 ~~accepted by the Planning Department for permit applications meeting the requirements of this~~
24 ~~subsection (c)(6). The Planning Commission shall not hold a public hearing for discretionary review of~~
25 ~~permit applications meeting the requirements of this subsection (c)(6). Permit applications meeting the~~

1 *requirements of this subsection (c)(6) shall not be subject to the notification or review requirements of*
2 *Section 311 of this Code.*

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

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

10 *(F) — **Rental; Restrictions on Subdivisions.***

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

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

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

22 *(H) — **Notification.** Upon determination that an application is in compliance with the*
23 *standards of subsection 207(c)(6) of the Planning Code, the Planning Department shall cause a notice*
24 *to be posted on the site pursuant to rules established by the Zoning Administrator and shall cause a*
25 *written notice describing the proposed project to be sent in the manner described below. This notice*

1 ~~shall be in addition to any notices required by the Building Code and shall have a format and content~~
2 ~~determined by the Zoning Administrator. This notice shall include a description of the proposal~~
3 ~~compared to any existing improvements on the site with dimensions of the basic features, elevations~~
4 ~~and site plan of the proposed project including the position of any adjacent buildings, exterior~~
5 ~~dimensions and finishes, and a graphic reference scale, existing and proposed uses or commercial or~~
6 ~~institutional business name, if known. The notice shall describe the project review process and shall set~~
7 ~~forth the mailing date of the notice.~~

8 (i) ~~Written notice shall be mailed to the project sponsor and tenants of the~~
9 ~~subject property. Written notice shall also be mailed to tenants of the subject property in unauthorized~~
10 ~~residential units.~~

11 (ii) ~~The notification package for a project subject to notice under this~~
12 ~~subsection 207(c)(6) shall include a written notice and reduced-size drawings of the project. The~~
13 ~~written notice shall compare the proposed project to the existing conditions at the development lot.~~
14 ~~Change to basic features of the project that are quantifiable shall be disclosed on the written notice.~~
15 ~~The basic features of existing and proposed conditions shall include, where applicable, front setback,~~
16 ~~building depth, rear yard, depth side, setbacks, building height, number of stories, dwelling unit count~~
17 ~~and use of the building.~~

18 (iii) ~~The written notice shall describe whether the project is a demolition, new~~
19 ~~construction or alteration project. If the project is an alteration, the type of alteration shall be~~
20 ~~described: horizontal, vertical, or both horizontal and vertical additions, and where the alteration is~~
21 ~~located.~~

22 (iv) ~~A written project description shall be part of the notice. In addition, the~~
23 ~~notice shall describe the project review process, information on how to obtain additional information,~~
24 ~~and the contact information of the Planning Department.~~

1 Floor Area, 16 feet or less in height, and with four foot side and rear yard setbacks. ADUs under this
2 subsection 207(c)(6)(D) shall meet the following conditions:

3 (i) Only one ADU will be constructed.

4 (ii) The ADU will be located on a lot that is zoned for single-family or
5 multifamily use and contains an existing or proposed dwelling.

6 (iii) The lot on which the ADU is proposed does not contain another ADU or
7 JADU.

8 (iv) The ADU is either a. attached to or will be constructed entirely within the
9 proposed or existing primary dwelling, including attached garages, storage areas, or similar uses, or
10 an accessory structure on the same lot, or b. attached to or will be constructed entirely within a
11 proposed or legally existing detached structure on the same lot, or c. detached from the proposed or
12 existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

13 (v) If there is an existing primary dwelling, the Gross Floor Area of an
14 attached ADU that provides one bedroom shall not exceed 50 percent of the Gross Floor Area of the
15 existing primary dwelling or 850 square feet, whichever is greater. If there is an existing primary
16 dwelling, the Gross Floor Area of an attached ADU that provides more than one bedroom shall not
17 exceed 50 percent of the Gross Floor Area of the existing primary dwelling or 1,000 square feet,
18 whichever is greater.

19 (vi) The Gross Floor Area of a detached ADU shall not exceed 1,200 square
20 feet.

21 (vii) **Setbacks.** No setback is required for an ADU located within an existing
22 living area or an existing accessory structure, or an ADU that replaces an existing structure and is
23 located in the same location and constructed to the same dimensions as the structure being replaced. A
24 setback of no more than four feet from the side and rear lot lines shall be required for an ADU that is
25

1 not converted from either an existing structure or a new structure constructed in the same location and
2 to the same dimensions as an existing structure.

3 (viii) When a garage, carport, or covered parking structure is demolished in
4 conjunction with the construction of an ADU or converted to an ADU, replacement of those offstreet
5 parking spaces is not required.

6 (E) Notification requirements for ADUs on a lot containing a proposed or existing
7 single-family dwelling. Prior to submitting an application to construct an ADU or JADU on a lot
8 containing a proposed or existing single-family dwelling under subsection 207(c)(6)(D), the property
9 owner shall notify all tenants on the subject property of the application, including tenants of the subject
10 property in unauthorized residential units. The property owner shall satisfy this notification
11 requirement in one of the following two ways.

12 (i) Comply with the requirements of the Building Code and applicable
13 Department of Building Inspection screening forms, and submit a copy of any applicable Department of
14 Building Inspection Screening forms to the Planning Department as part of the application to construct
15 an ADU or JADU; or

16 (ii) Cause a notice describing the proposed project to be posted on the
17 subject property for at least 15 days, cause a written notice describing the proposed project to be
18 mailed to the tenants of the subject property, and submit proof of these notices to the Planning
19 Department as part of the application to construct an ADU or JADU. These notices shall have a
20 format and content determined by the Zoning Administrator, and shall generally describe the project,
21 including the number and location of the proposed ADU and JADU. These notices shall describe how
22 to obtain additional information regarding the project and provide contact information for the
23 Planning Department that complies with the requirements of the Language Access Ordinance, Chapter
24 91 of the Administrative Code, to provide vital information about the Planning Department's services
25

1 or programs in the languages spoken by a Substantial Number of Limited English Speaking Persons, as
2 defined in Chapter 91.

3 (F) **Permit Application Review and Approval.** The City shall act on an application
4 for a permit to construct an ADU or JADU under this subsection 207(c)(6) within 60 days from receipt
5 of the complete application, without modification or disapproval, if the proposed construction fully
6 complies with the requirements set forth in this subsection 207(c)(6). No requests for discretionary
7 review shall be accepted by the Planning Department for permit applications meeting the requirements
8 of this subsection 207(c)(6). The Planning Commission shall not hold a public hearing for
9 discretionary review of permit applications meeting the requirements of this subsection 207(c)(6).
10 Permit applications meeting the requirements of this subsection 207(c)(6) shall not be subject to the
11 notification or review requirements of Section 311 of this Code.

12 (G) **Appeal.** The procedures for appeal to the Board of Appeals of a decision by the
13 Department under this subsection 207(c)(6) shall be as set forth in Section 8 of the Business and Tax
14 Regulations Code.

15 (H) **Prohibition of Short-Term Rentals.** An ADU or JADU authorized under this
16 subsection 207(c)(6) shall not be used for Short-Term Residential Rentals under Chapter 41A of the
17 Administrative Code. This restriction shall be recorded as a Notice of Special Restriction on the subject
18 lot.

19 (I) **Rental; Restrictions on Subdivisions.** The following restrictions shall be
20 recorded as a Notice of Special Restriction on the subject lot on which an ADU or JADU is constructed
21 under this subsection 207(c)(6) and shall be binding on all future owners and successors in interest:

22 (i) An ADU or JADU constructed pursuant to this subsection 207(c)(6) may
23 be rented and is subject to all applicable provisions of the Residential Rent Stabilization and
24 Arbitration Ordinance (Chapter 37 of the Administrative Code).

1 (ii) Notwithstanding the provisions of Article 9 of the Subdivision Code, a lot
2 with an ADU or JADU authorized under this subsection 207(c)(6) shall not be subdivided in a manner
3 that would allow for the ADU or JADU to be sold or separately financed pursuant to any condominium
4 plan, housing cooperative, or similar form of separate ownership, except that this prohibition on
5 separate sale or finance of the ADU shall not apply to an ADU that meets the requirements of
6 California Government Code Section 65852.26.

7 (iii) The size and attributes of a JADU constructed pursuant to this subsection
8 207(c)(6) shall comply with the requirements of this subsection 207(c)(6) and Government Code
9 65852.22.

10 (J) **Department Report.** In addition to the information required by subsection
11 207(c)(4)(I)(iii), the annual Housing Inventory shall include a description and evaluation of the
12 number and types of units being developed pursuant to this subsection (c)(6), their affordability rates,
13 and such other information as the Director or the Board of Supervisors determines would inform
14 decision makers and the public.

15 (K) **Fees.** No impact fees shall be imposed on ADUs smaller than seven hundred and
16 fifty square feet of Gross Floor Area. Impact fees for all other ADUs shall be imposed proportionately
17 in relation to the Gross Floor Area of the primary dwelling unit.

18 * * * *

19 **SEC. 1005. CONFORMITY AND PERMITS.**

20 * * * *

21 (e) After receiving a permit application from the Central Permit Bureau in accordance
22 with the preceding subsection, the Department shall ascertain whether a Certificate of
23 Appropriateness is required or has been approved for the work proposed in such permit
24 application. If a Certificate of Appropriateness is required and has been issued, and if the
25 permit application conforms to the work approved in the Certificate of Appropriateness, the

1 permit application shall be processed without further reference to this Article 10. If a
2 Certificate of Appropriateness is required and has not been issued, or if the permit application
3 does not conform to what was approved, the permit application shall be disapproved or held
4 by the Department until such time as conformity does exist either through modifications to the
5 proposed work or through the issuance of an amended or new Certificate of Appropriateness.
6 Notwithstanding the foregoing, in the following cases the Department shall process the permit
7 application without further reference to this Article 10:

8 * * * *

9 (9) When the application is for a permit to install a City-sponsored Landmark
10 plaque to a landmark or district, provided that the improvements conform to the requirements
11 outlined in Section 1006.6 of this Code; *or*

12 (10) When the application is for a permit to construct an Accessory Dwelling Unit or
13 Junior Accessory Dwelling Unit, provided that the Accessory Dwelling Unit or Junior Accessory
14 Dwelling Unit conforms to the requirements of subsection 207(c)(6) of this Code.

15 * * * *

16
17 **SEC. 1110. CONSTRUCTION, ALTERATION OR DEMOLITION OF SIGNIFICANT**
18 **OR CONTRIBUTORY BUILDINGS OR BUILDINGS IN CONSERVATION DISTRICTS.**

19 * * * *

20 (g) Notwithstanding the foregoing, in the following cases the Department may process
21 the permit application without further reference to this Article 11:

22 (1) When the application is for a permit for ordinary maintenance and repairs
23 only. For the purpose of this Article 11, "ordinary maintenance and repairs" shall mean any
24 work, the sole purpose and effect of which is to correct deterioration, decay or damage of
25 existing materials, including repair of damage caused by fire or other disaster.

1 (2) When the application is for a permit to construct any new or replacement
2 structures on a site where a Significant or Contributory Building has been lawfully demolished
3 pursuant to this Code and the site is not within a designated Conservation District; or

4 (3) When the application is for a permit to make interior alterations only and
5 does not constitute a demolition as defined in this Article, unless the Planning Department has
6 determined that the proposed interior alterations may result in any visual or material impact to
7 the exterior of the building or when the designating ordinance or applicable Appendix in this
8 Article requires review of such interior alterations; or

9 (4) When the application is for a permit to construct an Accessory Dwelling Unit or
10 Junior Accessory Dwelling Unit, provided that the Accessory Dwelling Unit or Junior Accessory
11 Dwelling Unit conforms to the requirements of subsection 207(c)(6) of this Code.

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

17
18 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
19 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
20 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
21 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
22 additions, and Board amendment deletions in accordance with the "Note" that appears under
23 the official title of the ordinance.

LEGISLATIVE DIGEST

[Planning Code - State-Mandated Accessory Dwelling Unit Controls]

Ordinance amending the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units meeting certain requirements in single-family and multifamily buildings; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

Planning Code Section 102 defines Accessory Dwelling Unit (ADU). Planning Code subsections 207(c)(4) and 207(c)(6) establish the requirements for constructing ADUs in areas of the City that are zoned for residential use. Subsection 207(c)(6) provides a state-mandated, ministerial approval process for ADUs constructed on lots containing existing or proposed single-family dwellings that strictly meet state ADU law requirements without requiring a Zoning Administrator waiver of Planning Code standards. Subsection 207(c)(4) provides the City’s local program for ADUs constructed on lots containing multi-family dwellings, and on lots containing existing or proposed single-family dwellings that do not meet the state ADU law criteria for ministerial consideration.

Amendments to Current Law

Recent amendments to state ADU law, including Senate Bill 13, Assembly Bill 68, and Assembly Bill 881, effective January 1, 2020, require the City to ministerially consider applications to construct additional types of ADUs that meet certain requirements. State ADU law has also been amended to further restrict the City’s authority to impose Planning Code standards on certain ADUs. This ordinance conforms Planning Code Section 102 and Section 207(c)(6) – the City’s state-mandated ADU program – to the current provisions of state law. As further described below, this ordinance would divide the City’s state-mandated ADU program into two separate approval pathways required by state law: one for “Streamlined” ADUs, and another for “Ministerial” ADUs.

This ordinance adds a definition of Junior ADU to Section 102. A Junior ADU is a Dwelling Unit that meets all the requirements of Planning Code subsection 207(c)(6), and, among other attributes, is accessory to at least one other Dwelling Unit on the same lot, is no more than 500 square feet of Gross Floor Area, and is contained entirely within an existing single-family structure.

The “Streamlined” ADU pathway would implement the requirements of California Government Code Sections 65852.2(a) through (d), which require ministerial approval within 60 days of a single ADU added to a lot that contains an existing or proposed dwelling. State law limits the standards that the City may impose on these Streamlined ADUs. This ordinance requires

Streamlined ADUs to satisfy certain specific requirements, in addition to any other applicable standards, but clarifies that the City may not impose limits on lot coverage, floor area ratio, open space, and minimum lot size that do not permit construction of an ADU that is 800 square feet or less in Gross Floor Area, 16 feet or less in height, and with four foot side and rear yard setbacks.

The “Ministerial” ADU pathway would implement the requirements of California Government Code Sections 65852.2(e) and 65852.22, which require ministerial consideration of the following four categories of ADUs and Junior ADUs:

- One ADU or Junior ADU per lot within the space of a proposed single-family dwelling or within the space of an existing single-family dwelling or accessory structure, which may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. This ADU or Junior ADU must have exterior access separate from the entrance to the single-family dwelling, as well as side and rear setbacks that are sufficient for fire and safety.
- One detached, new construction, ADU per lot with a proposed or existing single-family dwelling. This detached ADU may be combined with a Junior ADU. As authorized by state law, this ordinance would limit the detached ADU to no more than 800 square feet in Gross Floor Area, and no more than 16 feet in height.
- Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space. As required by state law, this ordinance allows the construction of at least one ADU within an existing multifamily dwelling, and up to 25 percent of the existing multifamily dwelling units.
- Not more than two ADUs located on a lot containing an existing multifamily dwelling, but detached from that multifamily dwelling. As required by state law, these detached ADUs are limited to 16 feet in height, and must have four foot rear yard and side setbacks.

State law allows the City to impose standards, including design, development, and historic standards, on these Ministerial ADUs. This ordinance requires Ministerial ADUs to satisfy certain specific requirements, in addition to any other applicable standards.

As required by State law, this ordinance exempts ADUs smaller than 750 square feet of Gross Floor Area from impact fees, and requires impact fees for all other ADUs to be imposed proportionately in relation to the Gross Floor Area of the primary dwelling unit.

This ordinance also modifies the tenant notification requirements for applications to construct an ADU or a Junior ADU on a lot containing an existing single-family dwelling under subsection 207(c)(6).

This ordinance also includes clarifying amendments to the City's local ADU program set forth in Planning Code Section 207(c)(4).

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 local 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 State law and also to facilitate the construction of ADUs under the City's local program.

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