

BOARD of SUPERVISORS



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April 28, 2017

File No. 170434-2

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

Dear Ms. Gibson:

On April 17, 2017, File No. 170125 was duplicated and amended:

File No. 170434-2

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.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in blue ink that reads "Alisa Somera".

By: Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

Attachment

Environmental review under Note to File for
Planning Department Case No. 2016-004042ENV ADU
Program 2017 Amendments, May 2, 2017.

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

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 Planning**
8 **Code Section 101.1 and findings of public convenience, necessity, and welfare under**
9 **Planning Code Section 302; and directing the Clerk to send a copy of this ordinance to**
10 **the California Department of Housing and Community Development after adoption**
11 **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. 170434 and is incorporated herein by reference. The Board affirms
this determination.

1 (b) On January 24, 2017, the Planning Commission, in Resolution No. 19859,
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
5 the Board of Supervisors in File No. 170125, and is incorporated herein by reference.

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

10
11 Section 2. Specific Findings.

12 (a) In 1982, the Legislature originally enacted the state's second unit law in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

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

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

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

8
9 Section 3. The Planning Code is hereby amended by revising Sections 102 and 207,
10 to read as follows:

11 **SEC. 102. Definitions.**

12 * * * *

13 **Dwelling Unit, Accessory.** Also known as a Secondary Unit or In-Law Unit, is a Dwelling Unit
14 that is constructed entirely within the existing built envelope, the "living area" as defined in
15 State law, or the buildable area of an existing building in areas that allow residential use or
16 within the existing built envelope or buildable envelope of an existing and authorized auxiliary
17 structure on the same lot.

18 * * * *

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

20 (a) **Applicability.** The density of ~~d~~Dwelling ~~u~~Units permitted in the various Districts
21 shall be as set forth in the Zoning Control Table for the district in which the lot is located. The
22 term "Dwelling Unit" is defined in Section 102 of this Code. In districts where no density limit is
23 specified, density shall not be limited by lot area but rather by the applicable requirements and
24 limitations set forth elsewhere in this Code. Such requirements and limitations include, but are
25 not limited to, height, bulk, setbacks, open space, exposure and unit mix as well as applicable

1 design guidelines, elements and area plans of the General Plan and design review by the
2 Planning Department.

3 * * * *

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

6 * * * *

7 (4) **Accessory Dwelling Units in Zoning Multifamily Buildings Districts**
8 **Other Than Single-Family Zoning Districts RH-1(D); Accessory Dwelling Units in Single-**
9 **Family Homes Zoning Districts That Do Not Strictly Meet the Requirements in Subsection (c)(6).**

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

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

18 (i) only one ADU will be constructed;

19 (ii) the ADU will be located on a lot that is zoned for single-family
20 or multifamily use and contains an existing ~~is in a single-family dwelling zoning district;~~

21 (iii) the ADU will be constructed entirely within the "living area" (as
22 defined in subsection (c)(6)(C)(4 iii)) or the buildable area of an existing single-family home or within
23 the built envelope of an existing and authorized auxiliary structure on the same lot;

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

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

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

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

17 (i) For buildings that have four existing Dwelling Units or fewer,
18 one ADU is permitted; for buildings that have more than four existing Dwelling Units or are
19 undergoing seismic retrofitting under subsection (F) below , there is no limit on the number of
20 ADUs permitted.

21 (ii) An Accessory Dwelling Unit shall be constructed entirely
22 within the built envelope of an existing building or within the built envelope of an existing and
23 authorized auxiliary structure on the same lot, as the built envelope in either case existed
24 three years prior to the time the application was filed for a building permit to construct the
25 ADU. For purposes of this provision, the "built envelope" shall include all spaces included in

1 Zoning Administrator Bulletin 4, as amended from time to time, as well as any infilling
2 underneath rear extensions. ~~the open area under a cantilevered room or room built on~~
3 ~~columns; decks, except for decks that encroach into the required rear yard, or decks that are~~
4 ~~supported by columns or walls other than the building wall to which it is attached and are~~
5 ~~multi-level or more than 10 feet above grade; and lightwell infills provided that the infill will be~~
6 ~~against a blank neighboring wall at the property line and not visible from any off-site location;~~
7 ~~as these spaces exist as of July 11, 2016 and except for any of these spaces that encroach~~
8 ~~on the required rear yard. In the event that an ADU is built in any of these additional spaces,~~
9 ~~such construction shall require notice pursuant to Planning Code Section 311 or 312.~~

10 (iii) An Accessory Dwelling Unit shall not be constructed using
11 space from an existing Dwelling Unit except that the allowable area may include any
12 residential space added under permit as “rooms down.”

13 * * * *

14 (vi) An Accessory Dwelling Unit shall not be permitted in any
15 building in a Neighborhood Commercial District or in the Chinatown Community Business or
16 Visitor Retail Districts if it would eliminate or reduce a ground-story retail or commercial space.
17 However, in Neighborhood Commercial Districts, conversion of vacant commercial space to
18 an ADU is permitted so long as that commercial space is not street-facing or does not
19 constitute more than a 25% reduction of the total commercial space on that lot.

20 * * * *

21 (F) **Buildings Undergoing Seismic Retrofitting.** For Accessory
22 Dwelling Units on lots with a building undergoing mandatory seismic retrofitting in compliance
23 with Chapter 4D Section 34B of the Existing Building Code or voluntary seismic retrofitting in
24 compliance with the Department of Building Inspection's Administrative Bulletin 094, the
25 following additional provision applies: If allowed by the Building Code, a building in which an

1 Accessory Dwelling Unit is constructed may be raised up to three feet to create ground floor
2 ceiling heights suitable for residential use. Such a raise in height

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

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

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

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

17 * * * *

18 (J) Permit Application Review and Approval. The Department shall
19 approve an application for a permit to construct an Accessory Dwelling Unit within 120 days
20 from receipt of the application, without modification or disapproval, if the proposed
21 construction fully complies with the requirements set forth in subsection (c)(4).

22 (6 5) Accessory Dwelling Units in RH-1(D) Existing Single-Family Homes
23 Zoning Districts (RH-1, RH-1(D), and RH-1(S)).

24 (A) Definition. An "Accessory Dwelling Unit" (ADU) is defined in Section
25 102. Applicability. This subsection (c)(6) shall apply to the construction of Accessory Dwelling Units

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

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

12 (C) **Lots Zoned for Single-Family or Multifamily Use and**
13 **Containing an Existing Single-Family Home RH-1 and RH-1(S); Controls on Construction.**
14 An Accessory Dwelling Unit located in an RH-1 or RH-1(S) a residential zoning district other than
15 RH-1(D) and constructed pursuant to this subsection (c)(6) shall meet all of the following:

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

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

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

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

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

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

10 (vi) (vii) No setback is required for an existing garage that is converted
11 to an ADU.

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

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

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

24 (E) Prohibition of Short-Term Rentals. An Accessory Dwelling Unit
25 authorized under this subsection (c)(6) shall not be used for Short-Term Residential Rentals under

1 Chapter 41A of the Administrative Code. This restriction shall be recorded as a Notice of Special
2 Restriction on the subject lot.

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

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

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

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

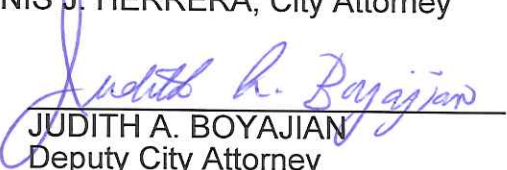
20
21 Section 4. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides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

1 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

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

12
13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By:


16 JUDITH A. BOYAJIAN
17 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(4/17/2017, Amended in Committee)

[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 homes 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 or in multifamily zoning districts 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 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 or multifamily 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.

The legislation has been amended to: (1) conform the definition in Section 102 to the new requirements and (2) include in Section 207(c)(6) ADUs in single-family homes that are in multifamily zoning districts. For ADUs in single-family homes, the amended legislation (1) allows an ADU to be constructed within the buildable area of the existing home, (2) requires the ADU to have independent exterior access from the home or accessory structure, and (3) requires side and rear setbacks sufficient for fire safety. Additional amendments (1) clarifies that temporary evictions for seismic retrofits or tenant improvements where an existing tenant is allowed to return are not considered an ADU prohibition, (2) removes the cap on the number of ADUs that are allowed to be added in connection with a seismic retrofit, (3) in Neighborhood Commercial Districts, allows the use of vacant commercial space so long as that commercial space is not street facing or does not constitute more than a 25% reduction of the total commercial space on that lot, (4) clarifies that any residential space added under permit as a "rooms down" is allowed to be converted to an ADU, (5) adds a legislated timeline for the review of any complete ADU application, and (6) revises the definition of the "built envelope."

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