

File No. 230310

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Transportation

Date: February 5, 2024

Board of Supervisors Meeting: _____

Date: _____

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Prepared by: John Carroll

Date: February 1, 2024

Prepared by: _____

Date: _____

Prepared by: _____

Date: _____

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 (ADUs) meeting certain requirements in single-family**
5 **and multifamily buildings and to permit certain ADUs in the rear yard under the City’s**
6 **local, discretionary approval program; ~~affirming the Planning Department’s~~**
7 **determination~~making findings~~ under the California Environmental Quality Act; making**
8 **findings of consistency with the General Plan and the eight priority policies of Planning**
9 **Code, Section 101.1; and adopting findings of public necessity, convenience, and**
10 **welfare under Planning Code, Section 302.**

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

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

19 Section 1. Findings.

20 (a) On April 24, 2014, the Planning Commission certified the 2004 and 2009 Housing
21 Element Final Environmental Impact Report (“Final EIR”) in accordance with the California
22 Environmental Quality Act (California Public Resources Code Sections 21000 et seq.)
23 (“CEQA”), the CEQA Guidelines (California Code of Regulations Title 14, Sections 15000 et
24 seq.), and Chapter 31 of the San Francisco Administrative Code. Subsequent to the adoption
25 of the Final EIR, the City has approved and incorporated eight addenda into the analysis of
the Final EIR and made requisite findings under CEQA. The Planning Department has

1 ~~determined that the actions contemplated in this ordinance comply with the California~~
2 ~~Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said~~
3 ~~determination is on file with the Clerk of the Board of Supervisors in File No. _____ and~~
4 ~~is incorporated herein by reference. The Board affirms this determination.~~

5 (b) The Planning Department prepared Addendum No. 9 to the Final EIR, dated
6 September 9, 2022 (“Addendum”). The Addendum evaluates the environmental effects of the
7 actions contemplated in this ordinance, which are an implementing program of the Project
8 evaluated in the Final EIR. The Addendum determines that: these actions would not cause
9 new significant impacts that were not identified in the Final EIR; these actions would not
10 cause significant impacts that were previously identified in the Final EIR to become
11 substantially more severe; no new mitigation measures would be necessary to reduce
12 significant impacts; no changes have occurred with respect to circumstances surrounding
13 these actions that would cause significant environmental impacts to which these actions
14 would contribute considerably; and no new information has become available that shows that
15 these actions would cause significant environmental impacts. For these reasons, no
16 subsequent or supplemental environmental review is required. The Board of Supervisors has
17 reviewed and considered the Final EIR and the Addendum, and the Planning Department’s
18 determination is on file with the Clerk of the Board of Supervisors in File No. 210585 and is
19 incorporated herein by reference.

20 (b~~c~~) On September 28, 2023, the Planning Commission, in Resolution No. 21397,
21 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
22 with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The
23 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
24 the Board of Supervisors in File No. 230310, and is incorporated herein by reference.

1 (ed) 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. 21397.

4
5 Section 2. The Planning Code is hereby amended by revising Sections 102, 136, 207,
6 1005, and 1110, to read as follows:

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

9 * * * *

10 **Dwelling Unit, Accessory, or ADU.** Also known as a Secondary Unit or In-Law Unit, is a
11 Dwelling Unit that meets all the requirements of subsection 207(c)(4) or subsection 207(c)(6) and that
12 is accessory to at least one other Dwelling Unit on the same lotis constructed either entirely within the
13 existing built envelope, the “living area” as defined in State law, or the buildable area of an existing or
14 proposed building in areas that allow residential use; or is constructed within the existing built
15 envelope of an existing and authorized auxiliary structure on the same lot. A detached ADU shall not
16 share structural walls with either the primary structure or any other structure on the lot. Height for
17 detached ADUs located outside the buildable area shall be measured from existing grade at any given
18 point to either a) the highest point of a finished roof in the case of a flat roof or b) the average height of
19 a pitched roof or stepped roof, or similarly sculptured roof form. Height for detached ADUs located
20 outside the buildable area shall not be eligible for any exemptions described in Planning Code
21 subsection 260(b).

22
23 **Dwelling Unit, Junior Accessory, or JADU.** A Dwelling Unit that meets all the requirements of
24 subsection 207(c)(6), and that:

25 (a) is accessory to at least one other Dwelling Unit on the same lot;

1 (b) is no more than 500 square feet of Gross Floor Area;

2 (c) is contained entirely within an existing or proposed single-family structure;

3 (d) may include separate sanitation facilities, or may share sanitation facilities with the
4 existing structure;

5 (e) is owner-occupied, unless the owner resides in the remaining portion of the structure;

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

8 (g) includes an efficiency kitchen that meets the requirements of Government Code Section
9 65852.22(a)(6), including a cooking facility with appliances, and a food preparation counter and
10 storage cabinets that are of reasonable size in relation to the size of the Junior Accessory Dwelling
11 Unit.

12 * * * *

13
14 **SEC. 136. OBSTRUCTIONS OVER STREETS AND ALLEYS AND IN REQUIRED**
15 **SETBACKS, YARDS, AND USABLE OPEN SPACE.**

16 * * * *

17 (c) The permitted obstructions shall be as follows:

18 * * * *

19 (32) Infill under decks and cantilevered rooms when adding an Accessory
20 Dwelling Unit; provided, however, that such infill shall comply with Section 207(c)(4) or
21 Section 207(c)(6) of this Code, whichever is applicable; and provided further that if the ADU is
22 proposed for a single-family home, the rear yard must be 25% of the lot depth but in no case
23 less than 15 feet.

24 (33) One detached Accessory Dwelling Unit that complies with the
25 requirements of Planning Code subsection 207(c)(4)(xii).

1 * * * *

2
3 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

4 * * * *

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

7 * * * *

8 (4) **Accessory Dwelling Units – Local Accessory Dwelling Unit Program:**
9 **Accessory Dwelling Units in Multifamily Buildings and Accessory Dwelling Units in**
10 **Single-Family Homes That Do Not Strictly Meet the Requirements in subsection (c)(6).**

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

13 (B) **Applicability.** This subsection (c)(4) shall apply to the construction
14 of ~~Accessory Dwelling Units~~ADUs on all lots located within the City and County of San Francisco
15 in areas that allow residential use, except ~~that construction of an Accessory Dwelling Unit is~~ADUs
16 regulated by subsection (c)(6) ~~below, 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 or~~
20 ~~multifamily use and contains an existing or proposed single-family dwelling;~~

21 (iii) ~~the ADU is either attached to or will be constructed entirely~~
22 ~~within the “living area” (as defined in subsection (c)(6)(B)(iii)) or the buildable area of an the~~
23 ~~proposed or existing primary dwelling single-family home, or constructed within the built envelope of~~
24 ~~an existing and authorized auxiliary structure on the same lot; provided, however, that (A) when a~~
25 ~~stand-alone garage, storage structure, or other auxiliary structure is being converted to an ADU, an~~

1 ~~expansion to the envelope is allowed to add dormers even if the stand-alone garage, storage structure,~~
2 ~~or other auxiliary structure is in the required rear yard and (B) on a corner lot, a legal stand-alone~~
3 ~~nonconforming garage, storage structure, or other auxiliary structure may be expanded within its~~
4 ~~existing footprint by up to one additional story in order to create a consistent street wall and improve~~
5 ~~the continuity of buildings on the block.~~

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

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

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

13 (i) For lots that have four existing Dwelling Units or fewer, or where
14 the zoning would permit the construction of four or fewer Dwelling Units, one ADU is
15 permitted, ~~for~~ for lots that have more than four existing Dwelling Units or are undergoing
16 seismic retrofitting under subsection (c)(4)(F) below, or where the zoning would permit the
17 construction of more than four Dwelling Units, there is no limit on the number of ADUs
18 permitted, as long as all other health and safety requirements are met.

19 (ii) The Department shall not approve an application for construction
20 of an ADU where a tenant on the lot ~~was~~has been evicted pursuant to Administrative Code
21 Sections 37.9(a)(9) through (a)(12) and 37.9(a)(14) under a notice of eviction served within 10
22 years prior to filing the application for a building permit to construct the ADU, or where a
23 tenant ~~has been~~was evicted pursuant to Administrative Code Section 37.9(a)(8) under a notice
24 of eviction served within five years prior to filing the application for a building permit to
25 construct the ADU. This subsection (c)(4)(C)(ii) shall not apply if the tenant was evicted under

1 Section 37.9(a)(11) or 37.9(a)(14) and the applicant(s) either (A) have certified that the
2 original tenant reoccupied the unit after the temporary eviction or (B) have submitted to the
3 Department and to the Residential Rent Stabilization and Arbitration Board (Rent Board) a
4 declaration from the property owner or the tenant certifying that the property owner notified
5 the tenant of the tenant's right to reoccupy the unit and the tenant chose not to reoccupy it.

6 (iii) Prior to submitting an application to construct an ADU under this
7 subsection (c)(4), the property owner shall file with the Rent Board a written declaration,
8 signed under penalty of perjury, demonstrating that the project will comply with the
9 requirements of Administrative Code Sections 37.2(r) and 37.9 relating to severance,
10 substantial reduction, or removal of a housing service. The Rent Board shall determine the
11 form and content of said declaration, which shall include the following information: (1) a
12 description of any housing services supplied in connection with the use or occupancy of any
13 units on the subject property that are located in the area of the property or building where the
14 ADU would be constructed; (2) whether construction of the ADU would result in the
15 severance, substantial reduction, or removal of any such housing services; and (3) whether
16 any of the just causes for eviction under Administrative Code Section 37.9(a) would apply.
17 The property owner shall also file a copy of the notice required under Section 207(c)(4)(J) with
18 the declaration.

19 (iv) Tenants at the subject property may contest the information in the
20 declaration required by subsection 207(c)(4)(C)(iii) by petitioning for a written determination
21 from the Rent Board verifying the presence and defining characteristics of the housing service
22 or services in question, and whether any such housing services would be severed,
23 substantially reduced, or removed by the project as proposed. Petitions must be filed with the
24 Rent Board within 30 calendar days after the notice required under subsection 207(c)(4)(J)
25 has been provided. If no such petition is timely filed, the Rent Board shall promptly transmit

1 the declaration to the Planning Department. If any such petition is timely filed, the Rent Board
2 shall endeavor to transmit the declaration and its final written determination on the petition to
3 the Planning Department within 90 calendar days of receipt of said petition. The Department
4 shall not approve an application to construct an ADU under this subsection (c)(4) unless (1)
5 the Rent Board has transmitted the declaration and final written determination required by
6 subsections (c)(4)(C)(iii) and (c)(4)(C)(iv), and (2) the materials transmitted by the Rent Board
7 indicate that construction of the ADU would not result in the severance, substantial reduction,
8 or removal without just cause of any tenant housing service set forth in Administrative Code
9 Section 37.2(r) that is supplied in the area of the property or building where the ADU would be
10 constructed, unless the property owner demonstrates that the tenant supplied with that
11 housing service has given their express written consent for the severance, substantial
12 reduction, or removal of the housing service.

13 (v) Except as provided in subsections (vi), ~~(vii)~~, and ~~(xiv)~~ below, an
14 ~~Accessory Dwelling Unit~~ ADU shall be constructed a. entirely within the buildable area of an
15 existing lot, provided that the ADU does not include a vertical addition ~~exceed the existing~~
16 ~~height of an existing the building in which it is constructed~~, or b. within the built envelope of an
17 existing and authorized ~~stand-alone~~ detached garage, storage structure, or other
18 ~~auxiliary detached~~ structure on the same lot, ~~as the built envelope existed three years prior to the~~
19 ~~time the application was filed for a building permit to construct the ADU. For purposes of this~~
20 subsection 207(c)(4), a “detached” structure or ADU shall not share structural walls with either the
21 primary structure or any other structure on the lot. For purposes of this subsection
22 207(c)(4)(C)(v), the “built envelope” shall include the open area under an existing and
23 authorized cantilevered room or room built on columns; decks, except for decks that are
24 supported by columns or walls other than the building wall to which they are attached and are
25 multi-level or more than 10 feet above grade; and lightwell infills provided that the infill will be

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

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

18 (vii) 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 (viii) ADUs shall comply with any applicable controls in Planning Code Section
23 134(f).

24 (viii)x) 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 (1) 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 (2)
5 waiving the limitation would help relieve any negative layout issues for the proposed ADU.

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

8 (xi) 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 (xii) 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 unless the Accessory Dwelling Unit is a Designated Child Care Unit, as defined in Section
15 102, and meets all applicable standards of Planning Code Section 414A.6(e).

16 (xiii) An Accessory Dwelling Unit shall not be permitted under this
17 subsection (c)(4) if it would result in the reduction or removal of on-site laundry service, unless
18 that laundry service is replaced with at least the same number or capacity of washers and
19 dryers within the same building and as accessible as before to all building tenants.

20 (xiv) An application for a permit solely to construct an ADU in a proposed
21 building pursuant to this subsection 207(c)(4)(C) shall not be subject to the notification requirements of
22 Section 311 of this Code; however, anyThe application for a permit to construct the proposed
23 building shall be subject to any applicable notification requirements of Section 311 of this Code.

1 (xv) In addition to any ADUs permitted under this Section 207(c)(4)
2 within the primary structure, one detached ADU shall be permitted within the required rear
3 yard if it complies with the following requirements:

4 a. The proposed ADU is located at least four feet from the side
5 and rear lot lines and has a height no greater than sixteen feet.

6 b. The Gross Floor Area of a detached ADU that provides one
7 bedroom or less shall not exceed 850 square feet. The Gross Floor Area of a detached ADU
8 that provides more than one bedroom shall not exceed 1,000 square feet.

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

12 (E) **Restrictions on Subdivisions.** Notwithstanding the provisions of Article
13 9 of the Subdivision Code, a lot with an *Accessory Dwelling Unit* ADU authorized under this
14 Section 207(c)(4) shall not be subdivided in a manner that would allow for the ADU to be sold
15 or separately financed pursuant to any condominium plan, housing cooperative, or similar
16 form of separate ownership; ~~provided, however, that~~ This prohibition on separate sale or
17 finance of the ADU shall not apply to an ADU in a building that (i) within three years prior to July
18 11, 2016 was an existing consisted entirely of condominium with no Rental Unit as defined in Section
19 37.2(r) of the Administrative Code units as of July 11, 2013, and (ii) has had no evictions pursuant
20 to Sections 37.9(a) through 37.9(a)(12) and 37.9(a)(14) of the Administrative Code within 10
21 years prior to since July 11, 2011 1996. This prohibition on separate sale or finance of the ADU shall
22 not apply to an ADU that meets the requirements of California Government Code Section 65852.26.

23 (F) **Buildings Undergoing Seismic Retrofitting.** For *Accessory Dwelling*
24 *Units* ADUs on lots with a building undergoing mandatory seismic retrofitting in compliance with
25 Chapter 4D of the Existing Building Code or voluntary seismic retrofitting in compliance with

1 the Department of Building Inspection’s Administrative Bulletin 094, the following additional
2 provision applies: If allowed by the Building Code, a building in which an ~~Accessory Dwelling~~
3 ~~Unit~~ADU is constructed may be raised up to three feet to create ground floor ceiling heights
4 suitable for residential use. Such a raise in height

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

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

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

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

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

21 Pursuant to the provisions of Section 307(l) of this Code, the Zoning Administrator may grant
22 ~~an Accessory Dwelling Unit~~ a complete or partial waiver of the density limits and bicycle
23 parking, rear yard, exposure, or open space standards of this Code for ADUs constructed within
24 an existing building, and may grant a waiver of the density limits of this Code for ADUs constructed
25 within a proposed building. If the Zoning Administrator grants a complete or partial waiver of the

1 requirements of this Code and the subject lot contains any Rental Units at the time an
2 application for a building permit is filed for construction of the *Accessory Dwelling Unit* ADU(s),
3 the property owner(s) shall enter into a Regulatory Agreement with the City under subsection
4 (c)(4)(H) subjecting the ADU(s) to the San Francisco Residential Rent Stabilization and
5 Arbitration Ordinance (Chapter 37 of the Administrative Code) as a condition of approval of
6 the ADU(s). For purposes of this requirement, Rental Units shall be as defined in Section
7 37.2(r) of the Administrative Code.

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

11 (i) a statement that the ADU(s) are not subject to the Costa Hawkins
12 Rental Housing Act (California Civil Code Section 1954.50) because, under Section
13 1954.52(b), the owner has entered into this agreement with the City in consideration for a
14 complete or partial waiver of the density limits, and/or bicycle parking, rear yard, exposure, or
15 open space standards of this Code or other direct financial contribution or other form of
16 assistance specified in California Government Code Sections 65915 et seq. (“Agreement”);
17 and

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

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

23 (iv) The property owner and the Planning Director (or the Director’s
24 designee), on behalf of the City, will execute the Agreement, which shall be reviewed and
25 approved by the City Attorney’s Office. The Agreement shall be executed prior to the City’s

1 issuance of the First Construction Document for the project, as defined in Section 107A.13.1
2 of the San Francisco Building Code.

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

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

10 (l) **Monitoring Program.**

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

22 (ii) **Monitoring of Prohibition on Use as Short Term Rentals.** The
23 Department shall collect data on the use of ~~Accessory Dwelling Units~~ ADUs authorized to be
24 constructed by this subsection (c)(4) as Short-Term Residential Rentals, as that term is
25 defined in Administrative Code Section 41A.4, and shall use such data to evaluate and

1 enforce Notices of Special Restriction pursuant to subsection 207(c)(4)(D) and the
2 requirements of Administrative Code Chapter 41A.

3 (iii) **Department Report.** *As part of the annual Housing Inventory, t*The
4 Department shall ~~publish a~~ report ~~annually until April 1, 2019, that describes and evaluates~~ the
5 types of units being developed ~~pursuant to this subsection 207(c)(4), and~~ their affordability rates,
6 ~~as well as~~ their use as Short-Term Residential Rentals, ~~and. The report shall contain~~ such
7 additional information as the Director or the Board of Supervisors determines would inform
8 decision makers and the public on the effectiveness and implementation of this subsection
9 207(c)(4), and shall include recommendations for any amendments to the requirements of this
10 Section 207(c)(4). ~~The Department shall transmit this report to the Board of Supervisors for its~~
11 ~~review and public input. In subsequent years, this information on Accessory Dwelling Units shall be~~
12 ~~reported annually in the Housing Inventory.~~

13 * * * *

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

17 (A) **Applicability.** This subsection 207(c)(6) shall apply to the construction of
18 ~~Accessory Dwelling Units~~ADUs and Junior Accessory Dwelling Units (“JADUs”) (as defined in
19 Section 102) in existing or proposed ~~single-family homes~~dwellings, or in a detached ~~auxiliary~~
20 structure on the same lot, if the ADU meets the applicable requirements of this
21 subsection 207(c)(6). An ADU constructed pursuant to this subsection is considered a
22 residential use that is consistent with the General Plan and the zoning designation for the lot.
23 Adding ~~one an~~ ADU or JADU in compliance with this subsection 207(c)(6) to an existing or proposed
24 ~~single-family home or in a detached auxiliary structure on the same lot~~ does not exceed the
25 allowable density for the lot. Unless otherwise specified, for purposes of this subsection 207(c)(6), a

1 “detached” structure or ADU shall not share structural walls with either the primary structure or any
2 other structure on the lot. If construction of the ADU will not meet the requirements of this
3 subsection ~~and the ADU cannot be constructed without a waiver of Code requirements pursuant to~~
4 ~~subsection (c)(4)(G),~~ the ADU is regulated pursuant to subsection 207(c)(4) and not this
5 subsection 207(c)(6).

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

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

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

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

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

1 (ii~~v~~) For projects involving a property listed in the California Register of
2 Historic Places, or a property designated individually or as part of a historic or conservation
3 district pursuant to Article 10 or Article 11, the ADU or JADU shall comply with any
4 architectural review standards adopted by the Historic Preservation Commission to prevent
5 adverse impacts to such historic resources. Such projects shall not be required to obtain a
6 Certificate of Appropriateness or a Permit to Alter.

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

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

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

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

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

23 ~~(xi) — On a corner lot, a legal stand-alone nonconforming garage, storage~~
24 ~~structure, or other auxiliary structure may be expanded within its existing footprint by up to one~~

1 ~~additional story in order to create a consistent street wall and improve the continuity of buildings on~~
2 ~~the block.~~

3 ~~(xii) — When the ADU involves expansion of the built envelope of an existing~~
4 ~~primary dwelling, or an expansion of the built envelope of an existing and authorized stand-alone~~
5 ~~garage, storage structure, or other auxiliary structure on the same lot, or the construction of a new~~
6 ~~detached auxiliary structure on the same lot, the total floor area of the ADU shall not exceed 1,200~~
7 ~~square feet.~~

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

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

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

24 ~~(F) — **Rental; Restrictions on Subdivisions.**~~

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

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

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

12 (H) — ~~**Notification.** Upon determination that an application is in compliance with the~~
13 ~~standards of subsection 207(c)(6) of the Planning Code, the Planning Department shall cause a notice~~
14 ~~to be posted on the site pursuant to rules established by the Zoning Administrator and shall cause a~~
15 ~~written notice describing the proposed project to be sent in the manner described below. This notice~~
16 ~~shall be in addition to any notices required by the Building Code and shall have a format and content~~
17 ~~determined by the Zoning Administrator. This notice shall include a description of the proposal~~
18 ~~compared to any existing improvements on the site with dimensions of the basic features, elevations~~
19 ~~and site plan of the proposed project including the position of any adjacent buildings, exterior~~
20 ~~dimensions and finishes, and a graphic reference scale, existing and proposed uses or commercial or~~
21 ~~institutional business name, if known. The notice shall describe the project review process and shall set~~
22 ~~forth the mailing date of the notice.~~

23 (i) — ~~Written notice shall be mailed to the project sponsor and tenants of the~~
24 ~~subject property. Written notice shall also be mailed to tenants of the subject property in unauthorized~~
25 ~~residential units.~~

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

8 (iii) — ~~The written notice shall describe whether the project is a demolition, new~~
9 ~~construction or alteration project. If the project is an alteration, the type of alteration shall be~~
10 ~~described: horizontal, vertical, or both horizontal and vertical additions, and where the alteration is~~
11 ~~located.~~

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

15 (v) — ~~The building permit application number(s) shall be disclosed in the~~
16 ~~written notice.~~

17 (vi) — ~~11x17 sized or equivalent drawings to scale shall be included with the~~
18 ~~written notice. The drawings shall illustrate the existing and proposed conditions in relationship to the~~
19 ~~adjacent properties. All dimensions and text throughout the drawings shall be legible. The drawings~~
20 ~~shall include a site plan, floor plans, and elevations documenting dimensional changes that correspond~~
21 ~~to the basic features included in the written notice. The existing and proposed site plan shall illustrate~~
22 ~~the project including the full lots and structures of the directly adjacent properties. The existing and~~
23 ~~proposed floor plans shall illustrate the location and removal of interior and exterior walls. The use of~~
24 ~~each room shall be labeled. Significant dimensions shall be provided to document the change proposed~~
25 ~~by the project. The existing and proposed elevations shall document the change in building volume:~~

1 *height and depth. Dimensional changes shall be documented, including overall building height and*
2 *also parapets, penthouses, and other proposed vertical and horizontal building extensions. The front*
3 *and rear elevations shall include the full profiles of the adjacent structures including the adjacent*
4 *structures' doors, windows, and general massing. Each side elevation shall include the full profile of*
5 *the adjacent building in the foreground of the project, and the adjacent windows, lightwells and*
6 *general massing shall be illustrated.*

7 *(vii) — **Language Access.** All forms of public notice provided pursuant to this*
8 *subsection 207(c)(6)(H) shall comply with the requirements of the Language Access Ordinance,*
9 *Chapter 91 of the Administrative Code, to provide vital information about the Planning Department's*
10 *services or programs in the languages spoken by a Substantial Number of Limited English Speaking*
11 *Persons, as defined in Chapter 91. The notices required by this subsection 207(c)(6)(H) shall contain*
12 *the information set forth in subsection 207(c)(6)(h)(ii)-(v) in the languages spoken by a Substantial*
13 *Number of Limited English Speaking Persons, as defined in Administrative Code Chapter 91.*

14 *(viii) — **Online Notice.** For 30 calendar days, on a publicly accessible website*
15 *that is maintained by the Planning Department, the Planning Department shall provide a digital copy*
16 *formatted to print on 11 x 17 inch paper of the posted notice, including the contents set forth in*
17 *subsection 207(c)(6)(h)(ii)-(v) for the application; and digital copies of any architectural and/or site*
18 *plans that are sealed and formatted to print on 11 x 17 inch paper, are consistent with Plan Submittal*
19 *Guidelines maintained and published by the Planning Department, and that describe and compare, at a*
20 *minimum, the existing and proposed conditions at the subject property, the existing and proposed*
21 *conditions in relationship to adjacent properties, and that may include a site plan, floor plans, and*
22 *elevations documenting dimensional changes required to describe the proposal.*

23 *(C) **Specific Controls for Ministerial ADUs.** The purpose of this subsection*
24 *207(c)(6)(C) is to implement California Government Code Sections 65852.2(e) and 65852.22, which*
25 *requires ministerial consideration of ADUs and JADUs that meet certain standards ("Ministerial*

1 ADUs”). ADUs and JADUs shall strictly meet the requirements set forth in this subsection (c)(6)(C)
2 without requiring a waiver of Code requirements pursuant to subsection (c)(4)(G). The City shall
3 approve ADUs and JADUs meeting the following requirements, in addition to the requirements of
4 subsection 207(c)(6)(B) and any other applicable standards:

5 (i) ADUs and JADUs within proposed space of a proposed single-family
6 dwelling or within existing space of a single-family dwelling or accessory structure meeting the
7 following conditions:

8 a. The lot on which the ADU or JADU is proposed contains an
9 existing or proposed single-family dwelling.

10 b. Only one ADU and one JADU is permitted per lot.

11 c. Each proposed ADU and JADU includes an entrance that is
12 separate from the entrance to the existing or proposed dwelling.

13 d. Side and rear setbacks will be sufficient for fire safety.

14 e. If an ADU is proposed, it will be within the existing space of a
15 single-family dwelling or accessory structure, or within the space of a proposed single-family dwelling,
16 or it will require an addition of no more than 150 square feet to an existing accessory structure to
17 accommodate ingress and egress.

18 f. If a JADU is proposed, it meets the requirements of California
19 Government Code Section 65852.22.

20 (ii) Detached, new construction ADUs on lot containing a proposed or
21 existing single-family dwelling meeting the following conditions:

22 a. The lot on which the detached ADU is proposed contains an
23 existing or proposed single-family dwelling.

24 b. The lot on which the ADU is proposed does not contain another
25 ADU, but may contain a JADU.

1 c. The proposed ADU is detached from the single-family dwelling
2 and any other structure.

3 d. The proposed ADU is new construction.

4 e. The proposed ADU is located at least four feet from the side and
5 rear lot lines, is no greater than 800 square feet in Gross Floor Area, and has a height no greater than
6 sixteen feet.

7 **(iii) ADUs within existing space of a multifamily dwelling meeting the**
8 **following conditions:**

9 a. The lot on which the ADU is proposed contains an existing
10 multifamily dwelling.

11 b. The ADU is proposed within a portion of the multifamily dwelling
12 structure that is not used as livable space, including but not limited to storage rooms, boiler rooms,
13 passageways, attics, basements, or garages.

14 c. The total number of ADUs within the dwelling structure would not
15 exceed twenty-five percent of the existing number of primary dwelling units within the structure,
16 provided that all multifamily dwelling structures shall be permitted to have at least one ADU pursuant
17 to this subsection 207(c)(6)(C)(iii) if all other applicable standards are met.

18 **(iv) Detached, new construction ADUs on lot containing multifamily**
19 **dwelling meeting the following conditions:**

20 a. The lot on which the ADU is proposed contains an existing
21 multifamily dwelling.

22 b. The proposed ADU is detached from the multifamily dwelling.

23 c. The proposed ADU is located at least four feet from the side and
24 rear lot lines and has a height no greater than ~~sixteen~~eighteen feet.

1 d. No more than two ADUs shall be permitted per lot pursuant to
2 this subsection 207(c)(6)(C)(iv).

3 (D) **Specific Controls for Streamlined ADUs.** The purpose of this subsection
4 207(c)(6)(D) is implement California Government Code Sections 65852.2(a) through (d), which
5 requires streamlined, ministerial approval of ADUs meeting certain standards (“Streamlined ADUs”).
6 An ADU located on a lot that is zoned for single-family or multifamily use and contains an existing or
7 proposed dwelling, and that is constructed pursuant to this subsection 207(c)(6)(D), shall meet all of
8 the following requirements, in addition to the requirements of subsection 207(c)(6)(B) and any other
9 applicable standards. Provided, however, that the City shall not impose limits on lot coverage, floor
10 area ratio, open space, and minimum lot size, for either attached or detached dwellings, that does not
11 permit construction of an ADU meeting all other requirements that is 800 square feet or less in Gross
12 Floor Area, 16 feet or less in height, and with four foot side and rear yard setbacks. ADUs under this
13 subsection 207(c)(6)(D) shall meet the following conditions:

14 (i) Only one ADU will be constructed.

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

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

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

24 (v) If there is an existing primary dwelling, the Gross Floor Area of an
25 attached ADU that provides one bedroom or less shall not exceed 50 percent of the Gross Floor Area

1 of the existing primary dwelling or 850 square feet, whichever is greater. If there is an existing primary
2 dwelling, the Gross Floor Area of an attached ADU that provides more than one bedroom shall not
3 exceed 50 percent of the Gross Floor Area of the existing primary dwelling or 1,000 square feet,
4 whichever is greater.

5 (vi) The Gross Floor Area of a detached ADU that provides one bedroom or
6 less shall not exceed 850 square feet. The Gross Floor Area of a detached ADU that provides more
7 than one bedroom shall not exceed 1,000 square feet.

8 (vii) **Setbacks.** No setback is required for an ADU located within an existing
9 living area or an existing accessory structure, or an ADU that replaces an existing structure and is
10 located in the same location and constructed to the same dimensions as the structure being replaced. A
11 setback of no more than four feet from the side and rear lot lines shall be required for an ADU that is
12 not converted from either an existing structure or a new structure constructed in the same location and
13 to the same dimensions as an existing structure.

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

17 (ix) The ADU shall not exceed a height of 16 feet.

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

24 (i) Comply with the requirements of the Building Code and applicable
25 Department of Building Inspection screening forms, and submit a copy of any applicable Department of

1 Building Inspection Screening forms to the Planning Department as part of the application to construct
2 an ADU or JADU; or

3 (ii) Cause a notice describing the proposed project to be posted on the
4 subject property for at least 15 days, cause a written notice describing the proposed project to be
5 mailed to the tenants of the subject property, and submit proof of these notices to the Planning
6 Department as part of the application to construct an ADU or JADU. These notices shall have a
7 format and content determined by the Zoning Administrator, and shall generally describe the project,
8 including the number and location of the proposed ADU and JADU. These notices shall describe how
9 to obtain additional information regarding the project and provide contact information for the
10 Planning Department that complies with the requirements of the Language Access Ordinance, Chapter
11 91 of the Administrative Code, to provide vital information about the Planning Department’s services
12 or programs in the languages spoken by a Substantial Number of Limited English Speaking Persons, as
13 defined in Chapter 91.

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

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

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

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

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

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

17 (iii) The size and attributes of a JADU constructed pursuant to this subsection
18 207(c)(6) shall comply with the requirements of this subsection 207(c)(6) and Government Code
19 65852.22.

20 (J) **Department Report.** In addition to the information required by subsection
21 207(c)(4)(I)(iii), the annual Housing Inventory shall include a description and evaluation of the
22 number and types of units being developed pursuant to this subsection (c)(6), their affordability rates,
23 and such other information as the Director or the Board of Supervisors determines would inform
24 decision makers and the public.

1 (K) Fees. No impact fees shall be imposed on ADUs or JADUs authorized under this
2 subsection 207(c)(6), where the ADU or JADU is smaller than seven hundred and fifty square feet of
3 Gross Floor Area, or for ADUs that are proposed in lots with three existing units or fewer. Impact fees
4 for all other ADUs shall be imposed proportionately in relation to the Gross Floor Area of the primary
5 dwelling unit.

6 * * * *

7
8 **SEC. 1005. CONFORMITY AND PERMITS.**

9 * * * *

10 (e) After receiving a permit application from the Central Permit Bureau in accordance
11 with the preceding subsection, the Department shall ascertain whether a Certificate of
12 Appropriateness is required or has been approved for the work proposed in such permit
13 application. If a Certificate of Appropriateness is required and has been issued, and if the
14 permit application conforms to the work approved in the Certificate of Appropriateness, the
15 permit application shall be processed without further reference to this Article 10. If a
16 Certificate of Appropriateness is required and has not been issued, or if the permit application
17 does not conform to what was approved, the permit application shall be disapproved or held
18 by the Department until such time as conformity does exist either through modifications to the
19 proposed work or through the issuance of an amended or new Certificate of Appropriateness.
20 Notwithstanding the foregoing, in the following cases the Department shall process the permit
21 application without further reference to this Article 10:

22 * * * *

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

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

4 * * * *

5
6 **SEC. 1110. CONSTRUCTION, ALTERATION OR DEMOLITION OF SIGNIFICANT**
7 **OR CONTRIBUTORY BUILDINGS OR BUILDINGS IN CONSERVATION DISTRICTS.**

8 * * * *

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

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

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

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

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

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

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

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

Section 6. Corrected Presentation of Existing Code. Some prior versions of this ordinance inadvertently failed to accurately reflect recent amendments to section 207 of the Planning Code enacted by Ordinance Nos. 208-21 and 209-21. This version of this ordinance has been updated to accurately represent those recent amendments as existing text of the Planning Code. Said revisions do not change the substance of this ordinance.

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

3
4 By: /s/ Peter R. Miljanich
5 PETER R. MILJANICH
6 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Amended in Committee, 3/20/2023)

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

Ordinance amending the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units (ADUs) meeting certain requirements in single-family and multifamily buildings and to permit certain ADUs in the rear yard under the City’s local, discretionary approval program; making findings 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; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

Planning Code Section 102 defines Accessory Dwelling Unit (ADU). 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.

Under this “Streamlined” ADU pathway, the maximum square footage per ADU that the City is required to approve would be:

- In the case of detached ADUs, 1200 square feet of Gross Floor Area;
- In the case of attached ADUs, if there is an existing primary dwelling:
 - Studios and 1 bedroom ADUs within the primary structure would be permitted up to 850 square feet, or 50% of the square footage of existing primary dwelling, whichever is greater; and
 - 2+ bedroom ADUs within the primary structure would be permitted up to 1,000 square feet, or 50% of the square footage of existing primary dwelling, whichever is greater.

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 and one 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 18 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.

State law 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. In addition, this ordinance also exempts ADUs proposed in lots with three existing units or fewer from paying impact fees.

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

This ordinance also amends the City's local ADU program set forth in Planning Code Section 207(c)(4). In addition to clarifying amendments, this ordinance would permit one detached ADU to be constructed within the required rear yard of a property, subject to certain height, setback, and floor area limitations.

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.

This legislative digest reflects amendments made to this ordinance by the Board of Supervisors Land Use and Transportation Committee on March 20, 2023.



November 27, 2023

Mr. David Zisser
Assistant Deputy Director
Local Government Relations & Accountability
Housing Policy Development Division
California Department of Housing and Community Development
2020 W. El Camino Avenue, Suite 552
Sacramento, CA 95833
via email to David.Zisser@hcd.ca.gov

Re: HCD Review of San Francisco's Accessory Dwelling Unit Ordinance No. 053-23

Dear Assistant Deputy Director Zisser,

Thank you for your October 26, 2023 transmittal of the California Department of Housing and Community Development's ("HCD") findings regarding San Francisco's accessory dwelling unit ("ADU") Ordinance No. 053-23. The purpose of this letter is to respond to those findings pursuant to California Government Code section 65852.2, subdivision (h)(2)(A). We appreciate your recognition of the City's local ADU approval program, and share HCD's goal of maximizing ADU production under the City's State-mandated ADU programs.

On September 28, 2023, the San Francisco Planning Commission recommended approval, with modifications, of a new proposed ADU ordinance contained in San Francisco Board of Supervisors File. No. 230310 (the "pending ADU ordinance"). That ordinance is now pending at the Land Use and Transportation Committee of the Board of Supervisors. HCD's October 26 letter requests nine amendments to the City's ADU ordinance. As explained further below, the pending ADU ordinance, if enacted with the modifications recommended by the Planning Commission, would address three of HCD's findings.

The Planning Department and Mayor Breed will seek additional amendments to the pending ADU ordinance to address HCD's remaining findings. Some of these additional amendments must be referred back to the City's Planning Commission under section 4.105 of the City's Charter and Planning Code section 302, subsection (d). We are confident that these anticipated changes to San Francisco's ADU approval process will conform the City's State-mandated ADU programs to State law requirements and further facilitate construction of this important type of housing. In the portion of this letter that follows, we restate HCD's findings and describe specifically how we propose to address each of them.

1. **Section 102 – Definitions / JADU** – The Ordinance defines a junior accessory dwelling unit (JADU) as a Dwelling Unit meeting the requirements of subsection 207(c)(6) and is "owner-occupied, unless the

owner resides in the remaining portion of the structure.” Government Code section 65852.22, subdivision (a)(2), does not require owner-occupancy if the owner is another governmental agency, land trust, or housing organization. The Ordinance must be amended to reflect when owner-occupancy is not required.

Response. We will seek an amendment to the pending ADU ordinance to add an exception from the owner occupancy requirements in Government Code section 65852.22, subdivision (a)(2) into the Planning Code's definition of Junior ADU.

2. Section 136(c)(32) – *Lot Depth* – The Ordinance provides that if an ADU is proposed for a single-family home, the rear yard must be 25 percent of the lot depth but in no case less than 15 feet. Government Code section 65852.2, subdivision (c)(2)(C), prohibits any requirements on lot coverage that does not permit at least an 800 square-foot ADU with four-foot side and rear setbacks. The Ordinance must be amended to make clear an 800 square-foot ADU is allowed notwithstanding any limits on rear yard percentage or depth.

Response. Despite the language in question, the City does not currently enforce any lot depth requirements that do not permit at least an 800 square-foot ADU with four-foot side and rear setbacks, nor will it do so upon passage of the pending ADU ordinance. Nonetheless, we will seek a clarifying amendment to the pending ADU ordinance to be explicit that the lot coverage requirements of Planning Code Section 136 do not prohibit construction of an ADU that is no more than 800 square feet with four-foot side and rear setbacks.

3. Section 207(c)(6)(A) – *Applicability* – The Ordinance states, “If construction of the ADU will not meet the requirements of this subsection, the ADU is regulated pursuant to subsection 207(c)(4) and not this subsection 207(c)(6).” The programs presented here – the State Mandated Program and the Local Program – are not sufficiently distinct and do not appear to allow applicants to choose which route they would like to take regarding their ADU or JADU application. The State Mandated Program implements State ADU Law, which creates two paths. First, Government Code section 65852.2, subdivision (a)(3)(A), provides that “[a] permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing....” Second, Subdivision (e)(1) provides that “notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit” for ADUs meeting the requirements under (e)(1). The Local Program creates yet another path. The City must amend the Ordinance to make it clear that there are distinct and separate paths for the development of ADUs and to allow applicants, at their election, to participate in either the State Mandated Program or the Local Program. The City may not automatically transfer an application to Section 207 (c)(4) if the application does not meet the requirements of section 207 (c)(6).

Response. In addition to its Local ADU program, the City allows applicants to elect to participate in either of its two State-mandated ADU programs: the “Hybrid ADU” program, which implements Government Code section 65852.2, subdivision (e); and the “State ADU” program, which implements Government Code section 65852.2, subdivisions (a)-(d). The City does not require ADU permit applicants to participate in the Local ADU program, and does not automatically transfer permit applications from either of the State-mandated approval programs to the Local program. The City and the Planning Department maintain ADU-related websites that both identify all of the City's ADU programs and provide information to help applicants choose the most suitable approval

pathway for their ADU project.¹ The pending ADU ordinance, with the Planning Commission's recommended modifications, would further distinguish the City's State-Mandated ADU programs from the City's Local ADU program by relocating these programs to new, separate sections of the Planning Code and clarifying the text of the Code.

4. Section 207(c)(6)(B)(ii) – *Historic Designation* – The Ordinance states that “[f]or projects involving a property listed in the California Register of Historic Places, or a property designated individually or as part of a historic or conservation district pursuant to Article 10 or Article 11, the ADU or JADU shall comply with any architectural review standards adopted by the Historic Preservation Commission to prevent adverse impacts to such historic resources. Such projects shall not be required to obtain a Certificate of Appropriateness or a Permit to Alter.” These standards under Government Code section 65852.2, subdivision (a)(1)(B), apply to ADUs permitted under section 65852.2, subdivisions (a)-(d); however, ADUs under section (c)(6) of the Ordinance apply to state mandated ADUs permitted under Government Code section 65852.2, subdivision (e). These historic designation standards must be moved to section 207(c)(4) of the Ordinance. Further, under Government Code section 65852.2, subdivision (a)(1)(B), only the California Register of Historic Resources may be used to restrict ADUs. Utilizing a local register of historic resources, or a special district, could preclude ADUs from being created in those areas. Therefore, the City must amend this section to remove the other restriction on special districts or significant lots and move these standards to section 207(c)(4) of the Ordinance.

Response. Government Code section 65852.2, subdivision (a)(1)(b)(i) broadly permits the City to impose objective architectural review standards on ADUs seeking approval under the City's State ADU program. This grant of authority is separate from, and in addition to, subdivision (a)(1)(b)(i)'s authorization of local “standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources.” Furthermore, Government Code section 65852.2, subdivision (e)(7) also broadly permits the City to impose objective standards, “including, but not limited to . . . historic standards” on ADUs under the City's Hybrid ADU program. State ADU law therefore authorizes the City to impose objective architectural review standards on ADUs seeking approval under either of the City's State-mandated programs. We will seek an amendment to the pending ADU ordinance to restate existing law that any architectural review standards adopted by the Historic Preservation Commission that are applicable to State-mandated ADUs must remain objective. We will also seek to add findings to the pending ADU ordinance to explain why the City's ADU controls comply with applicable requirements, pursuant to Government Code section 65852.2(h)(2)(B)(ii).

5. 207(c)(6)(C)(i)(b), (c)(6)(C)(ii)(b), 207(c)(6)(D)(i) and (c)(6)(D)(iii) – *Number of ADUs* – The Ordinance states that “[o]nly one ADU and one JADU is permitted per lot” in (c)(6)(C)(i)(b) and “[t]he lot on which the ADU is proposed does not contain another ADU, but may contain a JADU” in (c)(6)(C)(ii)(b). However, under Government Code section 65852.2, subdivision (e), which this section of the Ordinance is intended to implement, a residential lot may create a minimum of one ADU converted from existing space; one new construction, detached ADU under 800 square feet; and one JADU. Therefore, the City must amend these sections to allow for at least by-right units.

¹ For example, see <https://sfplanning.org/accessory-dwelling-units> and <https://sf.gov/topics/accessory-dwelling-unit-adu>. The Planning Department has prepared extensive materials to assist applicants seeking to construct an ADU, including a chart comparing the City's ADU programs, which may be found at https://sfplanning.org/sites/default/files/documents/adu/ADU_programs_comparison_chart.pdf.

Additionally, the Ordinance states that “[o]nly one ADU will be constructed” in (c)(6)(D)(i) and “[t]he lot on which the ADU is proposed does not contain another ADU or JADU” in (c)(6)(D)(iii). The Ordinance allows only one ADU per lot; however, units created within the proposed or existing space of a primary dwelling, or an existing accessory structure would be created pursuant to Government Code 65852.2, subdivision (e)(1)(A). Subdivision (e) allows for a combination of units to be created such that there may be up to three additional dwelling units. Therefore, the City must amend this section to remove this restriction.

Response. In order to comply with HCD’s interpretation of Government Code section 65852.2, subdivision (e), we will seek amendments to the pending ADU ordinance to permit the construction of up to three ADUs that meet applicable requirements under the City’s Hybrid ADU program.

6. 207(c)(6)(C)(ii)(e), (c)(6)(C)(iv)(c), & (c)(6)(D)(ix) – *Height Restrictions* – The Ordinance requires “a height no greater than sixteen feet.” However, Government Code section 65852.2, subdivision (c)(2)(D), allows for a height of 16, 18, 20, or 25 feet, as applicable. The City must amend the Ordinance to comply with State ADU Law.

Response. To comply with the State ADU law requirements referenced in this finding, the Planning Commission recommended modifications to the pending ADU ordinance to increase height limits to 16, 18, 20, or 25 feet, as applicable.

7. 207(c)(6)(D) – *Subdivision (c)(2)(C) Restrictions* – The Ordinance states that “the City shall not impose limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings, that does not permit construction of an ADU meeting all other requirements that is 800 square feet or less...” However, Government Code section 65852.2, subdivision (c)(2)(C), is more comprehensive, stating that “a local agency shall not establish by ordinance...[a]ny requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Imposing additional planning reviews or front setbacks which could preclude ADUs of 800 square feet or less would violate statute. Therefore, the City must amend this section to include these items.

Response. The City does not currently impose any zoning clearance, separate zoning review, or size requirements that do not permit construction of at least an 800 square foot ADU with four-foot side and rear setbacks, nor will it do so upon passage of the pending ADU ordinance. We will seek an amendment to the pending ADU ordinance to incorporate these additional restrictions on City authority into the text of the Planning Code.

8. 207(c)(6)(E)(ii) – *Notification* – The Ordinance states that prior to permit application, a property owner must “[c]ause a notice describing the proposed project to be posted on the subject property for at least 15 days...” However, Government Code section 65852.2, subdivision (a)(7), states that “[n]o other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use

permit under this subdivision.” Requiring 15 days of notification prior to the submittal of an application for an ADU would cause an undue delay in the permitting process. Therefore, the City must remove this requirement.

Response. We will seek amendments to the pending ADU ordinance to remove this notification requirement for ADUs seeking approval under the City's State ADU approval pathway. Nonetheless, we note that Government Code section 65852.2, subdivision (e)(7) grants the City broad authority to impose objective standards, including reasonable notification requirements, on ADUs seeking approval under the City's Hybrid ADU approval pathway. To this end, we will also seek to add findings to the pending ADU ordinance to explain why the City's ADU controls comply with the applicable requirements, pursuant to Government Code section 65852.2(h)(2)(B)(ii).

9. 207(c)(6)(F) – *Review and Approval* – The Ordinance states that “[t]he City shall act on an application for a permit to construct an ADU or JADU under this subsection 207(c)(6) within 60 days from receipt of the complete application, without modification or disapproval, if the proposed construction fully complies with the requirements set forth in this subsection 207(c)(6).” However, “act on” is outdated language, and as of January 1, 2023, Government Code section 65852.2, subdivision (a)(3), states that “[t]he permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days...” (Emphasis added.) Therefore, the City must amend this language to comply with the updated State ADU Law.

Response. The pending ADU ordinance, with the Planning Commission's recommended modifications, would amend the Building Code to require the City to approve or deny a permit to construct an ADU or Junior ADU within 60 days from receipt of a complete application.

We look forward to continuing our collaboration with HCD to help achieve our shared goal of addressing the housing needs of the City and State.

Sincerely,

Rich Hillis
Director of Planning

CC (all electronic)

Mayor London Breed
Members of the Board of Supervisors
City Attorney David Chiu
Director Patrick O'Riordan, DBI
Neville Pereira, DBI
Lisa Gluckstein, Office of the Mayor
Judson True, Office of the Mayor
Tyler Galli, California Department of Housing and Community Development
Jamie Candelaria, California Department of Housing and Community Development



October 12, 2023

Ms. Angela Calvillo, Clerk
Honorable Mayor Breed
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2023-003061PCA:
State-Mandated Accessory Dwelling Unit Controls
Board File No. 230310

Planning Commission Recommendation: Approval with Modification

Dear Ms. Calvillo and Mayor Breed,

On September 28, 2023, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Mayor Breed that would amend various sections of the Planning Code. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. Amend the Code to exclude ADUs from dwelling unit mix requirements.

The proposed amendments were covered in Addendum No. 9 to the Final EIR, dated September 9, 2022, to the 2004 and 2009 Housing Element Final EIR certified April 24, 2014.

Mayor, please advise the City Attorney at your earliest convenience if you wish to incorporate the change recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Aaron D. Starr
Manager of Legislative Affairs

cc: Peter Miljanich, Deputy City Attorney
Lisa Gluckstein, Housing & Land Use Advisor to Mayor Breed
John Carroll, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 21397

HEARING DATE: SEPTEMBER 28, 2023

Project Name: State-Mandated Accessory Dwelling Unit Controls
Case Number: 2023-003061PCA [Board File No. 230310]
Initiated by: Mayor Breed / Introduced March 20, 2023
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, 628-652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION APPROVING WITH MODIFICATION A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO CLARIFY THE MINISTERIAL APPROVAL PROCESS FOR CERTAIN ACCESSORY DWELLING UNITS (ADUS) MEETING CERTAIN REQUIREMENTS IN SINGLE-FAMILY AND MULTIFAMILY BUILDINGS AND TO PERMIT CERTAIN ADUS IN THE REAR YARD UNDER THE CITY'S LOCAL, DISCRETIONARY APPROVAL PROGRAM; MAKING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; AND ADOPTING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on March 20, 2023 Mayor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 230310, which would amend the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units (ADUs) meeting certain requirements in single-family and multifamily buildings and to permit certain ADUs in the rear yard under the City's local, discretionary approval program;

WHEREAS, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 28, 2023; and,

WHEREAS, the proposed Ordinance received CEQA clearance under Addendum No. 9 to the Final EIR, dated September 9, 2022 to the 2004 and 2009 Housing Element Final EIR certified April 24, 2014; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

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

MOVED, that the Planning Commission hereby **approves with modification** the proposed ordinance. The Commission's proposed recommendation is as follows:

1. Amend the Code to exclude ADUs from dwelling unit mix requirements.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The Commission finds that the proposed Ordinance supports the Housing Element's goals to increase and diversify housing choice.

The Commission finds that the proposed Ordinance will align the Planning Code with the State Law.

The Commission finds that the proposed Ordinance will further streamline the ADU review process and clarify current processes. Such changes will make the City's ADU program more effective and flexible.

General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1.A

Ensure housing stability and healthy homes.

OBJECTIVE 4.A

Substantially expand the amount of permanently affordable housing for extremely low- to moderate-income households.

OBJECTIVE 4.B

Expand small and mid-rise multi-family housing production to serve our workforce, prioritizing middle-income households.

OBJECTIVE 4.C

Diversify housing types for all cultures, family structures, and abilities.

POLICY 4

Facilitate the legalization of unauthorized dwelling units while improving their safety and habitability.

POLICY 26

Streamline and simplify permit processes to provide more equitable access to the application process, improve certainty of outcomes, and ensure meeting State-and local-required timelines, especially for 100% affordable housing and shelter projects.

POLICY 28

Affirm compliance in State housing law, requirements, and intent by strengthening data collection, clarifying definitions, and further supporting implementation.

POLICY 31

Facilitate small and mid-rise multi-family buildings that private development can deliver to serve middle-income households without deed restriction, including through adding units in lower density areas or by adding Accessory Dwelling Units (ADUs).

POLICY 32

Promote and facilitate aging in place for seniors and multi-generational living that supports extended families and communal households.

IMPLEMENTATION ACTION 7.4.6

Once adopted, submit the ADU ordinance to HCD and revise the ordinance based on HCD's review as needed.

This Ordinance addresses the remaining outstanding issues that the California Department of Housing and Community Development (HCD) needs to approve the City's Pro-Housing designation. Attaining this designation will help unlock state affordable housing funding and other resources such as Municipal Transportation Agency (MTA) grants.

The General Plan identifies ADUs as an effective way to increase housing choice in San Francisco. This Ordinance aligns with the Housing Element's objective the proposed Ordinance meets other objectives to increase housing in lower-density areas and to streamline ADU permit review processes. Further, this Ordinance seeks to make our local Code consistent with State law. This Ordinance directly responds to Implementation Action Item 7.4.6 which requires us to submit the ADU Ordinance to HCD for their review and comment. Changes have been made in response to HCD's initial comments. This Ordinance addresses the remaining outstanding issues that the California Department of Housing and Community Development (HCD) needs to approve the City's Pro-Housing designation. Attaining this designation will help unlock state affordable housing funding and other resources such as Municipal Transportation Agency (MTA) grants. This grant money could also unlock grant monies which

could provide financial support for professional services and construction of units that serve low-income households, as noted in Implementation Action Item 7.4.3.

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATION the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 28, 2023.



Jonas P. Ionin
Commission Secretary

Jonas P Ionin Digitally signed by Jonas P Ionin
Date: 2023.10.02 16:16:41 -07'00'

AYES: Braun, Ruiz, Diamond, Koppel, Tanner

NOES: Imperial, Moore

ABSENT: None

ADOPTED: September 28, 2023

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EXECUTIVE SUMMARY PLANNING CODE TEXT AMENDMENT

HEARING DATE: September 28, 2023

90-Day Deadline: December 29, 2023

Project Name: State-Mandated Accessory Dwelling Unit Controls
Case Number: 2023-003061PCA [Board File No. 230310]
Initiated by: Mayor Breed / Introduced March 20, 2023
Staff Contact: Veronica Flores, Legislative Affairs
 veronica.flores@sfgov.org, 628-652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
 aaron.starr@sfgov.org, (628) 652-7533

Environmental Review: Addendum to FEIR - [Addendum No. 9](#) to the Final EIR, dated September 9, 2022 to the 2004 and 2009 Housing Element Final EIR certified April 24, 2014 - [2007.125E DEIR1](#) and [2007.125E DEIR2](#).

Recommendation: Approval

Planning Code Amendment

The proposed Ordinance would amend the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units (ADUs) meeting certain requirements in single-family and multifamily buildings and to permit certain ADUs in the rear yard under the City’s local, discretionary approval program. This proposed Ordinance will update San Francisco’s ADU programs to comply with the latest amendments to the State law, per Assembly Bill 2221 and Senate Bill 897, both of which were effective beginning January 1, 2023.

THE WAY CODE IS WRITTEN BASED ON STATE LAW PRE-01/01/23	THE WAY IT IS BASED ON NEW STATE LAWS EFFECTIVE 01/01/23
<p>Timeline: The City has 60 days to act on State-Mandated ADUs.</p>	<p>The City has 60 days <i>to approve or deny</i> State-Mandated ADUs (instead of <i>to act</i>). The application is deemed approved if no action is taken within 60 days. Language regarding tolling is explicitly added to the Ordinance for when the applicant owes us information.</p> <p>This language has been moved from the Planning Code to Building Code because the Department of Building Inspection (DBI) is the permit-issuing agency.</p>
<p>Height: Up to 16 feet for Attached or Detached ADUs</p>	<p>Up to 16 feet in general for a Detached ADU</p> <p>Up to 18 feet: Allowed if the proposed ADU is within ½ mile of major transit stop or a high-quality transit corridor¹ -or- the property already has a MFD</p> <p>Up to 25 feet: Allowed if the ADU is attached to the primary dwelling, or up to the underlying height district (whichever is lower), but only up to two stories high</p>
<p>Detached ADUs: Detached ADUs are prohibited from sharing a structural wall with the primary dwelling or with any other structure on the property.</p>	<p>Per HCD’s interpretation of “detached” ADUs, the “Detached ADUs” definition would be revised to clarify it cannot share any structural walls with the <u>primary</u> structure. Therefore, Detached ADUs may share a structural wall with other structures on the property.</p>
<p>Permits for the demolition of a garage typically do not require notice per Planning Code (except if an Unauthorized Dwelling exists) and could potentially be approved over-the-counter.</p>	<p>Notice for the demolition of the garage being replaced with an ADU is not required, unless it is located within Article 10 or Article 11.</p> <p>This language has been copied into Building Code because it may trigger a DBI notice for this scope of work.</p>
<p>Hybrid ADUs: Hybrid ADUs are only permitted within existing or proposed single-family dwelling (SFD), or within an <i>existing</i> multi-family dwelling (MFD).</p>	<p>Hybrid ADUs are also permitted within <u>proposed</u> MFD.</p> <p>In the case of a Hybrid ADU within an <u>existing</u> MFD with a side or rear setback of less than 4 feet, the</p>

¹ An additional two feet in height shall be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling.

	existing MFD shall not be required to be modified as a condition of approving a Hybrid ADU.
CLARIFICATIONS	
State law has a special carveout for San Francisco that allows the City to impose objective design standards through the Hybrid ADU path.	Many applicants ask why there is the Hybrid ADU path. This Ordinance adds a clarification for this carveout and the reference to the Gov't. Code authorizing it.
The City cannot impose limits on lot coverage, floor area ratio, open space, and minimum lot size for State ADUs.	This section will be updated to also note the City cannot impose <u>front setbacks</u> for State ADUs. This change is to mirror the revised language in State law but does not change our review.
Permits for garage demolition being converted to an ADU are reviewed and issued pending on their submittal. If both are submitted at the same time, they are reviewed and issued at the same time.	State law explicitly requires that if a permit to demolish a detached garage is submitted at the same time as a permit for the ADU replacing the garage, that both permits shall be reviewed and issued at the same time. There is no implementation change here.

Anticipated Amendments

This file was duplicated from Board File No. 210585 on March 20, 2023 at the Land Use and Transportation Committee hearing. During that hearing, only one amendment² was included in the duplicate file with the intent of incorporating all the other changes from State laws effective January 1, 2023 following the hearing. The draft Ordinance included in Exhibit C reflects these other changes, as well as additional clean-up changes recommended by the Planning Department and endorsed by the Mayor's Office.

Background

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

This proposed Ordinance will update San Francisco's ADU programs to comply with the latest amendments to the State law, per Assembly Bill 2221 and Senate Bill 897, both of which were effective beginning January 1, 2023.

San Francisco first adopted a Local ADU Program in 2014 and made several updates since the initial inception both in response to changes to the State law and to improve the City's Local ADU Program. In 2019, State law was amended to allow ADUs in new construction. In 2020, State law was amended to clarify the ministerial approval

² The only amendment included in the duplicate file was increasing the height limit for detached ADUs from 16 feet to 18 feet.

process to allow State, Hybrid, and Junior ADUs (JADU). In 2021, State law was amended to ban rental restrictions imposed by homeowner’s associations (HOA). This proposed Ordinance will update San Francisco’s ADU programs to comply with the latest amendments to the State law, per Assembly Bill 2221 and Senate Bill 897, both of which were effective beginning January 1, 2023. The City is already reviewing and approving ADUs based on these State laws and this Ordinance would make our Code consistent with State law. The proposed Ordinance will also relocate the ADU programs from the Density Limit Section to their own stand-alone sections. This was identified as a future task during the last ADU legislation and has been an ongoing effort to make the ADU Programs section easier to read, understand, and use.

Issues and Considerations

Housing Choice

San Francisco and the Bay Area have a housing shortage. The Planning Department is working to meet these housing needs. In the City’s Housing Element, Policy 31 specifically cites ADUs as a way to expand housing choices. Additionally, ADUs have been identified as a way to expand small and mid-rise multi-family housing production to serve our workforce. The ADU programs today have expanded tremendously from the initial ADU pilot program in the Castro District in 2014. This is a testament to the success of the ADUs and why the ADU program continues to grow and evolve. The Ordinance refines the ministerial process for State-Mandated ADUs and reorganizes the ADU programs to make the Code sections easier to understand and use.

Timeline for Review

The Planning Department has collaborated with other City agencies involved in the review of ADUs and introduced parallel review efforts in recent years to complete review within 60 days. One of the biggest time-savings has been the City’s fully concurrent electronic review. This process allows all required agencies to issue ADU comments at the same time. This evolved from the original “Roundtable” review where different City agencies previously met in person and reviewed ADU permits together. Now everything is reviewed digitally, and an email is sent to the applicant once all agencies have completed their review.

Prior to January 1, 2023, State law required City agencies *to act* on State-Mandated ADUs within 60 days. State law now specifies that City agencies have 60 days *to approve or deny* State-Mandated ADUs. Further, if the City has not approved or denied the completed application within 60 days, the application shall be deemed approved. While the timeframe is the same, the refined language makes a distinct difference impacting DBI, the City’s permit-issuing agency. Permit issuance depends on how long it takes for the applicant to pick up the permit and pay the remainder of the fees. The applicant’s timeline (and permit issuance) is beyond our control at that point. Language regarding tolling is explicitly added to the Ordinance for when the applicant owes us information assisting the City in meeting the 60-day timeframe.

New Height Limits

State law allows increased height limits for the following circumstances:

- Up to 18 feet if the proposed ADU is within ½ mile of major transit stop or a high-quality transit corridor³,
- Up to 18 feet if the property already has an existing multi-family dwelling, or
- Up to 25 feet if the proposed ADU is attached the primary dwelling, or up to the underlying height limit of the property, whichever is lower.

In the last circumstance described above, Attached ADUs are only permitted up to two stories high.

General Plan Compliance

This Ordinance addresses the remaining outstanding issues that the California Department of Housing and Community Development (HCD) needs to approve the City's Pro-Housing designation. Attaining this designation will help unlock state affordable housing funding and other resources such as Municipal Transportation Agency (MTA) grants.

The General Plan identifies ADUs as an effective way to increase housing choice in San Francisco. This Ordinance aligns with the Housing Element's objective the proposed Ordinance meets other objectives to increase housing in lower-density areas and to streamline ADU permit review processes. Further, this Ordinance seeks to make our local Code consistent with State law. This Ordinance directly responds to Implementation Action Item 7.4.6 which requires us to submit the ADU Ordinance to HCD for their review and comment. Changes have been made in response to HCD's initial comments. This Ordinance addresses the remaining outstanding issues that the California Department of Housing and Community Development (HCD) needs to approve the City's Pro-Housing designation. Attaining this designation will help unlock state affordable housing funding and other resources such as Municipal Transportation Agency (MTA) grants. This grant money could also unlock grant monies which could provide financial support for professional services and construction of units that serve low-income households, as noted in Implementation Action Item 7.4.3.

Racial and Social Equity Analysis

The Planning Code amendments in the proposed Ordinance help clarify ministerial ADUs. The State-Mandated ADU program provides a quicker, and often more financially feasible path for property owners to add to the housing stock and different types of housing. This provides more options for multi-generational households, which is often found in communities of color, and allows seniors to age in place more easily within their same community and household. ADUs also help advance racial and social equity by allowing for more affordable dwellings due to their smaller sizes. Even if ADUs are less costly due to smaller square footages, ADUs are not typically rented at very low- or low-income AMI levels so there is still an affordability issue.

ADUs are permitted both within existing and new construction buildings. Naturally, adding ADUs within existing structures is much cheaper than new construction projects. However, households with lower incomes pursuing ADUs may experience disproportionate costs in general. The same permit and construction costs may require a much larger percentage of their income compared to moderate-income households. This may be a barrier for lower-income households to pursue ADUs, in which case they do not benefit from the ADU program or the proposed Ordinance. One consideration to help alleviate such financial burden may include a permit or fee

³ An additional two feet in height shall be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling.

waiver for low-income households. Former Supervisor Mar launched a pilot program in District 4 in September 2020 to provide professional services to 25 qualifying households interested in adding ADU(s) on their property using grant monies awarded by the State. The pilot program's goals included 1) providing services to lower-income households that otherwise would not be able to afford to hire an architect/developer and 2) to better understand what barriers lower-income households encounter when pursuing an ADU. If successful, the Department recommends the pilot program be modified and expanded to benefit the entire city, pending funding availability. Additionally, State law effective January 1, 2020 also waived impact fees for State-Mandated ADUs smaller than 750 square feet or if the proposed State-Mandated ADU was proposed on a property with three or fewer existing units. Further, prior legislation extended this impact fee relief to larger State-Mandated ADUs 750 square feet or larger by implementing a reduced impact fee to also provide applicants with some financial relief. The reduced impact fee would be based on the ADU's proportion in relation to the primary unit for single-family dwellings, or the average of existing units for multi-family dwellings.

Implementation

The Department has determined that this ordinance will not impact our current implementation procedures. The Ordinance is to align our Planning Code with State law, which we are already implementing. The proposed Ordinance will also re-organize our Code and move the ADU Programs from Section 207 to their own Code Sections.

Recommendation

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

Basis for Recommendation

The Department supports the overall goals of this Ordinance because of it supports the Housing Element's goals to increase housing choice in San Francisco. Specifically, the Ordinance refines the ministerial ADU programs to make the Planning Code consistent with State law. The proposed Ordinance also includes reorganizing the ADU Programs and creating stand-alone Code sections for them. This was identified as a future task during the last round of State ADU legislation and intended to make all ADU programs more legible and easier to use. Future Ordinances should also find ways to incentivize the Local ADU Program.

Required Commission Action

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

Environmental Review

The proposed amendments received CEQA clearance under Addendum No. 9 to the Final EIR, dated September 9, 2022 to the 2004 and 2009 Housing Element Final EIR certified April 24, 2014.

Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 230310
- Exhibit C: Draft revisions of Board File No. 230310

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PLANNING COMMISSION DRAFT RESOLUTION

HEARING DATE: September 28, 2023

Project Name: State-Mandated Accessory Dwelling Unit Controls
Case Number: 2023-003061PCA [Board File No. 230310]
Initiated by: Mayor Breed / Introduced March 20, 2023
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, 628-652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO CLARIFY THE MINISTERIAL APPROVAL PROCESS FOR CERTAIN ACCESSORY DWELLING UNITS (ADUS) MEETING CERTAIN REQUIREMENTS IN SINGLE-FAMILY AND MULTIFAMILY BUILDINGS AND TO PERMIT CERTAIN ADUS IN THE REAR YARD UNDER THE CITY'S LOCAL, DISCRETIONARY APPROVAL PROGRAM; MAKING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; AND ADOPTING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on March 20, 2023 Mayor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 230310, which would amend the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units (ADUs) meeting certain requirements in single-family and multifamily buildings and to permit certain ADUs in the rear yard under the City's local, discretionary approval program;

WHEREAS, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 28, 2023; and,

WHEREAS, the proposed Ordinance received CEQA clearance under Addendum No. 9 to the Final EIR, dated September 9, 2022 to the 2004 and 2009 Housing Element Final EIR certified April 24, 2014; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

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

MOVED, that the Planning Commission hereby **approves** the proposed ordinance.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The Commission finds that the proposed Ordinance supports the Housing Element's goals to increase and diversify housing choice.

The Commission finds that the proposed Ordinance will align the Planning Code with the State Law.

The Commission finds that the proposed Ordinance will further streamline the ADU review process and clarify current processes. Such changes will make the City's ADU program more effective and flexible.

General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1.A

Ensure housing stability and healthy homes.

OBJECTIVE 4.A

Substantially expand the amount of permanently affordable housing for extremely low- to moderate-income households.

OBJECTIVE 4.B

Expand small and mid-rise multi-family housing production to serve our workforce, prioritizing middle-income households.

OBJECTIVE 4.C

Diversify housing types for all cultures, family structures, and abilities.

POLICY 4

Facilitate the legalization of unauthorized dwelling units while improving their safety and habitability.

POLICY 26

Streamline and simplify permit processes to provide more equitable access to the application process, improve certainty of outcomes, and ensure meeting State-and local-required timelines, especially for 100% affordable housing and shelter projects.

POLICY 28

Affirm compliance in State housing law, requirements, and intent by strengthening data collection, clarifying definitions, and further supporting implementation.

POLICY 31

Facilitate small and mid-rise multi-family buildings that private development can deliver to serve middle-income households without deed restriction, including through adding units in lower density areas or by adding Accessory Dwelling Units (ADUs).

POLICY 32

Promote and facilitate aging in place for seniors and multi-generational living that supports extended families and communal households.

IMPLEMENTATION ACTION 7.4.6

Once adopted, submit the ADU ordinance to HCD and revise the ordinance based on HCD's review as needed.

This Ordinance addresses the remaining outstanding issues that the California Department of Housing and Community Development (HCD) needs to approve the City's Pro-Housing designation. Attaining this designation will help unlock state affordable housing funding and other resources such as Municipal Transportation Agency (MTA) grants.

The General Plan identifies ADUs as an effective way to increase housing choice in San Francisco. This Ordinance aligns with the Housing Element's objective the proposed Ordinance meets other objectives to increase housing in lower-density areas and to streamline ADU permit review processes. Further, this Ordinance seeks to make our local Code consistent with State law. This Ordinance directly responds to Implementation Action Item 7.4.6 which requires us to submit the ADU Ordinance to HCD for their review and comment. Changes have been made in response to HCD's initial comments. This Ordinance addresses the remaining outstanding issues that the California Department of Housing and Community Development (HCD) needs to approve the City's Pro-Housing designation. Attaining this designation will help unlock state affordable housing funding and other resources such as Municipal Transportation Agency (MTA) grants. This grant money could also unlock grant monies which could provide financial support for professional services and construction of units that serve low-income households, as noted in Implementation Action Item 7.4.3.

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic

buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 28, 2023.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: September 28, 2023

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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 (ADUs) meeting certain requirements in single-family**
5 **and multifamily buildings and to permit certain ADUs in the rear yard under the City’s**
6 **local, discretionary approval program; ~~affirming the Planning Department’s~~**
7 **~~determination~~making findings under the California Environmental Quality Act; making**
8 **findings of consistency with the General Plan and the eight priority policies of Planning**
9 **Code, Section 101.1; and adopting findings of public necessity, convenience, and**
10 **welfare under Planning Code, Section 302.**

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

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

19

20 Section 1. Findings.

21 (a) On April 24, 2014, the Planning Commission certified the 2004 and 2009 Housing
22 Element Final Environmental Impact Report (“Final EIR”) in accordance with the California
23 Environmental Quality Act (California Public Resources Code Sections 21000 et seq.)
24 (“CEQA”), the CEQA Guidelines (California Code of Regulations Title 14, Sections 15000 et
25 seq.), and Chapter 31 of the San Francisco Administrative Code. Subsequent to the adoption
of the Final EIR, the City has approved and incorporated eight addenda into the analysis of
the Final EIR and made requisite findings under CEQA. The Planning Department has

1 ~~determined that the actions contemplated in this ordinance comply with the California~~
2 ~~Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said~~
3 ~~determination is on file with the Clerk of the Board of Supervisors in File No. _____ and~~
4 ~~is incorporated herein by reference. The Board affirms this determination.~~

5 (b) The Planning Department prepared Addendum No. 9 to the Final EIR, dated
6 September 9, 2022 (“Addendum”). The Addendum evaluates the environmental effects of the
7 actions contemplated in this ordinance, which are an implementing program of the Project
8 evaluated in the Final EIR. The Addendum determines that: these actions would not cause
9 new significant impacts that were not identified in the Final EIR; these actions would not
10 cause significant impacts that were previously identified in the Final EIR to become
11 substantially more severe; no new mitigation measures would be necessary to reduce
12 significant impacts; no changes have occurred with respect to circumstances surrounding
13 these actions that would cause significant environmental impacts to which these actions
14 would contribute considerably; and no new information has become available that shows that
15 these actions would cause significant environmental impacts. For these reasons, no
16 subsequent or supplemental environmental review is required. The Board of Supervisors has
17 reviewed and considered the Final EIR and the Addendum, and the Planning Department’s
18 determination is on file with the Clerk of the Board of Supervisors in File No. 210585 and is
19 incorporated herein by reference.

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

1 (ed) 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, 136, 207,
6 1005, and 1110, to read as follows:

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

9 * * * *

10 **Dwelling Unit, Accessory, or ADU.** Also known as a Secondary Unit or In-Law Unit, is a
11 Dwelling Unit that meets all the requirements of subsection 207(c)(4) or subsection 207(c)(6) and that
12 is accessory to at least one other Dwelling Unit on the same lotis constructed either entirely within the
13 existing built envelope, the “living area” as defined in State law, or the buildable area of an existing or
14 proposed building in areas that allow residential use; or is constructed within the existing built
15 envelope of an existing and authorized auxiliary structure on the same lot. A detached ADU shall not
16 share structural walls with either the primary structure or any other structure on the lot. Height for
17 detached ADUs located outside the buildable area shall be measured from existing grade at any given
18 point to either a) the highest point of a finished roof in the case of a flat roof or b) the average height of
19 a pitched roof or stepped roof, or similarly sculptured roof form. Height for detached ADUs located
20 outside the buildable area shall not be eligible for any exemptions described in Planning Code
21 subsection 260(b).

22
23 **Dwelling Unit, Junior Accessory, or JADU.** A Dwelling Unit that meets all the requirements of
24 subsection 207(c)(6), and that:

25 (a) is accessory to at least one other Dwelling Unit on the same lot;

1 **(b) is no more than 500 square feet of Gross Floor Area;**

2 **(c) is contained entirely within an existing or proposed single-family structure;**

3 **(d) may include separate sanitation facilities, or may share sanitation facilities with the**
4 **existing structure;**

5 **(e) is owner-occupied, unless the owner resides in the remaining portion of the structure;**

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

8 **(g) includes an efficiency kitchen that meets the requirements of Government Code Section**
9 **65852.22(a)(6), including a cooking facility with appliances, and a food preparation counter and**
10 **storage cabinets that are of reasonable size in relation to the size of the Junior Accessory Dwelling**
11 **Unit.**

12 * * * *

13
14 **SEC. 136. OBSTRUCTIONS OVER STREETS AND ALLEYS AND IN REQUIRED**
15 **SETBACKS, YARDS, AND USABLE OPEN SPACE.**

16 * * * *

17 (c) The permitted obstructions shall be as follows:

18 * * * *

19 (32) Infill under decks and cantilevered rooms when adding an Accessory
20 Dwelling Unit; provided, however, that such infill shall comply with Section 207(c)(4) or
21 Section 207(c)(6) of this Code, whichever is applicable; and provided further that if the ADU is
22 proposed for a single-family home, the rear yard must be 25% of the lot depth but in no case
23 less than 15 feet.

24 **(33) One detached Accessory Dwelling Unit that complies with the**
25 **requirements of Planning Code subsection 207(c)(4)(xii).**

1 * * * *

2
3 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

4 * * * *

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

7 * * * *

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

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

13 (B) **Applicability.** This subsection (c)(4) shall apply to the construction
14 of ~~Accessory Dwelling Units~~ADUs on all lots located within the City and County of San Francisco
15 in areas that allow residential use, except ~~that construction of an Accessory Dwelling Unit is~~ADUs
16 regulated by subsection (c)(6) ~~below, 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 or~~
20 ~~multifamily use and contains an existing or proposed single-family dwelling;~~

21 (iii) ~~the ADU is either attached to or will be constructed entirely~~
22 ~~within the “living area” (as defined in subsection (c)(6)(B)(iii)) or the buildable area of an the~~
23 ~~proposed or existing primary dwelling single-family home, or constructed within the built envelope of~~
24 ~~an existing and authorized auxiliary structure on the same lot; provided, however, that (A) when a~~
25 ~~stand-alone garage, storage structure, or other auxiliary structure is being converted to an ADU, an~~

1 ~~expansion to the envelope is allowed to add dormers even if the stand-alone garage, storage structure,~~
2 ~~or other auxiliary structure is in the required rear yard and (B) on a corner lot, a legal stand-alone~~
3 ~~nonconforming garage, storage structure, or other auxiliary structure may be expanded within its~~
4 ~~existing footprint by up to one additional story in order to create a consistent street wall and improve~~
5 ~~the continuity of buildings on the block.~~

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

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

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

13 (i) For lots that have four existing Dwelling Units or fewer, or where
14 the zoning would permit the construction of four or fewer Dwelling Units, one ADU is
15 permitted, ~~for~~ for lots that have more than four existing Dwelling Units or are undergoing
16 seismic retrofitting under subsection (c)(4)(F) below, or where the zoning would permit the
17 construction of more than four Dwelling Units, there is no limit on the number of ADUs
18 permitted, as long as all other health and safety requirements are met.

19 (ii) The Department shall not approve an application for construction
20 of an ADU where a tenant on the lot ~~was~~ has been evicted pursuant to Administrative Code
21 Sections 37.9(a)(9) through (a)(12) and 37.9(a)(14) under a notice of eviction served within 10
22 years prior to filing the application for a building permit to construct the ADU, or where a
23 tenant ~~has been~~ was evicted pursuant to Administrative Code Section 37.9(a)(8) under a notice
24 of eviction served within five years prior to filing the application for a building permit to
25 construct the ADU. This subsection (c)(4)(C)(ii) shall not apply if the tenant was evicted under

1 Section 37.9(a)(11) or 37.9(a)(14) and the applicant(s) either (A) have certified that the
2 original tenant reoccupied the unit after the temporary eviction or (B) have submitted to the
3 Department and to the Residential Rent Stabilization and Arbitration Board (Rent Board) a
4 declaration from the property owner or the tenant certifying that the property owner notified
5 the tenant of the tenant's right to reoccupy the unit and the tenant chose not to reoccupy it.

6 (iii) Prior to submitting an application to construct an ADU under this
7 subsection (c)(4), the property owner shall file with the Rent Board a written declaration,
8 signed under penalty of perjury, demonstrating that the project will comply with the
9 requirements of Administrative Code Sections 37.2(r) and 37.9 relating to severance,
10 substantial reduction, or removal of a housing service. The Rent Board shall determine the
11 form and content of said declaration, which shall include the following information: (1) a
12 description of any housing services supplied in connection with the use or occupancy of any
13 units on the subject property that are located in the area of the property or building where the
14 ADU would be constructed; (2) whether construction of the ADU would result in the
15 severance, substantial reduction, or removal of any such housing services; and (3) whether
16 any of the just causes for eviction under Administrative Code Section 37.9(a) would apply.
17 The property owner shall also file a copy of the notice required under Section 207(c)(4)(J) with
18 the declaration.

19 (iv) Tenants at the subject property may contest the information in the
20 declaration required by subsection 207(c)(4)(C)(iii) by petitioning for a written determination
21 from the Rent Board verifying the presence and defining characteristics of the housing service
22 or services in question, and whether any such housing services would be severed,
23 substantially reduced, or removed by the project as proposed. Petitions must be filed with the
24 Rent Board within 30 calendar days after the notice required under subsection 207(c)(4)(J)
25 has been provided. If no such petition is timely filed, the Rent Board shall promptly transmit

1 the declaration to the Planning Department. If any such petition is timely filed, the Rent Board
2 shall endeavor to transmit the declaration and its final written determination on the petition to
3 the Planning Department within 90 calendar days of receipt of said petition. The Department
4 shall not approve an application to construct an ADU under this subsection (c)(4) unless (1)
5 the Rent Board has transmitted the declaration and final written determination required by
6 subsections (c)(4)(C)(iii) and (c)(4)(C)(iv), and (2) the materials transmitted by the Rent Board
7 indicate that construction of the ADU would not result in the severance, substantial reduction,
8 or removal without just cause of any tenant housing service set forth in Administrative Code
9 Section 37.2(r) that is supplied in the area of the property or building where the ADU would be
10 constructed, unless the property owner demonstrates that the tenant supplied with that
11 housing service has given their express written consent for the severance, substantial
12 reduction, or removal of the housing service.

13 (v) Except as provided in subsections (vi), ~~(vii)~~, and ~~(xiv)~~ below, an
14 ~~Accessory Dwelling Unit~~ ADU shall be constructed a. entirely within the buildable area of an
15 existing lot, provided that the ADU does not include a vertical addition ~~exceed the existing~~
16 ~~height of an existing the building in which it is constructed~~, or b. within the built envelope of an
17 existing and authorized ~~stand-alone~~ detached garage, storage structure, or other
18 ~~auxiliary detached~~ structure on the same lot, ~~as the built envelope existed three years prior to the~~
19 ~~time the application was filed for a building permit to construct the ADU. For purposes of this~~
20 subsection 207(c)(4), a “detached” structure or ADU shall not share structural walls with either the
21 primary structure or any other structure on the lot. For purposes of this subsection
22 207(c)(4)(C)(v), the “built envelope” shall include the open area under an existing and
23 authorized cantilevered room or room built on columns; decks, except for decks that are
24 supported by columns or walls other than the building wall to which they are attached and are
25 multi-level or more than 10 feet above grade; and lightwell infills provided that the infill will be

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

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

18 (vii) 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 (viii) ADUs shall comply with any applicable controls in Planning Code Section
23 134(f).

24 (viii)x) 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 (1) 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 (2)
5 waiving the limitation would help relieve any negative layout issues for the proposed ADU.

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

8 (xi) 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 (xii) 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 unless the Accessory Dwelling Unit is a Designated Child Care Unit, as defined in Section
15 102, and meets all applicable standards of Planning Code Section 414A.6(e).

16 (xiii) An Accessory Dwelling Unit shall not be permitted under this
17 subsection (c)(4) if it would result in the reduction or removal of on-site laundry service, unless
18 that laundry service is replaced with at least the same number or capacity of washers and
19 dryers within the same building and as accessible as before to all building tenants.

20 (xiv) An application for a permit solely to construct an ADU in a proposed
21 building pursuant to this subsection 207(c)(4)(C) shall not be subject to the notification requirements of
22 Section 311 of this Code; however, anyThe application for a permit to construct the proposed
23 building shall be subject to any applicable notification requirements of Section 311 of this Code.

1 (xv) In addition to any ADUs permitted under this Section 207(c)(4)
2 within the primary structure, one detached ADU shall be permitted within the required rear
3 yard if it complies with the following requirements:

4 a. The proposed ADU is located at least four feet from the side
5 and rear lot lines and has a height no greater than sixteen feet.

6 b. The Gross Floor Area of a detached ADU that provides one
7 bedroom or less shall not exceed 850 square feet. The Gross Floor Area of a detached ADU
8 that provides more than one bedroom shall not exceed 1,000 square feet.

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

12 (E) **Restrictions on Subdivisions.** Notwithstanding the provisions of Article
13 9 of the Subdivision Code, a lot with an *Accessory Dwelling Unit* ADU authorized under this
14 Section 207(c)(4) shall not be subdivided in a manner that would allow for the ADU to be sold
15 or separately financed pursuant to any condominium plan, housing cooperative, or similar
16 form of separate ownership; ~~provided, however, that~~ This prohibition on separate sale or
17 finance of the ADU shall not apply to an ADU in a building that (i) within three years prior to July
18 11, 2016 was an existing consisted entirely of condominium with no Rental Unit as defined in Section
19 37.2(r) of the Administrative Code units as of July 11, 2013, and (ii) has had no evictions pursuant
20 to Sections 37.9(a) through 37.9(a)(12) and 37.9(a)(14) of the Administrative Code within 10
21 years prior to since July 11, 2011 1996. This prohibition on separate sale or finance of the ADU shall
22 not apply to an ADU that meets the requirements of California Government Code Section 65852.26.

23 (F) **Buildings Undergoing Seismic Retrofitting.** For *Accessory Dwelling*
24 *Units* ADUs on lots with a building undergoing mandatory seismic retrofitting in compliance with
25 Chapter 4D of the Existing Building Code or voluntary seismic retrofitting in compliance with

1 the Department of Building Inspection’s Administrative Bulletin 094, the following additional
2 provision applies: If allowed by the Building Code, a building in which an ~~Accessory Dwelling~~
3 ~~Unit~~ADU is constructed may be raised up to three feet to create ground floor ceiling heights
4 suitable for residential use. Such a raise in height

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

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

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

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

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

21 Pursuant to the provisions of Section 307(l) of this Code, the Zoning Administrator may grant
22 ~~an Accessory Dwelling Unit~~ a complete or partial waiver of the density limits and bicycle
23 parking, rear yard, exposure, or open space standards of this Code for ADUs constructed within
24 an existing building, and may grant a waiver of the density limits of this Code for ADUs constructed
25 within a proposed building. If the Zoning Administrator grants a complete or partial waiver of the

1 requirements of this Code and the subject lot contains any Rental Units at the time an
2 application for a building permit is filed for construction of the ~~Accessory Dwelling Unit~~ADU(s),
3 the property owner(s) shall enter into a Regulatory Agreement with the City under subsection
4 (c)(4)(H) subjecting the ADU(s) to the San Francisco Residential Rent Stabilization and
5 Arbitration Ordinance (Chapter 37 of the Administrative Code) as a condition of approval of
6 the ADU(s). For purposes of this requirement, Rental Units shall be as defined in Section
7 37.2(r) of the Administrative Code.

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

11 (i) a statement that the ADU(s) are not subject to the Costa Hawkins
12 Rental Housing Act (California Civil Code Section 1954.50) because, under Section
13 1954.52(b), the owner has entered into this agreement with the City in consideration for a
14 complete or partial waiver of the density limits, and/or bicycle parking, rear yard, exposure, or
15 open space standards of this Code or other direct financial contribution or other form of
16 assistance specified in California Government Code Sections 65915 et seq. (“Agreement”);
17 and

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

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

23 (iv) The property owner and the Planning Director (or the Director’s
24 designee), on behalf of the City, will execute the Agreement, which shall be reviewed and
25 approved by the City Attorney’s Office. The Agreement shall be executed prior to the City’s

1 issuance of the First Construction Document for the project, as defined in Section 107A.13.1
2 of the San Francisco Building Code.

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

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

10 (l) **Monitoring Program.**

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

22 (ii) **Monitoring of Prohibition on Use as Short Term Rentals.** The
23 Department shall collect data on the use of ~~Accessory Dwelling Units~~ ADUs authorized to be
24 constructed by this subsection (c)(4) as Short-Term Residential Rentals, as that term is
25 defined in Administrative Code Section 41A.4, and shall use such data to evaluate and

1 enforce Notices of Special Restriction pursuant to subsection 207(c)(4)(D) and the
2 requirements of Administrative Code Chapter 41A.

3 (iii) **Department Report.** *As part of the annual Housing Inventory, t*The
4 Department shall ~~publish a~~ report ~~annually until April 1, 2019, that describes and evaluates~~ the
5 types of units being developed ~~pursuant to this subsection 207(c)(4), and~~ their affordability rates,
6 ~~as well as~~ their use as Short-Term Residential Rentals, ~~and. The report shall contain~~ such
7 additional information as the Director or the Board of Supervisors determines would inform
8 decision makers and the public on the effectiveness and implementation of this subsection
9 207(c)(4), and shall include recommendations for any amendments to the requirements of this
10 Section 207(c)(4). ~~The Department shall transmit this report to the Board of Supervisors for its~~
11 ~~review and public input. In subsequent years, this information on Accessory Dwelling Units shall be~~
12 ~~reported annually in the Housing Inventory.~~

13 * * * *

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

17 (A) **Applicability.** This subsection 207(c)(6) shall apply to the construction of
18 ~~Accessory Dwelling Units~~ADUs and Junior Accessory Dwelling Units (“JADUs”) (as defined in
19 Section 102) in existing or proposed ~~single-family homes~~dwellings, or in a detached ~~auxiliary~~
20 structure on the same lot, if the ADU meets the applicable requirements of this
21 subsection207(c)(6). An ADU constructed pursuant to this subsection is considered a
22 residential use that is consistent with the General Plan and the zoning designation for the lot.
23 Adding ~~one an~~ ADU or JADU in compliance with this subsection 207(c)(6) to an existing or proposed
24 ~~single-family home or in a detached auxiliary structure on the same lot~~ does not exceed the
25 allowable density for the lot. Unless otherwise specified, for purposes of this subsection 207(c)(6), a

1 “detached” structure or ADU shall not share structural walls with either the primary structure or any
2 other structure on the lot. If construction of the ADU will not meet the requirements of this
3 subsection ~~and the ADU cannot be constructed without a waiver of Code requirements pursuant to~~
4 ~~subsection (c)(4)(G),~~ the ADU is regulated pursuant to subsection 207(c)(4) and not this
5 subsection 207(c)(6).

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

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

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

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

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

1 (ii~~v~~) For projects involving a property listed in the California Register of
2 Historic Places, or a property designated individually or as part of a historic or conservation
3 district pursuant to Article 10 or Article 11, the ADU or JADU shall comply with any
4 architectural review standards adopted by the Historic Preservation Commission to prevent
5 adverse impacts to such historic resources. Such projects shall not be required to obtain a
6 Certificate of Appropriateness or a Permit to Alter.

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

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

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

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

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

23 ~~(xi) — On a corner lot, a legal stand-alone nonconforming garage, storage~~
24 ~~structure, or other auxiliary structure may be expanded within its existing footprint by up to one~~

1 ~~additional story in order to create a consistent street wall and improve the continuity of buildings on~~
2 ~~the block.~~

3 ~~(xii) — When the ADU involves expansion of the built envelope of an existing~~
4 ~~primary dwelling, or an expansion of the built envelope of an existing and authorized stand-alone~~
5 ~~garage, storage structure, or other auxiliary structure on the same lot, or the construction of a new~~
6 ~~detached auxiliary structure on the same lot, the total floor area of the ADU shall not exceed 1,200~~
7 ~~square feet.~~

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

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

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

24 ~~(F) — **Rental; Restrictions on Subdivisions.**~~

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

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

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

12 (H) — **Notification.** ~~Upon determination that an application is in compliance with the~~
13 ~~standards of subsection 207(c)(6) of the Planning Code, the Planning Department shall cause a notice~~
14 ~~to be posted on the site pursuant to rules established by the Zoning Administrator and shall cause a~~
15 ~~written notice describing the proposed project to be sent in the manner described below. This notice~~
16 ~~shall be in addition to any notices required by the Building Code and shall have a format and content~~
17 ~~determined by the Zoning Administrator. This notice shall include a description of the proposal~~
18 ~~compared to any existing improvements on the site with dimensions of the basic features, elevations~~
19 ~~and site plan of the proposed project including the position of any adjacent buildings, exterior~~
20 ~~dimensions and finishes, and a graphic reference scale, existing and proposed uses or commercial or~~
21 ~~institutional business name, if known. The notice shall describe the project review process and shall set~~
22 ~~forth the mailing date of the notice.~~

23 (i) — ~~Written notice shall be mailed to the project sponsor and tenants of the~~
24 ~~subject property. Written notice shall also be mailed to tenants of the subject property in unauthorized~~
25 ~~residential units.~~

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

8 (iii) — ~~The written notice shall describe whether the project is a demolition, new~~
9 ~~construction or alteration project. If the project is an alteration, the type of alteration shall be~~
10 ~~described: horizontal, vertical, or both horizontal and vertical additions, and where the alteration is~~
11 ~~located.~~

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

15 (v) — ~~The building permit application number(s) shall be disclosed in the~~
16 ~~written notice.~~

17 (vi) — ~~11x17 sized or equivalent drawings to scale shall be included with the~~
18 ~~written notice. The drawings shall illustrate the existing and proposed conditions in relationship to the~~
19 ~~adjacent properties. All dimensions and text throughout the drawings shall be legible. The drawings~~
20 ~~shall include a site plan, floor plans, and elevations documenting dimensional changes that correspond~~
21 ~~to the basic features included in the written notice. The existing and proposed site plan shall illustrate~~
22 ~~the project including the full lots and structures of the directly adjacent properties. The existing and~~
23 ~~proposed floor plans shall illustrate the location and removal of interior and exterior walls. The use of~~
24 ~~each room shall be labeled. Significant dimensions shall be provided to document the change proposed~~
25 ~~by the project. The existing and proposed elevations shall document the change in building volume:~~

1 *height and depth. Dimensional changes shall be documented, including overall building height and*
2 *also parapets, penthouses, and other proposed vertical and horizontal building extensions. The front*
3 *and rear elevations shall include the full profiles of the adjacent structures including the adjacent*
4 *structures' doors, windows, and general massing. Each side elevation shall include the full profile of*
5 *the adjacent building in the foreground of the project, and the adjacent windows, lightwells and*
6 *general massing shall be illustrated.*

7 *(vii) — **Language Access.** All forms of public notice provided pursuant to this*
8 *subsection 207(c)(6)(H) shall comply with the requirements of the Language Access Ordinance,*
9 *Chapter 91 of the Administrative Code, to provide vital information about the Planning Department's*
10 *services or programs in the languages spoken by a Substantial Number of Limited English Speaking*
11 *Persons, as defined in Chapter 91. The notices required by this subsection 207(c)(6)(H) shall contain*
12 *the information set forth in subsection 207(c)(6)(h)(ii)-(v) in the languages spoken by a Substantial*
13 *Number of Limited English Speaking Persons, as defined in Administrative Code Chapter 91.*

14 *(viii) — **Online Notice.** For 30 calendar days, on a publicly accessible website*
15 *that is maintained by the Planning Department, the Planning Department shall provide a digital copy*
16 *formatted to print on 11 x 17 inch paper of the posted notice, including the contents set forth in*
17 *subsection 207(c)(6)(h)(ii)-(v) for the application; and digital copies of any architectural and/or site*
18 *plans that are sealed and formatted to print on 11 x 17 inch paper, are consistent with Plan Submittal*
19 *Guidelines maintained and published by the Planning Department, and that describe and compare, at a*
20 *minimum, the existing and proposed conditions at the subject property, the existing and proposed*
21 *conditions in relationship to adjacent properties, and that may include a site plan, floor plans, and*
22 *elevations documenting dimensional changes required to describe the proposal.*

23 *(C) Specific Controls for Ministerial ADUs. The purpose of this subsection*
24 *207(c)(6)(C) is to implement California Government Code Sections 65852.2(e) and 65852.22, which*
25 *requires ministerial consideration of ADUs and JADUs that meet certain standards ("Ministerial*

1 ADUs”). ADUs and JADUs shall strictly meet the requirements set forth in this subsection (c)(6)(C)
2 without requiring a waiver of Code requirements pursuant to subsection (c)(4)(G). The City shall
3 approve ADUs and JADUs meeting the following requirements, in addition to the requirements of
4 subsection 207(c)(6)(B) and any other applicable standards:

5 (i) ADUs and JADUs within proposed space of a proposed single-family
6 dwelling or within existing space of a single-family dwelling or accessory structure meeting the
7 following conditions:

- 8 a. The lot on which the ADU or JADU is proposed contains an
9 existing or proposed single-family dwelling.
- 10 b. Only one ADU and one JADU is permitted per lot.
- 11 c. Each proposed ADU and JADU includes an entrance that is
12 separate from the entrance to the existing or proposed dwelling.
- 13 d. Side and rear setbacks will be sufficient for fire safety.
- 14 e. If an ADU is proposed, it will be within the existing space of a
15 single-family dwelling or accessory structure, or within the space of a proposed single-family dwelling,
16 or it will require an addition of no more than 150 square feet to an existing accessory structure to
17 accommodate ingress and egress.
- 18 f. If a JADU is proposed, it meets the requirements of California
19 Government Code Section 65852.22.

20 (ii) Detached, new construction ADUs on lot containing a proposed or
21 existing single-family dwelling meeting the following conditions:

- 22 a. The lot on which the detached ADU is proposed contains an
23 existing or proposed single-family dwelling.
- 24 b. The lot on which the ADU is proposed does not contain another
25 ADU, but may contain a JADU.

1 d. No more than two ADUs shall be permitted per lot pursuant to
2 this subsection 207(c)(6)(C)(iv).

3 (D) **Specific Controls for Streamlined ADUs.** The purpose of this subsection
4 207(c)(6)(D) is implement California Government Code Sections 65852.2(a) through (d), which
5 requires streamlined, ministerial approval of ADUs meeting certain standards (“Streamlined ADUs”).
6 An ADU located on a lot that is zoned for single-family or multifamily use and contains an existing or
7 proposed dwelling, and that is constructed pursuant to this subsection 207(c)(6)(D), shall meet all of
8 the following requirements, in addition to the requirements of subsection 207(c)(6)(B) and any other
9 applicable standards. Provided, however, that the City shall not impose limits on lot coverage, floor
10 area ratio, open space, and minimum lot size, for either attached or detached dwellings, that does not
11 permit construction of an ADU meeting all other requirements that is 800 square feet or less in Gross
12 Floor Area, 16 feet or less in height, and with four foot side and rear yard setbacks. ADUs under this
13 subsection 207(c)(6)(D) shall meet the following conditions:

14 (i) Only one ADU will be constructed.

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

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

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

24 (v) If there is an existing primary dwelling, the Gross Floor Area of an
25 attached ADU that provides one bedroom or less shall not exceed 50 percent of the Gross Floor Area

1 of the existing primary dwelling or 850 square feet, whichever is greater. If there is an existing primary
2 dwelling, the Gross Floor Area of an attached ADU that provides more than one bedroom shall not
3 exceed 50 percent of the Gross Floor Area of the existing primary dwelling or 1,000 square feet,
4 whichever is greater.

5 (vi) The Gross Floor Area of a detached ADU that provides one bedroom or
6 less shall not exceed 850 square feet. The Gross Floor Area of a detached ADU that provides more
7 than one bedroom shall not exceed 1,000 square feet.

8 (vii) **Setbacks.** No setback is required for an ADU located within an existing
9 living area or an existing accessory structure, or an ADU that replaces an existing structure and is
10 located in the same location and constructed to the same dimensions as the structure being replaced. A
11 setback of no more than four feet from the side and rear lot lines shall be required for an ADU that is
12 not converted from either an existing structure or a new structure constructed in the same location and
13 to the same dimensions as an existing structure.

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

17 (ix) The ADU shall not exceed a height of 16 feet.

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

24 (i) Comply with the requirements of the Building Code and applicable
25 Department of Building Inspection screening forms, and submit a copy of any applicable Department of

1 Building Inspection Screening forms to the Planning Department as part of the application to construct
2 an ADU or JADU; or

3 (ii) Cause a notice describing the proposed project to be posted on the
4 subject property for at least 15 days, cause a written notice describing the proposed project to be
5 mailed to the tenants of the subject property, and submit proof of these notices to the Planning
6 Department as part of the application to construct an ADU or JADU. These notices shall have a
7 format and content determined by the Zoning Administrator, and shall generally describe the project,
8 including the number and location of the proposed ADU and JADU. These notices shall describe how
9 to obtain additional information regarding the project and provide contact information for the
10 Planning Department that complies with the requirements of the Language Access Ordinance, Chapter
11 91 of the Administrative Code, to provide vital information about the Planning Department's services
12 or programs in the languages spoken by a Substantial Number of Limited English Speaking Persons, as
13 defined in Chapter 91.

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

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

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

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

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

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

17 (iii) The size and attributes of a JADU constructed pursuant to this subsection
18 207(c)(6) shall comply with the requirements of this subsection 207(c)(6) and Government Code
19 65852.22.

20 (J) **Department Report.** In addition to the information required by subsection
21 207(c)(4)(I)(iii), the annual Housing Inventory shall include a description and evaluation of the
22 number and types of units being developed pursuant to this subsection (c)(6), their affordability rates,
23 and such other information as the Director or the Board of Supervisors determines would inform
24 decision makers and the public.

1 (K) Fees. No impact fees shall be imposed on ADUs or JADUs authorized under this
2 subsection 207(c)(6), where the ADU or JADU is smaller than seven hundred and fifty square feet of
3 Gross Floor Area, or for ADUs that are proposed in lots with three existing units or fewer. Impact fees
4 for all other ADUs shall be imposed proportionately in relation to the Gross Floor Area of the primary
5 dwelling unit.

6 * * * *

7
8 **SEC. 1005. CONFORMITY AND PERMITS.**

9 * * * *

10 (e) After receiving a permit application from the Central Permit Bureau in accordance
11 with the preceding subsection, the Department shall ascertain whether a Certificate of
12 Appropriateness is required or has been approved for the work proposed in such permit
13 application. If a Certificate of Appropriateness is required and has been issued, and if the
14 permit application conforms to the work approved in the Certificate of Appropriateness, the
15 permit application shall be processed without further reference to this Article 10. If a
16 Certificate of Appropriateness is required and has not been issued, or if the permit application
17 does not conform to what was approved, the permit application shall be disapproved or held
18 by the Department until such time as conformity does exist either through modifications to the
19 proposed work or through the issuance of an amended or new Certificate of Appropriateness.
20 Notwithstanding the foregoing, in the following cases the Department shall process the permit
21 application without further reference to this Article 10:

22 * * * *

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

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

4 * * * *

5
6 **SEC. 1110. CONSTRUCTION, ALTERATION OR DEMOLITION OF SIGNIFICANT**
7 **OR CONTRIBUTORY BUILDINGS OR BUILDINGS IN CONSERVATION DISTRICTS.**

8 * * * *

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

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

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

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

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

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

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

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

Section 6. Corrected Presentation of Existing Code. Some prior versions of this ordinance inadvertently failed to accurately reflect recent amendments to section 207 of the Planning Code enacted by Ordinance Nos. 208-21 and 209-21. This version of this ordinance has been updated to accurately represent those recent amendments as existing text of the Planning Code. Said revisions do not change the substance of this ordinance.

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

3
4 By: /s/ Peter R. Miljanich
5 PETER R. MILJANICH
6 Deputy City Attorney

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1 [Administrative Code, Business and Tax Regulations, Planning Code - State-Mandated
2 Accessory Dwelling Unit Controls]

3 **Ordinance amending the Administrative Code, Building Code, Business and Tax**
4 **Regulations Code, and Planning Code to clarify the ministerial approval process for**
5 **certain Accessory Dwelling Units (ADUs) meeting certain requirements in single-family**
6 **and multifamily buildings ~~and to permit certain ADUs in the rear yard under the City's~~**
7 **~~local, discretionary approval program; affirming the Planning Department's~~**
8 **~~determinationmaking findings~~affirming the Planning Department's determination under**
9 **the California Environmental Quality Act; making findings of consistency with the**
10 **General Plan and the eight priority policies of Planning Code, Section 101.1; and**
11 **adopting findings of public necessity, convenience, and welfare under Planning Code,**
12 **Section 302.**

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. Findings.

22 (a) ~~On April 24, 2014, the Planning Commission certified the 2004 and 2009 Housing~~
23 ~~Element Final Environmental Impact Report ("Final EIR") in accordance with the California~~
24 ~~Environmental Quality Act (California Public Resources Code Sections 21000 et seq.)~~
25 ~~("CEQA"), the CEQA Guidelines (California Code of Regulations Title 14, Sections 15000 et~~
~~seq.), and Chapter 31 of the San Francisco Administrative Code. Subsequent to the adoption~~

1 of the Final EIR, the City has approved and incorporated eight addenda into the analysis of
2 the Final EIR and made requisite findings under CEQA. The Planning Department has
3 determined that the actions contemplated in this ordinance comply with the California
4 Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said
5 determination is on file with the Clerk of the Board of Supervisors in File No. _____ and
6 is incorporated herein by reference. The Board affirms this determination. The Planning
7 Department has determined that the actions contemplated in this ordinance comply with the
8 California Environmental Quality Act (California Public Resources Code Sections 21000 et
9 seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No.
10 _____ and is incorporated herein by reference. The Board affirms this determination.

11 (b) The Planning Department prepared Addendum No. 9 to the Final EIR, dated
12 September 9, 2022 (“Addendum”). The Addendum evaluates the environmental effects of the
13 actions contemplated in this ordinance, which are an implementing program of the Project
14 evaluated in the Final EIR. The Addendum determines that: these actions would not cause
15 new significant impacts that were not identified in the Final EIR; these actions would not
16 cause significant impacts that were previously identified in the Final EIR to become
17 substantially more severe; no new mitigation measures would be necessary to reduce
18 significant impacts; no changes have occurred with respect to circumstances surrounding
19 these actions that would cause significant environmental impacts to which these actions
20 would contribute considerably; and no new information has become available that shows that
21 these actions would cause significant environmental impacts. For these reasons, no
22 subsequent or supplemental environmental review is required. The Board of Supervisors has
23 reviewed and considered the Final EIR and the Addendum, and the Planning Department’s
24 determination is on file with the Clerk of the Board of Supervisors in File No. 210585 and is
25 incorporated herein by reference.

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

9 (d) On _____, 2023, the Building Inspection Commission considered this
10 ordinance at a duly noticed public hearing pursuant to Charter Section D3. 750-5.

11 (e) No local findings are required under California Health and Safety Code Section
12 17958.7 because the amendments to the Building Code contained in this ordinance do not
13 regulate materials or manner of construction or repair, and instead relate in their entirety to
14 administrative procedures, which are expressly excluded from the definition of a "building
15 standard" by California Health and Safety Code Section 18909(c).

16
17 Section 2. The Planning Code is hereby amended by revising Sections 102, 136,
18 155.1, 207, 1005, and 1110, and adding Sections 207.1 and 207.2, to read as follows:

19
20 **SEC. 102. DEFINITIONS.**

21 * * * *

22 **Dwelling Unit, Accessory, or ADU.** Also known as a Secondary Unit or In-Law Unit, is a
23 Dwelling Unit that meets all the requirements of subsection 207.1(e)(4) or subsection
24 207.2(e)(6) and that is accessory to at least one other Dwelling Unit on the same lot. A
25 detached ADU shall not share structural walls with either the primary structure or any other

1 structure on the lot. Height for detached ADUs located outside the buildable area shall be
2 measured from existing grade at any given point to either a) the highest point of a finished
3 roof in the case of a flat roof or b) the average height of a pitched roof or stepped roof, or
4 similarly sculptured roof form. Height for detached ADUs located outside the buildable area
5 shall not be eligible for any exemptions described in Planning Code subsection 260(b).

6
7 **Dwelling Unit, Junior Accessory, or JADU.** A Dwelling Unit that meets all the requirements
8 of subsection 207.2(e)(6), and that:

- 9 (a) is accessory to at least one other Dwelling Unit on the same lot;
- 10 (b) is no more than 500 square feet of Gross Floor Area;
- 11 (c) is contained entirely within an existing or proposed single-family structure;
- 12 (d) may include separate sanitation facilities, or may share sanitation facilities with
13 the existing structure;
- 14 (e) is owner-occupied, unless the owner resides in the remaining portion of the
15 structure;
- 16 (f) includes an entrance to the Junior Accessory Dwelling Unit that is separate from
17 the main entrance to the proposed or existing single-family structure; and
- 18 (g) includes an efficiency kitchen that meets the requirements of Government Code
19 Section 65852.22(a)(6), including a cooking facility with appliances, and a food preparation
20 counter and storage cabinets that are of reasonable size in relation to the size of the Junior
21 Accessory Dwelling Unit.

22 * * * *

23
24 **SEC. 136. OBSTRUCTIONS OVER STREETS AND ALLEYS AND IN REQUIRED**
25 **SETBACKS, YARDS, AND USABLE OPEN SPACE.**

1 * * * *

2 (c) The permitted obstructions shall be as follows:

3 * * * *

4 (32) Infill under decks and cantilevered rooms when adding an Accessory
5 Dwelling Unit; provided, however, that such infill shall comply with Section 207.1~~(e)~~(4) or
6 Section 207.2~~(e)~~(6) of this Code, whichever is applicable; and provided further that if the ADU
7 is proposed for a single-family home, the rear yard must be 25% of the lot depth but in no
8 case less than 15 feet.

9 (33) One detached Accessory Dwelling Unit that complies with the
10 requirements of Planning Code subsection 207.1(c)(15)(4)(xii).

11 * * * *

12
13 **SEC. 155.1. BICYCLE PARKING: DEFINITIONS AND STANDARDS.**

14 * * * *

15 (b) **Standards for Location of Bicycle Parking Spaces.** These standards apply to
16 all bicycle parking subject to Section 155.2, as well as bicycle parking for City-owned and
17 leased buildings, parking garages and parking lots subject to Section 155.3. Bicycle racks
18 shall be located in highly visible areas as described in subsections below in order to maximize
19 convenience and minimize theft and vandalism. For Accessory Dwelling Units, the
20 requirements of this subsection (b) may be modified or waived pursuant to the procedures
21 and criteria set forth in Sections 307(l) and 207.1~~(e)~~(4)(G).

22 * * * *

23 (c) **Design Standards for Bicycle Parking Spaces.** These design standards apply to
24 all bicycle parking spaces subject to Sections 155.2 and 155.3. Bicycle parking shall follow the
25 design standards established in Zoning Administrator Bulletin No. 9, which includes specific

1 requirements on bicycle parking layout and acceptable types of Class 1 and Class 2 bicycle
2 parking spaces. For Accessory Dwelling Units, the requirements of this subsection (c) may be
3 modified or waived pursuant to the procedures and criteria set forth in Sections 307(l) and
4 207.1(e)(4)(G).

5 * * * *

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

8 * * * *

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

11 * * * *

12 (4) The exception to Dwelling Unit density limits for certain Accessory
13 Dwelling Units under the City’s Local Accessory Dwelling Unit Program are contained in
14 Section 207.1 of this Code ~~*Accessory Dwelling Units—Local Program: Accessory Dwelling Units*~~
15 ~~*in Multifamily Buildings and Accessory Dwelling Units in Single-Family Homes That Do Not*~~
16 ~~*Strictly Meet the Requirements in subsection (e)(6).*~~

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

19 (B) ~~*Applicability.*~~ This subsection (e)(4) shall apply to the construction of
20 ADUs on all lots located within the City and County of San Francisco in areas that allow residential
21 use, except ADUs regulated by subsection (e)(6) below.

22 (C) ~~*Controls on Construction.*~~ An ADU regulated by this subsection (e)(4) is
23 permitted to be constructed in an existing or proposed building under the following conditions:

24 (i) ~~*For lots that have four existing Dwelling Units or fewer, or where the*~~
25 ~~*zoning would permit the construction of four or fewer Dwelling Units, one ADU is permitted. For lots*~~

1 *that have more than four existing Dwelling Units or are undergoing seismic retrofitting under*
2 *subsection (c)(4)(F) below, or where the zoning would permit the construction of more than four*
3 *Dwelling Units, there is no limit on the number of ADUs permitted, as long as all other health and*
4 *safety requirements are met.*

5 ~~————— (ii) ——— The Department shall not approve an application for construction of an~~
6 ~~ADU where a tenant on the lot was evicted pursuant to Administrative Code Sections 37.9(a)(9)~~
7 ~~through (a)(12) and 37.9(a)(14) under a notice of eviction served within 10 years prior to filing the~~
8 ~~application for a building permit to construct the ADU, or where a tenant was evicted pursuant to~~
9 ~~Administrative Code Section 37.9(a)(8) under a notice of eviction served within five years prior to~~
10 ~~filing the application for a building permit to construct the ADU. This subsection (c)(4)(C)(ii) shall not~~
11 ~~apply if the tenant was evicted under Section 37.9(a)(11) or 37.9(a)(14) and the applicant(s) either (A)~~
12 ~~have certified that the original tenant reoccupied the unit after the temporary eviction or (B) have~~
13 ~~submitted to the Department and to the Residential Rent Stabilization and Arbitration Board (Rent~~
14 ~~Board) a declaration from the property owner or the tenant certifying that the property owner notified~~
15 ~~the tenant of the tenant's right to reoccupy the unit and the tenant chose not to reoccupy it.~~

16 ~~————— (iii) ——— Prior to submitting an application to construct an ADU under this~~
17 ~~subsection (c)(4), the property owner shall file with the Rent Board a written declaration, signed under~~
18 ~~penalty of perjury, demonstrating that the project will comply with the requirements of Administrative~~
19 ~~Code Sections 37.2(r) and 37.9 relating to severance, substantial reduction, or removal of a housing~~
20 ~~service. The Rent Board shall determine the form and content of said declaration, which shall include~~
21 ~~the following information: (1) a description of any housing services supplied in connection with the use~~
22 ~~or occupancy of any units on the subject property that are located in the area of the property or~~
23 ~~building where the ADU would be constructed; (2) whether construction of the ADU would result in the~~
24 ~~severance, substantial reduction, or removal of any such housing services; and (3) whether any of the~~
25

1 *just causes for eviction under Administrative Code Section 37.9(a) would apply. The property owner*
2 *shall also file a copy of the notice required under Section 207(e)(4)(J) with the declaration.*

3 ~~—— (iv) Tenants at the subject property may contest the information in the declaration~~
4 ~~required by subsection 207(e)(4)(C)(iii) by petitioning for a written determination from the Rent Board~~
5 ~~verifying the presence and defining characteristics of the housing service or services in question, and~~
6 ~~whether any such housing services would be severed, substantially reduced, or removed by the project~~
7 ~~as proposed. Petitions must be filed with the Rent Board within 30 calendar days after the notice~~
8 ~~required under subsection 207(e)(4)(J) has been provided. If no such petition is timely filed, the Rent~~
9 ~~Board shall promptly transmit the declaration to the Planning Department. If any such petition is~~
10 ~~timely filed, the Rent Board shall endeavor to transmit the declaration and its final written~~
11 ~~determination on the petition to the Planning Department within 90 calendar days of receipt of said~~
12 ~~petition. The Department shall not approve an application to construct an ADU under this subsection~~
13 ~~(e)(4) unless (1) the Rent Board has transmitted the declaration and final written determination~~
14 ~~required by subsections (e)(4)(C)(iii) and (e)(4)(C)(iv), and (2) the materials transmitted by the Rent~~
15 ~~Board indicate that construction of the ADU would not result in the severance, substantial reduction,~~
16 ~~or removal without just cause of any tenant housing service set forth in Administrative Code Section~~
17 ~~37.2(r) that is supplied in the area of the property or building where the ADU would be constructed,~~
18 ~~unless the property owner demonstrates that the tenant supplied with that housing service has given~~
19 ~~their express written consent for the severance, substantial reduction, or removal of the housing~~
20 ~~service.~~

21 ~~—— (v) Except as provided in subsections (vi), (vii), and (xiv) below, an ADU~~
22 ~~shall be constructed a. entirely within the buildable area of an existing lot, provided that the ADU does~~
23 ~~not include a vertical addition, or b. within the built envelope of an existing and authorized detached~~
24 ~~garage, storage structure, or other detached structure on the same lot. For purposes of this subsection~~
25 ~~207(e)(4), a “detached” structure or ADU shall not share structural walls with either the primary~~

1 ~~structure or any other structure on the lot. For purposes of this subsection 207(e)(4)(C)(v), the “built~~
2 ~~envelope” shall include the open area under an existing and authorized cantilevered room or room~~
3 ~~built on columns; decks, except for decks that are supported by columns or walls other than the~~
4 ~~building wall to which they are attached and are multi-level or more than 10 feet above grade; and~~
5 ~~lightwell infills provided that the infill will be against a blank neighboring wall at the property line and~~
6 ~~not visible from any off-site location; as these spaces exist as of July 11, 2016. An ADU constructed~~
7 ~~entirely within the existing built envelope, as defined in this subsection 207(e)(4)(C)(v), along with~~
8 ~~permitted obstructions allowed in Section 136(e)(32), of an existing building or authorized detached~~
9 ~~structure on the same lot, or where an existing detached garage or storage structure has been~~
10 ~~expanded to add dormers, is exempt from the notification requirements of Section 311 of this Code~~
11 ~~unless the existing building or authorized detached structure on the same lot is an Article 10 or Article~~
12 ~~11 individual landmark or is in an Article 10 or Article 11 District, in which case the notification~~
13 ~~requirements will apply. If an ADU will be constructed under a cantilevered room or deck that~~
14 ~~encroaches into the required rear yard, a pre-application meeting that complies with the Planning~~
15 ~~Commission’s Pre-Application policy is required.~~

16 ~~————— (vi) ——— When a detached garage, storage, or other auxiliary structure is being~~
17 ~~converted to an ADU, an expansion to the envelope is allowed to add dormers even if the detached~~
18 ~~garage, storage structure, or other auxiliary structure is in the required rear yard.~~

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

23 ~~————— (viii) ADUs shall comply with any applicable controls in Planning Code Section~~
24 ~~134(f).~~

1 ~~————— (ix) — An ADU shall not be constructed using space from an existing Dwelling~~
2 ~~Unit, except that an ADU may expand into habitable space on the ground or basement floors provided~~
3 ~~that it does not exceed 25% of the total gross square footage of such space on the ground and basement~~
4 ~~floors. The Zoning Administrator may waive this 25% limitation if (1) the resulting space would not be~~
5 ~~usable or would be impractical to use for other reasonable uses, including, but not limited to, storage~~
6 ~~or bicycle parking or (2) waiving the limitation would help relieve any negative layout issues for the~~
7 ~~proposed ADU.~~

8 ~~————— (x) — An existing building undergoing seismic retrofitting may be eligible for a~~
9 ~~height increase pursuant to subsection (e)(4)(F) below.~~

10 ~~————— (xi) — Notwithstanding any other provision of this Code, an ADU authorized~~
11 ~~under this Section 207(e)(4) may not be merged with an original unit(s).~~

12 ~~————— (xii) — An ADU shall not be permitted in any building in a Neighborhood~~
13 ~~Commercial District or in the Chinatown Community Business or Visitor Retail Districts if it would~~
14 ~~eliminate or reduce a ground-story retail space, unless the Accessory Dwelling Unit is a Designated~~
15 ~~Child Care Unit, as defined in Section 102, and meets all applicable standards of Planning Code~~
16 ~~Section 414A.6(e).~~

17 ~~————— (xiii) — An Accessory Dwelling Unit shall not be permitted under this subsection~~
18 ~~(e)(4) if it would result in the reduction or removal of on-site laundry service, unless that laundry~~
19 ~~service is replaced with at least the same number or capacity of washers and dryers within the same~~
20 ~~building and as accessible as before to all building tenants.~~

21 ~~————— (xiv) — An application for a permit solely to construct an ADU in a proposed~~
22 ~~building pursuant to this subsection 207(e)(4)(C) shall not be subject to the notification requirements of~~
23 ~~Section 311 of this Code; however, any application for a permit to construct the proposed building~~
24 ~~shall be subject to any applicable notification requirements of Section 311 of this Code.~~

1 ~~————— (xv) — In addition to any ADUs permitted under this Section 207(e)(4) within the~~
2 ~~primary structure, one detached ADU shall be permitted within the required rear yard if it complies~~
3 ~~with the following requirements:~~

4 ~~————— a. — The proposed ADU is located at least four feet from the side and~~
5 ~~rear lot lines and has a height no greater than sixteen feet.~~

6 ~~————— b. — The Gross Floor Area of a detached ADU that provides one~~
7 ~~bedroom or less shall not exceed 850 square feet. The Gross Floor Area of a detached ADU that~~
8 ~~provides more than one bedroom shall not exceed 1,000 square feet.~~

9 ~~———— (D) — **Prohibition of Short-Term Rentals.** An ADU shall not be used for Short-Term~~
10 ~~Residential Rentals under Chapter 41A of the Administrative Code, which restriction shall be recorded~~
11 ~~as a Notice of Special Restriction on the subject lot.~~

12 ~~———— (E) — **Restrictions on Subdivisions.** Notwithstanding the provisions of Article 9 of the~~
13 ~~Subdivision Code, a lot with an ADU authorized under this Section 207(e)(4) shall not be subdivided in~~
14 ~~a manner that would allow for the ADU to be sold or separately financed pursuant to any condominium~~
15 ~~plan, housing cooperative, or similar form of separate ownership. This prohibition on separate sale or~~
16 ~~finance of the ADU shall not apply to an ADU in a building that consisted entirely of condominium~~
17 ~~units as of July 11, 2013, and has had no evictions pursuant to Sections 37.9(a) through 37.9(a)(12)~~
18 ~~and 37.9(a)(14) of the Administrative Code since July 11, 1996. This prohibition on separate sale or~~
19 ~~finance of the ADU shall not apply to an ADU that meets the requirements of California Government~~
20 ~~Code Section 65852.26.~~

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

1 ~~Code, a building in which an ADU 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 Section 311 of this~~
4 ~~Code; and~~

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

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

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

18 ~~————— (G) — **Waiver of Code Requirements; Applicability of Rent Ordinance.** Pursuant to~~
19 ~~the provisions of Section 307(l) of this Code, the Zoning Administrator may grant a complete or partial~~
20 ~~waiver of the density limits and bicycle parking, rear yard, exposure, or open space standards of this~~
21 ~~Code for ADUs constructed within an existing building, and may grant a waiver of the density limits of~~
22 ~~this Code for ADUs constructed within a proposed building. If the Zoning Administrator grants a~~
23 ~~complete or partial waiver of the requirements of this Code and the subject lot contains any Rental~~
24 ~~Units at the time an application for a building permit is filed for construction of the ADU(s), the~~
25 ~~property owner(s) shall enter into a Regulatory Agreement with the City under subsection (c)(4)(H)~~

1 *subjecting the ADU(s) to the San Francisco Residential Rent Stabilization and Arbitration Ordinance*
2 *(Chapter 37 of the Administrative Code) as a condition of approval of the ADU(s). For purposes of this*
3 *requirement, Rental Units shall be as defined in Section 37.2(r) of the Administrative Code.*

4 ~~————— (H) ——— **Regulatory Agreements.** A Regulatory Agreement required by subsection~~
5 ~~(e)(4)(G) as a condition of approval of an Accessory Dwelling Unit shall contain the following:~~

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

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

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

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

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

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

4 ~~————— (I) ———~~ **Monitoring Program.**

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

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

20 ~~————— (iii) ———~~ **Department Report.** ~~As part of the annual Housing Inventory, the~~
21 ~~Department shall report the types of units being developed pursuant to this subsection 207(c)(4), their~~
22 ~~affordability rates, their use as Short Term Residential Rentals, and such additional information as the~~
23 ~~Director or the Board of Supervisors determines would inform decision makers and the public on the~~
24 ~~effectiveness and implementation of this subsection 207(c)(4), and shall include recommendations for~~
25 ~~any amendments to the requirements of this Section 207(c)(4).~~

1 * * * *

2 (6) The exception to Dwelling Unit density limits for certain Accessory Dwelling
3 Units under the State-Mandated Accessory Dwelling Unit Program are contained in Section
4 207.2 of this Code. ~~*Accessory Dwelling Units – State Mandated Program: Accessory Dwelling Units*~~
5 ~~*in Existing or Proposed Dwellings or in a Detached Structure on the Same Lot.*~~

6 ——— (A) — ~~*Applicability. This subsection 207(e)(6) shall apply to the construction of ADUs*~~
7 ~~*and Junior Accessory Dwelling Units (“JADUs”) (as defined in Section 102) in existing or proposed*~~
8 ~~*dwellings, or in a detached structure on the same lot, if the ADU meets the applicable requirements of*~~
9 ~~*this subsection 207(e)(6). An ADU constructed pursuant to this subsection is considered a residential*~~
10 ~~*use that is consistent with the General Plan and the zoning designation for the lot. Adding an ADU or*~~
11 ~~*JADU in compliance with this subsection 207(e)(6) does not exceed the allowable density for the lot.*~~
12 ~~*Unless otherwise specified, for purposes of this subsection 207(e)(6), a “detached” structure or ADU*~~
13 ~~*shall not share structural walls with either the primary structure or any other structure on the lot. If*~~
14 ~~*construction of the ADU will not meet the requirements of this subsection, the ADU is regulated*~~
15 ~~*pursuant to subsection 207(e)(4) and not this subsection 207(e)(6).*~~

16 ——— (B) — ~~*General Controls on Construction. An ADU constructed pursuant to this*~~
17 ~~*subsection (e)(6) shall meet all of the following:*~~

18 ——— (i) — ~~*The ADU must have independent exterior access from the existing or*~~
19 ~~*proposed primary dwelling or existing accessory structure, and side and rear setbacks sufficient for fire*~~
20 ~~*safety.*~~

21 ——— (ii) — ~~*For projects involving a property listed in the California Register of*~~
22 ~~*Historic Places, or a property designated individually or as part of a historic or conservation district*~~
23 ~~*pursuant to Article 10 or Article 11, the ADU or JADU shall comply with any architectural review*~~
24 ~~*standards adopted by the Historic Preservation Commission to prevent adverse impacts to such historic*~~
25

1 ~~resources. Such projects shall not be required to obtain a Certificate of Appropriateness or a Permit to~~
2 ~~Alter.~~

3 ~~————— (iii) — All applicable requirements of San Francisco’s health and safety codes~~
4 ~~shall apply, including but not limited to the Building and Fire Codes.~~

5 ~~————— (iv) — No parking is required for the ADU.~~

6 ~~————— (C) — **Specific Controls for Ministerial ADUs.** The purpose of this subsection~~
7 ~~207(e)(6)(C) is to implement California Government Code Sections 65852.2(e) and 65852.22, which~~
8 ~~requires ministerial consideration of ADUs and JADUs that meet certain standards (“Ministerial~~
9 ~~ADUs”). ADUs and JADUs shall strictly meet the requirements set forth in this subsection (e)(6)(C)~~
10 ~~without requiring a waiver of Code requirements pursuant to subsection (e)(4)(G). The City shall~~
11 ~~approve ADUs and JADUs meeting the following requirements, in addition to the requirements of~~
12 ~~subsection 207(e)(6)(B) and any other applicable standards:~~

13 ~~————— (i) — **ADUs and JADUs within proposed space of a proposed single-family**~~
14 ~~**dwelling or within existing space of a single-family dwelling or accessory structure meeting the**~~
15 ~~**following conditions:**~~

16 ~~————— a. — The lot on which the ADU or JADU is proposed contains an~~
17 ~~existing or proposed single-family dwelling.~~

18 ~~————— b. — Only one ADU and one JADU is permitted per lot.~~

19 ~~————— c. — Each proposed ADU and JADU includes an entrance that is~~
20 ~~separate from the entrance to the existing or proposed dwelling.~~

21 ~~————— d. — Side and rear setbacks will be sufficient for fire safety.~~

22 ~~————— e. — If an ADU is proposed, it will be within the existing space of a~~
23 ~~single-family dwelling or accessory structure, or within the space of a proposed single-family dwelling,~~
24 ~~or it will require an addition of no more than 150 square feet to an existing accessory structure to~~
25 ~~accommodate ingress and egress.~~

1 ~~————— (iv) — Detached, new construction ADUs on lot containing multifamily~~
2 ~~dwelling meeting the following conditions:~~

3 ~~————— a. — The lot on which the ADU is proposed contains an existing~~
4 ~~multifamily dwelling.~~

5 ~~————— b. — The proposed ADU is detached from the multifamily dwelling.~~

6 ~~————— c. — The proposed ADU is located at least four feet from the side and~~
7 ~~rear lot lines and has a height no greater than eighteen feet.~~

8 ~~————— d. — No more than two ADUs shall be permitted per lot pursuant to~~
9 ~~this subsection 207(e)(6)(C)(iv).~~

10 ~~————— (D) — **Specific Controls for Streamlined ADUs.** The purpose of this subsection~~
11 ~~207(e)(6)(D) is implement California Government Code Sections 65852.2(a) through (d), which~~
12 ~~requires streamlined, ministerial approval of ADUs meeting certain standards (“Streamlined ADUs”).~~
13 ~~An ADU located on a lot that is zoned for single-family or multifamily use and contains an existing or~~
14 ~~proposed dwelling, and that is constructed pursuant to this subsection 207(e)(6)(D), shall meet all of~~
15 ~~the following requirements, in addition to the requirements of subsection 207(e)(6)(B) and any other~~
16 ~~applicable standards. Provided, however, that the City shall not impose limits on lot coverage, floor~~
17 ~~area ratio, open space, and minimum lot size, for either attached or detached dwellings, that does not~~
18 ~~permit construction of an ADU meeting all other requirements that is 800 square feet or less in Gross~~
19 ~~Floor Area, 16 feet or less in height, and with four foot side and rear yard setbacks. ADUs under this~~
20 ~~subsection 207(e)(6)(D) shall meet the following conditions:~~

21 ~~(i) — Only one ADU will be constructed.~~

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

24 ~~(iii) — The lot on which the ADU is proposed does not contain another ADU or~~
25 ~~JADU.~~

1 ~~————— (iv) — The ADU is either a. attached to or will be constructed entirely within the~~
2 ~~proposed or existing primary dwelling, including attached garages, storage areas, or similar uses, or~~
3 ~~an accessory structure on the same lot, or b. attached to or will be constructed entirely within a~~
4 ~~proposed or legally existing detached structure on the same lot, or c. detached from the proposed or~~
5 ~~existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.~~

6 ~~————— (v) — If there is an existing primary dwelling, the Gross Floor Area of an~~
7 ~~attached ADU that provides one bedroom or less shall not exceed 50 percent of the Gross Floor Area~~
8 ~~of the existing primary dwelling or 850 square feet, whichever is greater. If there is an existing primary~~
9 ~~dwelling, the Gross Floor Area of an attached ADU that provides more than one bedroom shall not~~
10 ~~exceed 50 percent of the Gross Floor Area of the existing primary dwelling or 1,000 square feet,~~
11 ~~whichever is greater.~~

12 ~~————— (vi) — The Gross Floor Area of a detached ADU that provides one bedroom or~~
13 ~~less shall not exceed 850 square feet. The Gross Floor Area of a detached ADU that provides more~~
14 ~~than one bedroom shall not exceed 1,000 square feet.~~

15 ~~————— (vii) — **Setbacks.** No setback is required for an ADU located within an existing~~
16 ~~living area or an existing accessory structure, or an ADU that replaces an existing structure and is~~
17 ~~located in the same location and constructed to the same dimensions as the structure being replaced. A~~
18 ~~setback of no more than four feet from the side and rear lot lines shall be required for an ADU that is~~
19 ~~not converted from either an existing structure or a new structure constructed in the same location and~~
20 ~~to the same dimensions as an existing structure.~~

21 ~~————— (viii) — When a garage, carport, or covered parking structure is demolished in~~
22 ~~conjunction with the construction of an ADU or converted to an ADU, replacement of those offstreet~~
23 ~~parking spaces is not required.~~

24 ~~————— (ix) — The ADU shall not exceed a height of 16 feet.~~

25

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

7 ~~————— (i) ——— Comply with the requirements of the Building Code and applicable~~
8 ~~Department of Building Inspection screening forms, and submit a copy of any applicable Department of~~
9 ~~Building Inspection Screening forms to the Planning Department as part of the application to construct~~
10 ~~an ADU or JADU; or~~

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

22 ~~————— (F) ——— Permit Application Review and Approval. The City shall act on an application~~
23 ~~for a permit to construct an ADU or JADU under this subsection 207(c)(6) within 60 days from receipt~~
24 ~~of the complete application, without modification or disapproval, if the proposed construction fully~~
25 ~~complies with the requirements set forth in this subsection 207(c)(6). No requests for discretionary~~

1 *review shall be accepted by the Planning Department for permit applications meeting the requirements*
2 *of this subsection 207(e)(6). The Planning Commission shall not hold a public hearing for*
3 *discretionary review of permit applications meeting the requirements of this subsection 207(e)(6).*
4 *Permit applications meeting the requirements of this subsection 207(e)(6) shall not be subject to the*
5 *notification or review requirements of Section 311 of this Code.*

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

9 ~~—— (H) — **Prohibition of Short-Term Rentals.** An ADU or JADU authorized under this~~
10 ~~subsection 207(e)(6) shall not be used for Short-Term Residential Rentals under Chapter 41A of the~~
11 ~~Administrative Code. This restriction shall be recorded as a Notice of Special Restriction on the subject~~
12 ~~lot.~~

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

16 ~~—— (i) — An ADU or JADU constructed pursuant to this subsection 207(e)(6) may~~
17 ~~be rented and is subject to all applicable provisions of the Residential Rent Stabilization and~~
18 ~~Arbitration Ordinance (Chapter 37 of the Administrative Code).~~

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

1 ~~————— (iii) — The size and attributes of a JADU constructed pursuant to this subsection~~
2 ~~207(e)(6) shall comply with the requirements of this subsection 207(e)(6) and Government Code~~
3 ~~65852.22.~~

4 ~~————— (J) — **Department Report.** In addition to the information required by subsection~~
5 ~~207(e)(4)(I)(iii), the annual Housing Inventory shall include a description and evaluation of the~~
6 ~~number and types of units being developed pursuant to this subsection (e)(6), their affordability rates,~~
7 ~~and such other information as the Director or the Board of Supervisors determines would inform~~
8 ~~decision makers and the public.~~

9 ~~(K) — **Fees.** No impact fees shall be imposed on ADUs or JADUs authorized under this~~
10 ~~subsection 207(e)(6), where the ADU or JADU is smaller than seven hundred and fifty square feet of~~
11 ~~Gross Floor Area, or for ADUs that are proposed in lots with three existing units or fewer. Impact fees~~
12 ~~for all other ADUs shall be imposed proportionately in relation to the Gross Floor Area of the primary~~
13 ~~dwelling unit.~~

14 * * * *

15 **SEC. 207.1 LOCAL ACCESSORY DWELLING UNIT PROGRAM.**

16 **(a) Exception to Dwelling Unit Density Limits for Certain Accessory Dwelling**
17 **Units Under City’s Local Program.** An exception to the calculations under Section 207 of
18 this Code shall be made for Accessory Dwelling Units (“ADUs”), as defined in Section 102 of
19 this Code, meeting the requirements of this Section 207.1.

20 **(b) Applicability.** This Section 207.1 shall apply to the construction of ADUs on all
21 lots located within the City and County of San Francisco in areas that allow residential use,
22 except ADUs regulated by the State-Mandated Program under Section 207.2 of this Code.

23 **(c) Controls on Construction.** An ADU regulated by this Section 207.1 is
24 permitted to be constructed in an existing or proposed building under the following conditions:

1 (1) For lots that have four existing Dwelling Units or fewer, or where the
2 zoning would permit the construction of four or fewer Dwelling Units, one ADU is permitted.
3 For lots that have more than four existing Dwelling Units or are undergoing seismic retrofitting
4 under subsection 207.1(f) below, or where the zoning would permit the construction of more
5 than four Dwelling Units, there is no limit on the number of ADUs permitted, as long as all
6 other health and safety requirements are met.

7 (2) The Department shall not approve an application for construction of an
8 ADU where a tenant on the lot was evicted pursuant to Administrative Code Sections
9 37.9(a)(9) through (a)(12) and 37.9(a)(14) under a notice of eviction served within 10 years
10 prior to filing the application for a building permit to construct the ADU, or where a tenant was
11 evicted pursuant to Administrative Code Section 37.9(a)(8) under a notice of eviction served
12 within five years prior to filing the application for a building permit to construct the ADU. This
13 subsection (c)(2) shall not apply if the tenant was evicted under Section 37.9(a)(11) or
14 37.9(a)(14) and the applicant(s) either (A) have certified that the original tenant reoccupied the
15 unit after the temporary eviction or (B) have submitted to the Department and to the
16 Residential Rent Stabilization and Arbitration Board (Rent Board) a declaration from the
17 property owner or the tenant certifying that the property owner notified the tenant of the
18 tenant's right to reoccupy the unit and the tenant chose not to reoccupy it.

19 (3) Prior to submitting an application to construct an ADU under this Section
20 207.1, the property owner shall file with the Rent Board a written declaration, signed under
21 penalty of perjury, demonstrating that the project will comply with the requirements of
22 Administrative Code Sections 37.2(r) and 37.9 relating to severance, substantial reduction, or
23 removal of a housing service. The Rent Board shall determine the form and content of said
24 declaration, which shall include the following information: (1) a description of any housing
25 services supplied in connection with the use or occupancy of any units on the subject property

1 that are located in the area of the property or building where the ADU would be constructed;
2 (2) whether construction of the ADU would result in the severance, substantial reduction, or
3 removal of any such housing services; and (3) whether any of the just causes for eviction
4 under Administrative Code Section 37.9(a) would apply. The property owner shall also file a
5 copy of the notice required under Section 207.1(j) with the declaration.

6 (4) Tenants at the subject property may contest the information in the
7 declaration required by subsection 207.1(c)(3) by petitioning for a written determination from
8 the Rent Board verifying the presence and defining characteristics of the housing service or
9 services in question, and whether any such housing services would be severed, substantially
10 reduced, or removed by the project as proposed. Petitions must be filed with the Rent Board
11 within 30 calendar days after the notice required under Section 207.1(j) has been provided. If
12 no such petition is timely filed, the Rent Board shall promptly transmit the declaration to the
13 Planning Department. If any such petition is timely filed, the Rent Board shall endeavor to
14 transmit the declaration and its final written determination on the petition to the Planning
15 Department within 90 calendar days of receipt of said petition. The Department shall not
16 approve an application to construct an ADU under this Section 207.1 unless (1) the Rent
17 Board has transmitted the declaration and final written determination required by subsections
18 (c)(3) and (c)(4), and (2) the materials transmitted by the Rent Board indicate that construction
19 of the ADU would not result in the severance, substantial reduction, or removal without just
20 cause of any tenant housing service set forth in Administrative Code Section 37.2(r) that is
21 supplied in the area of the property or building where the ADU would be constructed, unless
22 the property owner demonstrates that the tenant supplied with that housing service has given
23 their express written consent for the severance, substantial reduction, or removal of the
24 housing service.

1 (5) Except as provided in subsections (6), (7), and (8) below, an ADU shall
2 be constructed a. entirely within the buildable area of an existing lot, provided that the ADU
3 does not include a vertical addition, or b. within the built envelope of an existing and
4 authorized detached garage, storage structure, or other detached structure on the same lot.
5 For purposes of this subsection 207(c)(4), a “detached” structure or ADU shall not share
6 structural walls with either the primary structure or any other structure on the lot. For purposes
7 of this subsection 207(c)(5), the “built envelope” shall include the open area under an existing
8 and authorized cantilevered room or room built on columns; decks, except for decks that are
9 supported by columns or walls other than the building wall to which they are attached and are
10 multi-level or more than 10 feet above grade; and lightwell infills provided that the infill will be
11 against a blank neighboring wall at the property line and not visible from any off-site location;
12 as these spaces exist as of July 11, 2016. An ADU constructed entirely within the existing built
13 envelope, as defined in this subsection 207(c)(5), along with permitted obstructions allowed in
14 Section 136(c)(32), of an existing building or authorized detached structure on the same lot, or
15 where an existing detached garage or storage structure has been expanded to add dormers,
16 is exempt from the notification requirements of Section 311 of this Code unless the existing
17 building or authorized detached structure on the same lot is an Article 10 or Article 11
18 individual landmark or is in an Article 10 or Article 11 District, in which case the notification
19 requirements will apply. If an ADU will be constructed under a cantilevered room or deck that
20 encroaches into the required rear yard, a pre-application meeting that complies with the
21 Planning Commission’s Pre-Application policy is required.

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

25

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

5 (8) ADUs shall comply with any applicable controls in Planning Code Section
6 134(f).

7 (9) An ADU shall not be constructed using space from an existing Dwelling
8 Unit, except that an ADU may expand into habitable space on the ground or basement floors
9 provided that it does not exceed 25% of the total gross square footage of such space on the
10 ground and basement floors. The Zoning Administrator may waive this 25% limitation if (1) the
11 resulting space would not be usable or would be impractical to use for other reasonable uses,
12 including, but not limited to, storage or bicycle parking or (2) waiving the limitation would help
13 relieve any negative layout issues for the proposed ADU.

14 (10) An existing building undergoing seismic retrofitting may be eligible for a
15 height increase pursuant to subsection 207.1(f) below.

16 (11) Notwithstanding any other provision of this Code, an ADU authorized
17 under this Section 207.1 may not be merged with an original unit(s).

18 (12) An ADU shall not be permitted in any building in a Neighborhood
19 Commercial District or in the Chinatown Community Business or Visitor Retail Districts if it
20 would eliminate or reduce a ground-story retail space, unless the Accessory Dwelling Unit is a
21 Designated Child Care Unit, as defined in Section 102, and meets all applicable standards of
22 Planning Code Section 414A.6(e).

23 (13) An Accessory Dwelling Unit shall not be permitted under this subsection
24 (c)(4) if it would result in the reduction or removal of on-site laundry service, unless that
25

1 laundry service is replaced with at least the same number or capacity of washers and dryers
2 within the same building and as accessible as before to all building tenants.

3 (14) An application for a permit solely to construct an ADU in a proposed
4 building pursuant to this subsection 207.1(c) shall not be subject to the notification
5 requirements of Section 311 of this Code; however, any application for a permit to construct
6 the proposed building shall be subject to any applicable notification requirements of Section
7 311 of this Code.

8 (15) In addition to any ADUs permitted under this Section 207.1 within the
9 primary structure, one detached ADU shall be permitted within the required rear yard if it
10 complies with the following requirements:

11 (A) The proposed ADU is located at least four feet from the side and
12 rear lot lines and has a height no greater than sixteen feet.

13 (B) The Gross Floor Area of a detached ADU that provides one
14 bedroom or less shall not exceed 850 square feet. The Gross Floor Area of a detached ADU
15 that provides more than one bedroom shall not exceed 1,000 square feet.

16 (d) **Prohibition of Short-Term Rentals.** An ADU shall not be used for Short-Term
17 Residential Rentals under Chapter 41A of the Administrative Code, which restriction shall be
18 recorded as a Notice of Special Restriction on the subject lot.

19 (e) **Restrictions on Subdivisions.** Notwithstanding the provisions of Article 9 of
20 the Subdivision Code, a lot with an ADU authorized under this Section 207.1 shall not be
21 subdivided in a manner that would allow for the ADU to be sold or separately financed
22 pursuant to any condominium plan, housing cooperative, or similar form of separate
23 ownership. This prohibition on separate sale or finance of the ADU shall not apply to an ADU
24 in a building that consisted entirely of condominium units as of July 11, 2013, and has had no
25 evictions pursuant to Sections 37.9(a) through 37.9(a)(12) and 37.9(a)(14) of the

1 Administrative Code since July 11, 1996. This prohibition on separate sale or finance of the
2 ADU shall not apply to an ADU that meets the requirements of California Government Code
3 Section 65852.26.

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

10 (1) Shall be exempt from the notification requirements of Section 311 of this
11 Code; and

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

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

22 (4) Pursuant to subsection 207.1(c)(1), there is no limit on the number of
23 ADUs that are permitted to be added in connection with a seismic retrofit, as long as all health
24 and safety requirements are met.

1 (g) **Waiver of Code Requirements; Applicability of Rent Ordinance.** Pursuant to
2 the provisions of Section 307(l) of this Code, the Zoning Administrator may grant a complete
3 or partial waiver of the density limits and bicycle parking, rear yard, exposure, or open space
4 standards of this Code for ADUs constructed within an existing building, and may grant a
5 waiver of the density limits of this Code for ADUs constructed within a proposed building. If
6 the Zoning Administrator grants a complete or partial waiver of the requirements of this Code
7 and the subject lot contains any Rental Units at the time an application for a building permit is
8 filed for construction of the ADU(s), the property owner(s) shall enter into a Regulatory
9 Agreement with the City under subsection 207.1(h) subjecting the ADU(s) to the San
10 Francisco Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the
11 Administrative Code) as a condition of approval of the ADU(s). For purposes of this
12 requirement, Rental Units shall be as defined in Section 37.2(r) of the Administrative Code.

13 (h) **Regulatory Agreements.** A Regulatory Agreement required by subsection
14 207.1(g) as a condition of approval of an Accessory Dwelling Unit shall contain the following:

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

21 (2) a description of the complete or partial waiver of Code requirements
22 granted by the Zoning Administrator or other direct financial contribution or form of assistance
23 provided to the property owner; and

24 (3) a description of the remedies for breach of the Agreement and other
25 provisions to ensure implementation and compliance with the Agreement.

1 (4) The property owner and the Planning Director (or the Director's
2 designee), on behalf of the City, will execute the Agreement, which shall be reviewed and
3 approved by the City Attorney's Office. The Agreement shall be executed prior to the City's
4 issuance of the First Construction Document for the project, as defined in Section 107A.13.1
5 of the San Francisco Building Code.

6 (5) Following execution of the Regulatory Agreement by all parties and
7 approval by the City Attorney, the Regulatory Agreement or a memorandum thereof shall be
8 recorded against the property and shall be binding on all future owners and successors in
9 interest.

10 Any Regulatory Agreement entered into under this Section 207.1 shall not preclude a
11 landlord from establishing the initial rental rate pursuant to Section 1954.53 of the Costa
12 Hawkins Rental Housing Act.

13 (i) **Monitoring Program.**

14 (1) **Monitoring and Enforcement of Unit Affordability.** The Department
15 shall establish a system to monitor the affordability of the Accessory Dwelling Units authorized
16 to be constructed by this Section 207.1 and shall use such data to enforce the requirements of
17 the Regulatory Agreements entered into pursuant to subsection 207.1(h). Property owners
18 shall provide the Department with rent information as requested by the Department. The
19 Board of Supervisors recognizes that property owners and tenants generally consider rental
20 information sensitive and do not want it publicly disclosed. The intent of the Board is for the
21 Department to obtain the information for purposes of monitoring and enforcement but that its
22 public disclosure is not linked to specific individuals or units. The Department shall consult
23 with the City Attorney's Office with respect to the legal requirements to determine how best to
24 achieve the intent of the Board.

1 (2) **Monitoring of Prohibition on Use as Short Term Rentals.** The

2 Department shall collect data on the use of ADUs authorized to be constructed by this Section
3 207.1 as Short-Term Residential Rentals, as that term is defined in Administrative Code
4 Section 41A.4, and shall use such data to evaluate and enforce Notices of Special Restriction
5 pursuant to Section 207.1(d) and the requirements of Administrative Code Chapter 41A.

6 (3) **Department Report.** As part of the annual Housing Inventory, the

7 Department shall report the types of units being developed pursuant to this subsection 207.1,
8 their affordability rates, their use as Short-Term Residential Rentals, and such additional
9 information as the Director or the Board of Supervisors determines would inform decision
10 makers and the public on the effectiveness and implementation of this Section 207.1, and
11 shall include recommendations for any amendments to the requirements of this Section 207.1.

12
13 **SEC. 207.2 STATE MANDATED ACCESSORY DWELLING UNIT PROGRAM.**

14 (a) **Exception to Dwelling Unit Density Limits for Certain Accessory Dwelling**
15 **Units Under the State-Mandated Program.** An exception to the calculations under Section
16 207 of this Code shall be made for Accessory Dwelling Units (“ADUs”) and Junior Accessory
17 Dwelling Units (“JADUs”), as defined in Section 102 of this Code, meeting the requirements of
18 this Section 207.2. The purpose of this Section 207.2 is to implement California Government
19 Code Sections 65852.2 and 65852.22, which require ministerial consideration of ADUs and
20 JADUs that meet certain standards.

21 (b) **Applicability.** This Section 207.2 shall apply to the construction of ADUs and
22 JADUs in existing or proposed dwellings, or in a detached structure on the same lot, if the
23 ADU meets the applicable requirements of this Section 207.2. An ADU constructed pursuant
24 to this Section is considered a residential use that is consistent with the General Plan and the
25 zoning designation for the lot. Adding an ADU or JADU in compliance with this Section 207.2

1 does not exceed the allowable density for the lot. Unless otherwise specified, for purposes of
2 this subsection Section 207.2, a “detached” structure or ADU shall not share structural walls
3 with the primary structure on the lot. If construction of the ADU will not meet the requirements
4 of this Section, the ADU is regulated pursuant to Section 207.1 and not this Section 207.2.

5 (c) **General Controls on Construction.** An ADU constructed pursuant to this
6 Section 207.2 shall meet all of the following:

7 (1) The ADU must have independent exterior access from the existing or
8 proposed primary dwelling or existing accessory structure, and side and rear setbacks
9 sufficient for fire safety.

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

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

18 (4) No parking is required for the ADU.

19 (d) **Specific Controls for Hybrid ADUs.** The purpose of this subsection 207.2(d)
20 is to implement California Government Code Sections 65852.2(e) and 65852.22, which
21 require ministerial consideration of ADUs and JADUs that meet certain standards (“Hybrid
22 ADUs”). California Government Code Section 65852.2(e)(7) authorizes the City to impose
23 objective standards, including, but not limited to, design, development, and historic standards,
24 on ADUs approved under this subsection 207.2(d). ADUs and JADUs shall strictly meet the
25 requirements set forth in this subsection 207.2(d) without requiring a waiver of Code

1 requirements pursuant to subsection 207.1(g). The City shall approve ADUs and JADUs
2 meeting the following requirements, in addition to the requirements of subsection 207.2(b) and
3 any other applicable standards:

4 (1) ADUs and JADUs within proposed space of a proposed single-
5 family dwelling or within existing space of a single-family dwelling or accessory
6 structure meeting the following conditions:

7 (A) The lot on which the ADU or JADU is proposed contains an
8 existing or proposed single-family dwelling.

9 (B) Only one ADU and one JADU is permitted per lot.

10 (C) Each proposed ADU and JADU includes an entrance that is
11 separate from the entrance to the existing or proposed dwelling.

12 (D) Side and rear setbacks will be sufficient for fire safety.

13 (E) If an ADU is proposed, it will be within the existing space of a
14 single-family dwelling or accessory structure, or within the space of a proposed single-family
15 dwelling, or it will require an addition of no more than 150 square feet to an existing accessory
16 structure to accommodate ingress and egress.

17 (F) If a JADU is proposed, it meets the requirements of Planning Code
18 Section 102 and California Government Code Section 65852.22.

19 (2) Detached, new construction ADUs on lot containing a proposed or
20 existing single-family dwelling meeting the following conditions:

21 (A) The lot on which the detached ADU is proposed contains an
22 existing or proposed single-family dwelling.

23 (B) The lot on which the ADU is proposed does not contain another
24 ADU, but may contain a JADU.

1 (C) The proposed ADU is detached from the single-family dwelling and
2 any other structure.

3 (D) The proposed ADU is new construction.

4 (E) The proposed ADU is located at least four feet from the side and
5 rear lot lines, is no greater than 800 square feet in Gross Floor Area, and does not exceed the
6 applicable height limit contained in subsection 207.2(e)(9).

7 **(3) ADUs within existing space of a multifamily dwelling meeting the**
8 **following conditions:**

9 (A) The lot on which the ADU is proposed contains an existing
10 multifamily dwelling.

11 (B) The ADU is proposed within a portion of the multifamily dwelling
12 structure that is not used as livable space, including but not limited to storage rooms, boiler
13 rooms, passageways, attics, basements, or garages.

14 (C) The total number of ADUs within the dwelling structure would not
15 exceed twenty-five percent of the existing number of primary dwelling units within the
16 structure, provided that all multifamily dwelling structures shall be permitted to have at least
17 one ADU pursuant to this subsection 207.2(d)(3) if all other applicable standards are met.

18 **(4) Detached, new construction ADUs on lot containing a proposed or**
19 **existing multifamily dwelling meeting the following conditions:**

20 (A) The lot on which the ADU is proposed contains a proposed or
21 existing multifamily dwelling.

22 (B) The proposed ADU is detached from the multifamily dwelling.

23 (C) The proposed ADU is located at least four feet from the side and
24 rear lot lines, except that if the existing multifamily dwelling has a side or rear setback of less
25 than four feet, modification of the existing multifamily dwelling shall not be required as a

1 condition of approving a proposed ADU that otherwise satisfies the requirements of this
2 subsection 207.2(c)(4).

3 (D) The proposed ADU does not exceed the applicable height limit
4 contained in subsection 207.2(e)(9).

5 (E) No more than two ADUs shall be permitted per lot pursuant to this
6 subsection 207.2(c)(4).

7 (e) **Specific Controls for State ADUs.** The purpose of this subsection 207.2(d) is
8 implement California Government Code Sections 65852.2(a) through (d), which require
9 streamlined, ministerial approval of ADUs meeting certain standards (“State ADUs”). An ADU
10 located on a lot that is zoned for single-family or multifamily use and contains an existing or
11 proposed dwelling, and that is constructed pursuant to this subsection 207.2(e), shall meet all
12 of the following requirements, in addition to the requirements of subsection 207.2(b) and any
13 other applicable standards. Provided, however, that the City shall not impose limits on lot
14 coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either
15 attached or detached dwellings, that does not permit construction of an ADU meeting all other
16 requirements that is 800 square feet or less in Gross Floor Area, 16 feet or less in height, and
17 with four foot side and rear yard setbacks. ADUs under this subsection 207(e) shall meet the
18 following conditions:

19 (1) Only one ADU will be constructed.

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

22 (3) The lot on which the ADU is proposed does not contain another ADU or
23 JADU.

24 (4) The ADU is either (A) attached to or will be constructed entirely within the
25 proposed or existing primary dwelling, including attached garages, storage areas, or similar

1 uses, or an accessory structure on the same lot, or (B) attached to or will be constructed
2 entirely within a proposed or legally existing detached structure on the same lot, or (C)
3 detached from the proposed or existing primary dwelling and located on the same lot as the
4 proposed or existing primary dwelling.

5 (5) If there is an existing primary dwelling, the Gross Floor Area of an
6 attached ADU that provides one bedroom or less shall not exceed 50 percent of the Gross
7 Floor Area of the existing primary dwelling or 850 square feet, whichever is greater. If there is
8 an existing primary dwelling, the Gross Floor Area of an attached ADU that provides more
9 than one bedroom shall not exceed 50 percent of the Gross Floor Area of the existing primary
10 dwelling or 1,000 square feet, whichever is greater.

11 (6) The Gross Floor Area of a detached ADU that provides one bedroom or
12 less shall not exceed 850 square feet. The Gross Floor Area of a detached ADU that provides
13 more than one bedroom shall not exceed 1,000 square feet.

14 (7) **Setbacks.** No setback is required for an ADU located within an existing
15 living area or an existing accessory structure, or an ADU that replaces an existing structure
16 and is located in the same location and constructed to the same dimensions as the structure
17 being replaced. A setback of no more than four feet from the side and rear lot lines shall be
18 required for an ADU that is not converted from either an existing structure or a new structure
19 constructed in the same location and to the same dimensions as an existing structure.

20 (8) **Garages.** When a garage, carport, or covered parking structure is
21 proposed to be demolished in conjunction with the construction of an ADU or converted to an
22 ADU, replacement of those offstreet parking spaces is not required; and a permit to demolish
23 a detached garage that is to be replaced with an ADU shall be reviewed with the application to
24 construct the ADU and issued at the same time.

25 (9) **Height limits.** The ADU shall not exceed the following height limits:

1 (A) A height of 16 feet for a detached ADU on a lot with an existing or
2 proposed dwelling.

3 (B) A height of 18 feet for a detached ADU on a lot with an existing or
4 proposed dwelling that is within one-half of one mile walking distance of a major transit stop or
5 a high-quality transit corridor, as defined in Section 21155 of the California Public Resources
6 Code. An additional two feet in height shall be permitted to accommodate a roof pitch on the
7 ADU that is aligned with the roof pitch of the primary dwelling.

8 (C) A height of 18 feet for a detached ADU on a lot with an existing or
9 proposed multifamily, multi-story dwelling.

10 (D) A height of 25 feet or the applicable height limit for the primary
11 dwelling, whichever is lower, for an ADU that is attached to the primary dwelling, except that
12 the ADU shall not exceed two stories.

13 (f) **Notification requirements for ADUs on a lot containing a proposed or**
14 **existing single-family dwelling.** Prior to submitting an application to construct an ADU or
15 JADU on a lot containing a proposed or existing single-family dwelling under subsection 207.2
16 (e), the property owner shall notify all tenants on the subject property of the application,
17 including tenants of the subject property in unauthorized residential units. The property owner
18 shall satisfy this notification requirement in one of the following two ways.

19 (1) Comply with the requirements of the Building Code and applicable
20 Department of Building Inspection screening forms, and submit a copy of any applicable
21 Department of Building Inspection Screening forms to the Planning Department as part of the
22 application to construct an ADU or JADU; or

23 (2) Cause a notice describing the proposed project to be posted on the
24 subject property for at least 15 days, cause a written notice describing the proposed project to
25 be mailed to the tenants of the subject property, and submit proof of these notices to the

1 Planning Department as part of the application to construct an ADU or JADU. These notices
2 shall have a format and content determined by the Zoning Administrator, and shall generally
3 describe the project, including the number and location of the proposed ADU and JADU.
4 These notices shall describe how to obtain additional information regarding the project and
5 provide contact information for the Planning Department that complies with the requirements
6 of the Language Access Ordinance, Chapter 91 of the Administrative Code, to provide vital
7 information about the Planning Department's services or programs in the languages spoken
8 by a Substantial Number of Limited English Speaking Persons, as defined in Chapter 91.

9 (3) Written and posted notice shall not be required for the demolition of a
10 detached garage that is to be replaced with an ADU, unless the property is located within a
11 historic or conservation district pursuant to Article 10 or Article 11 of this Code.

12 (g) **Permit Application Review and Approval.** No requests for discretionary
13 review shall be accepted by the Planning Department for permit applications meeting the
14 requirements of this Section 207.2. The Planning Commission shall not hold a public hearing
15 for discretionary review of permit applications meeting the requirements of this Section 207.2.
16 Permit applications meeting the requirements of this Section 207.2 shall not be subject to the
17 notification or review requirements of Section 311 of this Code.

18 (h) **Appeal.** The procedures for appeal to the Board of Appeals of a decision by the
19 Department under this Section 207.2 shall be as set forth in Section 8 of the Business and
20 Tax Regulations Code.

21 (i) **Prohibition of Short-Term Rentals.** An ADU or JADU authorized under this
22 Section 207.2 shall not be used for Short-Term Residential Rentals under Chapter 41A of the
23 Administrative Code. This restriction shall be recorded as a Notice of Special Restriction on
24 the subject lot.

1 (j) **Rental; Restrictions on Subdivisions.** The following restrictions shall be
2 recorded as a Notice of Special Restriction on the subject lot on which an ADU or JADU is
3 constructed under this Section 207.2 and shall be binding on all future owners and successors
4 in interest:

5 (1) An ADU or JADU constructed pursuant to this subsection 207.2 may be
6 rented and is subject to all applicable provisions of the Residential Rent Stabilization and
7 Arbitration Ordinance (Chapter 37 of the Administrative Code).

8 (2) Notwithstanding the provisions of Article 9 of the Subdivision Code, a lot
9 with an ADU or JADU authorized under this Section 207.2 shall not be subdivided in a manner
10 that would allow for the ADU or JADU to be sold or separately financed pursuant to any
11 condominium plan, housing cooperative, or similar form of separate ownership, except that
12 this prohibition on separate sale or finance of the ADU shall not apply to an ADU that meets
13 the requirements of California Government Code Section 65852.26.

14 (3) The size and attributes of a JADU constructed pursuant to this Section
15 207.2 shall comply with the requirements of this Section 207.2 and Government Code
16 65852.22.

17 (j) **Department Report.** In addition to the information required by subsection
18 207.1(i)(3), the annual Housing Inventory shall include a description and evaluation of the
19 number and types of units being developed pursuant to this Section 207.2, their affordability
20 rates, and such other information as the Director or the Board of Supervisors determines
21 would inform decision makers and the public.

22 (k) **Fees.** No impact fees shall be imposed on ADUs or JADUs authorized under
23 this subsection 207.2, where the ADU or JADU is smaller than seven hundred and fifty square
24 feet of Gross Floor Area, or for ADUs that are proposed in lots with three existing units or
25

1 fewer. Impact fees for all other ADUs shall be imposed proportionately in relation to the Gross
2 Floor Area of the primary dwelling unit.

3
4 **SEC. 1005. CONFORMITY AND PERMITS.**

5 * * * *

6 (e) After receiving a permit application from the Central Permit Bureau in accordance
7 with the preceding subsection, the Department shall ascertain whether a Certificate of
8 Appropriateness is required or has been approved for the work proposed in such permit
9 application. If a Certificate of Appropriateness is required and has been issued, and if the
10 permit application conforms to the work approved in the Certificate of Appropriateness, the
11 permit application shall be processed without further reference to this Article 10. If a
12 Certificate of Appropriateness is required and has not been issued, or if the permit application
13 does not conform to what was approved, the permit application shall be disapproved or held
14 by the Department until such time as conformity does exist either through modifications to the
15 proposed work or through the issuance of an amended or new Certificate of Appropriateness.
16 Notwithstanding the foregoing, in the following cases the Department shall process the permit
17 application without further reference to this Article 10:

18 * * * *

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

22 (10) When the application is for a permit to construct an Accessory Dwelling Unit
23 or Junior Accessory Dwelling Unit, provided that the Accessory Dwelling Unit or Junior
24 Accessory Dwelling Unit conforms to the requirements of subsection 207.2(~~e~~)(6) of this Code.

25 * * * *

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2 **SEC. 1110. CONSTRUCTION, ALTERATION OR DEMOLITION OF SIGNIFICANT**
3 **OR CONTRIBUTORY BUILDINGS OR BUILDINGS IN CONSERVATION DISTRICTS.**

4 * * * *

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

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

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

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

19 (4) When the application is for a permit to construct an Accessory Dwelling Unit
20 or Junior Accessory Dwelling Unit, provided that the Accessory Dwelling Unit or Junior
21 Accessory Dwelling Unit conforms to the requirements of subsection 207.2(e)(6) of this Code.

22
23 Section 3. Articles 1, 2, 3, 7, and 8 of the Planning Code are hereby amended by
24 replacing all references to Planning Code "subsection 207(c)(4)" and "section 207(c)(4)" in
25 each of the Sections listed below with the term "Section 207.1":

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Section 4. Articles 1, 2, 3, 7, and 8 of the Planning Code are hereby amended by replacing all references to Planning Code “subsection 207(c)(6)” and “section 207(c)(6)” in each of the Sections listed below with the term “Section 207.2”:

Section 5. The Administrative Code is hereby amended by revising Section 37.2, to read as follows:

SEC. 37.2. DEFINITIONS.

* * * *

(r) Rental Units. All residential dwelling units in the City together with the land and appurtenant buildings thereto, and all housing services, privileges, furnishings, and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities.

Garage facilities, parking facilities, driveways, storage spaces, laundry rooms, decks, patios, or gardens on the same lot, or kitchen facilities or lobbies in single room occupancy (SRO) hotels, supplied in connection with the use or occupancy of a unit, may not be severed from the tenancy by the landlord without just cause as required by Section 37.9(a). Any severance, substantial reduction or removal of a housing service, even if permitted under Section 37.9(a), shall be offset by a corresponding reduction in rent. Either a landlord or a tenant may file a petition with the Rent Board to determine the amount of the rent reduction. In addition, a tenant may petition the Rent Board for a determination on whether an Accessory Dwelling Unit proposed to be constructed under Planning Code Section 207.1(e)(4) would sever, substantially reduce, or remove a housing service, pursuant to the procedures

1 set forth in subsection 207.1(e)(4)(C)(iii). The issuance of a permit for construction of an
2 Accessory Dwelling Unit does not, in and of itself, constitute a just cause for the purpose of
3 severing a housing service.

4 Notwithstanding the preceding paragraph, a landlord may temporarily sever one or
5 more housing services listed in that paragraph in order to perform seismic work required by
6 Building Code "Mandatory Earthquake Retrofit of Wood-Frame Buildings" ("mandatory
7 seismic work") if: (1) the landlord has given the notice to temporarily sever as required by
8 Administrative Code Section 65A.2; (2) the landlord has obtained all necessary permits on or
9 before the date the notice to temporarily sever is given; (3) the housing service(s) will only be
10 severed for the minimum time required to complete the mandatory seismic work and in no
11 event for a longer period than provided by Building Code Section 106A.4.4, Table B; and (4)
12 the temporarily severed housing service(s) will be fully restored immediately upon completion
13 of the mandatory seismic work. For such temporary severance of one or more of the specified
14 housing services due to mandatory seismic work required by Building Code Chapter 34B,
15 tenants will not be entitled to a reduction in rent, but tenants shall be entitled to either
16 compensation or a substitute housing service as provided in Administrative Code Chapter
17 65A.

18 The term "rental units" shall not include:

19 * * * *

20 (4) Except as provided in subsections (A)-(E), dwelling units whose rents are
21 controlled or regulated by any government unit, agency, or authority, excepting those
22 unsubsidized and/or unassisted units which are insured by the United States Department of
23 Housing and Urban Development; provided, however, that units in unreinforced masonry
24 buildings which have undergone seismic strengthening in accordance with Building Code
25 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the

1 ordinance is not in conflict with the seismic strengthening bond program or with the program's
2 loan agreements or with any regulations promulgated thereunder;

3 * * * *

4 (D) The term "rental units" shall include (i) Accessory Dwelling Units
5 constructed pursuant to Section 207.1(e)(4) of the Planning Code and that have received a
6 complete or partial waiver of the density limits and the parking, rear yard, exposure, or open
7 space standards from the Zoning Administrator pursuant to Planning Code Section 307(l), and
8 (ii) New Unit(s) constructed and funded pursuant to Administrative Code Chapter 85.

9 * * * *

10
11 Section 6. The Business and Tax Regulations Code is hereby amended by revising
12 Sections 8 and 26, to read as follows:

13 **SEC. 8. METHOD OF APPEAL TO THE BOARD OF APPEALS.**

14 * * * *

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

17 * * * *

18 (9) Additional Requirements.

19 * * * *

20 (C) Except as otherwise specified in this subsection (e)(9)(C), the Board of
21 Appeals shall fix the time and place of hearing, which shall be not less than 10 nor more than
22 45 days after the filing of said appeal, and shall act thereon not later than 60 days after such
23 filing or a reasonable time thereafter.

24 * * * *

1 (iii) In the case of a decision on a permit application made pursuant to
2 Planning Code Section 207.2, ~~subsection (e)(6)~~, the Board of Appeals shall set the hearing
3 not less than 10 days after the filing of said appeal, shall act thereon not more than 30 days
4 after such filing, and shall not entertain a motion for rehearing.

5
6 **SEC. 26. FACTS TO BE CONSIDERED BY DEPARTMENTS.**

7 * * * *

8 (f) Notwithstanding subsection (a), the provisions of Planning Code Section 207.2,
9 ~~subsection (e)(6)~~, shall govern actions taken on the granting, denial, amendment, suspension,
10 and revocation of permits regulated under that ~~subsection 207.2(e)(6)~~, not the standards set
11 forth in subsection (a) of this Section 26.

12 * * * *

13
14 Section 7. The Building Code is hereby amended by adding Section 106A.1.19, to
15 read as follows:

16 **106A.1.19 State-Mandated Accessory Dwelling Unit Program.** California
17 Government Code Sections 65852.2 and 65852.22 require expedited, ministerial
18 consideration of Accessory Dwelling Units (“ADUs”) and Junior Accessory Dwelling Units
19 (“JADUs”) that meet the requirements of Planning Code Section 207.2.

20 **106A.1.19.1 Permit Application Review and Approval.** The City shall approve or
21 deny an application for a permit to construct an ADU or JADU on a lot containing an existing
22 dwelling within 60 days from receipt of the complete application if the proposed construction
23 fully complies with the requirements set forth in Planning Code Section 207.2 and any other
24 applicable requirements. If the applicant requests a delay, the 60-day time period shall be

1 tolled for the period of the delay. If the City has not approved or denied the completed
2 application within 60 days, the application shall be deemed approved.

3 **106A.1.19.2 Notice of Garage Demolition.** Written and posted notice shall not be
4 required for the demolition of a detached garage that is to be replaced with an ADU, unless
5 the property is located within a historic or conservation district pursuant to Article 10 or Article
6 11 of the Planning Code.

7
8 Section 38. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 49. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 Section 510. Directions to Clerk. The Clerk of the Board of Supervisors is hereby
21 directed to submit a copy of this ordinance to the California Department of Housing and
22 Community Development within 60 days after adoption pursuant to Section 65852.2(h) of the
23 California Government Code.

1 Section 11. Corrected Presentation of Existing Code. On March 20, 2023, the Land
2 Use and Transportation Committee created this ordinance by duplicating Board File No.
3 210585. Ordinance No. 53-23, in Board of Supervisors File No. 210585, took effect on May
4 22, 2023. This ordinance has been updated to accurately represent recent amendments to
5 Sections 102, 136, 207, 1005, and 1110 of the Planning Code enacted by Ordinance No. 53-
6 23 as existing text of the Planning Code. Said revisions do not change the substance of this
7 ordinance.

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

12
13 By: /s/ Peter R. Miljanich
14 PETER R. MILJANICH
15 Deputy City Attorney

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September 7, 2021

Ms. Angela Calvillo, Clerk
Honorable Mayor Breed
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2021-006260PCA:
State-Mandated Accessory Dwelling Unit Controls
Board File No. 210585

Planning Commission Recommendation: **Approval with Modification**

Dear Ms. Calvillo and Mayor Breed,

On September 1, 2021 and September 2, 2021, the Historic Preservation Commission and Planning Commission, respectively, conducted duly noticed public hearings to consider the proposed Ordinance, introduced by Mayor Breed, that would amend the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units meeting certain requirements in single-family and multifamily buildings. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:


Under the Local ADU Program, in addition to ADUs within the primary structure, also allow a detached ADU within the required rear yard, following State law parameters.

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

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

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,



Digitally signed by Daniel
A. Sider
Date: 2021.09.07 11:39:16
-07'00'
Adobe Acrobat version:
2021.005.20058

Daniel A. Sider, AICP
Chief of Staff

for

Aaron D. Starr
Manager of Legislative Affairs

cc: Peter Miljanich, Deputy City Attorney
Andres Power, Policy Director to Mayor Breed
Sophia Kittler, Mayor's Liaison to the Board of Supervisors
Erica Major, Office of the Clerk of the Board

Attachments :

Historic Preservation Commission Resolution
Planning Commission Resolution
Executive Summary



HISTORIC PRESERVATION COMMISSION RESOLUTION NO. 1197

Project Name: State-Mandated Accessory Dwelling Unit Controls
Case Number: 2021-006260PCA [Board File No. 210585]
Initiated by: Mayor Breed / Introduced June 8, 2021
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, (628) 652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION RECOMMENDING APPROVAL WITH MODIFICATION OF A PROPOSED ORDINANCE THAT WOULD AMEND 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; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; AND ADOPTING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on June 8, 2021 Mayor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 210585, which would amend the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units meeting certain requirements in single-family and multifamily buildings;

WHEREAS, the Historic Preservation Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 1, 2021; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2) and 15378; and

WHEREAS, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Commission has reviewed the proposed Ordinance; and

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

MOVED, that the Commission hereby **recommends approval with modification** of the proposed ordinance. The Commission's proposed recommendation is as follows:

1. Under the Local ADU Program, in addition to ADUs within the primary structure, also allow a detached ADU within the required rear yard following State law parameters.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission finds that the proposed Ordinance supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans by increasing the potential for new Accessory Dwelling Units.
2. The Commission finds that the proposed Ordinance will help align the Planning Code with the State Law.
3. The Commission finds that the proposed Ordinance will further streamline the ADU review process and clarify current processes. Such changes will make the City's ADU program more effective and flexible.

General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.5

Consider secondary units in community plans where there is neighborhood support and when other neighborhood goals can be achieved, especially if that housing is made permanently affordable to lower-income households.

OBJECTIVE 3

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

Policy 3.4

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

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

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City’s supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City’s supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an

earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved.

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby RECOMMENDS APPROVAL WITH MODIFICATION of the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 1, 2021.



Jonas P Ionin Digitally signed by Jonas P Ionin
Date: 2021.09.07 09:26:09 -07'00'

Jonas P. Ionin
Commission Secretary

AYES: Wright, Nageswaran, Black, Foley, Johns, So, Matsuda

NOES: None

ABSENT: None

ADOPTED: September 1, 2021

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PLANNING COMMISSION RESOLUTION NO. 20971

Project Name: State-Mandated Accessory Dwelling Unit Controls
Case Number: 2021-006260PCA [Board File No. 210585]
Initiated by: Mayor Breed / Introduced June 8, 2021
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, (628) 652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION APPROVING WITH MODIFICATION A PROPOSED ORDINANCE THAT WOULD AMEND 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; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; AND ADOPTING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on June 8, 2021 Mayor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 210585, which would amend the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units meeting certain requirements in single-family and multifamily buildings;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 2, 2021; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

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

MOVED, that the Planning Commission hereby **approves with modification** the proposed ordinance. The Commission's proposed recommendation is as follows:

1. Under the Local ADU Program, in addition to ADUs within the primary structure, also allow a detached ADU within the required rear yard following State law parameters.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission finds that the proposed Ordinance supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans by increasing the potential for new Accessory Dwelling Units.
2. The Commission finds that the proposed Ordinance will help align the Planning Code with the State Law.
3. The Commission finds that the proposed Ordinance will further streamline the ADU review process and clarify current processes. Such changes will make the City's ADU program more effective and flexible.

General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.5

Consider secondary units in community plans where there is neighborhood support and when other neighborhood goals can be achieved, especially if that housing is made permanently affordable to lower-income households.

OBJECTIVE 3

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

Policy 3.4

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

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

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City’s supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City’s supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an

earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved.

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATION the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 2, 2021.



Jonas P Ionin Digitally signed by Jonas P Ionin
Date: 2021.09.07 09:26:58 -0700

Jonas P. Ionin
Commission Secretary

AYES: Tanner, Diamond, Fung, Imperial, Moore, Koppel

NOES: None

ABSENT: Chan

ADOPTED: September 2, 2021

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EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: September 1, 2021

90-Day Deadline: September 9, 2021

Project Name: State-Mandated Accessory Dwelling Unit Controls
Case Number: 2021-006260PCA [Board File No. 210585]
Initiated by: Mayor Breed / Introduced June 8, 2021
Staff Contact: Veronica Flores, Legislative Affairs
Veronica.Flores@sfgov.org, 628-652-7525
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

Recommendation: Approval

Planning Code Amendment

The proposed Ordinance would amend the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units (ADUs) meeting certain requirements in single-family and multi-family buildings. The changes in the proposed Ordinance are required to bring the Planning Code into compliance with State law.

Before comparing the changes between the Planning Code today and the proposed Ordinance, it is important to understand that there are now two different categories of ADUs under State law. The City is required to act on all these ADUs within 60 days of receipt of a complete application and shall be ministerial. These State-Mandated ADUs have no discretionary action, are not subject to review under the California Environmental Quality Act (CEQA), no subjective design review, and have a shortened appeal window. A brief description is included below to help clarify the comparisons in the following table. In efforts to clarify the different types of ADUs, the names have been simplified since the November 2020 Commission hearings as follows.

- **State Program** (known as Streamlined ADUs in the proposed Ordinance): These ADUs are the most permissive in that the City has no ability to require Code compliance for anything that is not listed in State law; however, State Program ADUs are only permitted on properties where there are no other ADUs. This program allows one ADU (conversion, attached, or detached) per lot.
- **Hybrid Program** (known as Ministerial ADUs in the proposed Ordinance): These ADUs need to comply with all Planning Code requirements (e.g. rear yard, exposure, etc.), except for density and cannot

require a waiver. Number of ADUs (conversion, detached, and/or junior) allowed per this program varies. This most closely resembles what is allowed today under the Section 207(c)(6) or previously known as “No Waiver ADUs”. Additionally, Hybrid Program ADUs include a new type of ADU for existing and proposed single-family dwellings called the Junior ADU (JADU), which is described below.

- o **Junior ADUs:** Junior ADUs would be allowed within existing or proposed single-family dwellings. General eligibility requirements include, but are not limited to, the following:
 - Converting no more than 500 square feet of the existing or proposed single-family dwelling;
 - Owner occupancy in either the primary unit or JADU;
 - An entrance that is separate from the main entrance of the primary unit;
 - Must include an efficiency kitchen; and
 - May or may not include shared sanitation facilities.

For further details, see the [ADU Programs Comparison Handout](#) available on the Planning Department website.

The Way It Is Now	The Way It Would Be
Review timeline: The Department is required to complete review of an ADU within 120 days from receipt of a complete application.	The City would be required to act on a permit for an ADU or JADU under State law within 60 days from receipt of a complete application.
Articles 10 and 11: ADUs proposed within Article 10 and 11 buildings and districts would be required to comply with architectural review standards as adopted by the Historic Preservation Commission. These projects are not subject to the Certificate of Appropriateness or Permit to Alter review processes.	Articles 10 and 11 would explicitly exempt State and Hybrid Program ADUs and JADUs proposed within landmark buildings and districts from Certificate of Appropriateness and Permit to Alter review processes.
Planning Code compliance: State-Mandated ADUs (also known as No Waiver ADUs) must comply with all Planning Code requirements except for density limitations.	Hybrid Program ADUs would still require Planning Code compliance except for density. However, State Program ADUs would not be required to comply with Planning Code requirements that are not listed in State law.
Impact fees: All ADUs are subject to impact fees, which are calculated based on standard thresholds such as adding a new unit or square footage.	State and Hybrid Program ADUs smaller than 750 square feet would be exempt from impact fees. State and Hybrid Program ADUs proposed on properties with three or fewer units would also be exempt from impact fees. State and Hybrid Program ADUs 750 square feet or larger would be subject to a reduced impact fee. The reduced impact fee would be based on the ADU’s proportion in relation to the primary unit for single-family dwellings, or the average of existing units for multi-family dwellings.
Noticing for single-family dwellings: All ADUs proposed within existing or new construction single-family dwellings require a 30-day notice posted at the	ADUs proposed within an existing or new construction single-family dwelling that have tenant(s) would be required to complete either a) the

The Way It Is Now	The Way It Would Be
<p>property, a mailed notice, and an online notice. The Planning Department issues such notices during the 120-day review timeframe.</p>	<p>Department of Building Inspection (DBI) Screening Form, if applicable or b) if the DBI Screening Form is not applicable, send a notice per the Planning Code requirements. Proof of this notice needs to be submitted with a complete application.</p>
<p>Density: One ADU is permitted in an existing or new construction single-family dwelling or existing authorized detached structure. Proposed ADUs may be located within non-habitable space and may take habitable space away from an existing dwelling.</p>	<p>One State Program ADU (conversion, attached, or detached) would be permitted for existing or proposed single- or multi-family dwellings so long as there are no other ADUs on the properties.</p> <p>Hybrid Program ADUs would be permitted as follows:</p> <p>Existing or new construction single-family dwellings or existing authorized detached structures would be permitted to add one ADU (conversion or detached) and/or one JADU.</p> <p>Existing multi-family dwellings would be permitted to add either 1) one conversion ADU or up to 25% of the existing number of legal dwelling units within the primary structure, whichever is greater, or 2) up to two detached ADUs.</p>
<p>Size restrictions: ADUs proposed within an existing or proposed single-family dwelling or within an existing authorized detached structure are limited to 1,200 square feet in size.</p>	<p>Hybrid Program detached ADUs would be permitted up to 800 square feet for properties with existing or proposed single-family dwellings. JADUs would be permitted up to 500 square feet within existing or proposed single-family dwellings.</p> <p>State Program detached ADUs would be permitted up to 850 square feet for studio and one-bedrooms and up to 1,000 square feet for two or more bedrooms for existing or proposed single- or multi-family dwellings. Additionally, if there is an existing dwelling, State Program attached ADUs have the following size restrictions: a) studios and 1-bedroom ADUs would be permitted up to 850 sf or 50% of existing primary dwelling, whichever is greater and b) ADUs with two or more bedrooms would be permitted up to 1,000 sf or 50% of existing primary dwelling, whichever is greater.</p>
<p>Expansions: Existing authorized detached structures may be expanded with dormers. If said structure is</p>	<p>The specific provisions related to expansions on existing authorized detached structures would be removed since detached ADUs would be permitted</p>

The Way It Is Now	The Way It Would Be
located on a corner lot, an additional story above the existing footprint is permitted.	per State law. However, Hybrid Program ADUs on properties with an existing or proposed single-family dwelling may expand an existing authorized detached structure by up to 150 square feet to accommodate ingress/egress.
Height: ADUs must comply with the height requirements	<p>State Program ADUs (attached and detached) would be limited to 16 feet in height.</p> <p>Hybrid Program detached ADUs would be limited to 16 feet in height.</p> <p>Further, detached ADUs located outside of the buildable area (only allowed under the State Program) would be measured from existing grade at any given point to either a) the highest point of a finished roof in the case of a flat roof or b) the average height of a pitched roof or stepped roof, or similarly sculptured roof form.</p>
Setbacks: ADUs must comply with all required setbacks.	<p>State Program ADUs (attached and detached) would require a setback of four feet from the side and rear property lines. No setback is required if the ADU is located within an existing living area or an existing accessory structure, or an ADU that replaces an existing structure, is in the same location, and constructed to the same dimensions as the structure being replaced.</p> <p>Hybrid Program detached ADUs would require a setback of four feet from the side and rear property lines and need to comply with all local Planning Code setback requirements.</p>
TECHNICAL CLARIFICATIONS FOR LOCAL PROGRAM	
Noticing for Waiver Program: Notice is required for new construction or expansions that are not exempt from noticing.	Notice would only be required for any proposed new construction building, not for any scopes of work related to the ADU itself.
Waivers: Waivers may be granted for ADUs added to existing buildings under the Waiver Program.	Waivers may only be granted for ADUs proposed within existing buildings. ADUs proposed within new construction buildings may only be granted the density waiver.

Background

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

San Francisco first adopted a local ADU program in 2014 and made several updates since the initial inception both in response to changes to the State law and to improve the City's local ADU program. The most recent ADU changes prior to this Ordinance occurred in 2019, which allowed ADUs in new construction. The proposed Ordinance will update San Francisco's ADU programs to comply with the latest amendments to the State law, per Section 3 of [Senate Bill 13](#), Section 2 of [Assembly Bill 68](#), and Section 1.5 of [Assembly Bill 881](#), all of which were effective beginning January 1, 2020. The proposed Ordinance also incorporates changes made to State law under [Assembly Bill 3182](#), which was effective beginning January 1, 2021. All these changes are required to bring our local code into compliance with State law. Additionally, the proposed Ordinance will clarify the ministerial approval process, restructure the Code to make it more legible to read, and provide technical clarifications.

This Ordinance is the continuation of [Board File 201008](#) which was filed on May 3, 2021. The only changes within this new Ordinance compared to the prior Ordinance includes clarifications or changes required by State law, as well as incorporating the recommended modification from both the Historic Preservation and Planning Commissions from the November 2020 hearings.

Issues and Considerations

Housing Stock

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

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

Ministerial Overview

The latest State law amendments clarify the ministerial review for ADUs in single-family and multi-family dwellings. Ministerial review for such ADUs is defined as follows:

- No subjective design review except for standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places
- Not subject to review under the California Environmental Quality Act (CEQA)
- Not subject to Planning Code Section 311 neighborhood notification requirements
- No discretionary review opportunity

Additionally, the State-Mandated ADUs are also subject to a shortened appeal window requiring that the appeal be heard within 10-30 days from appeal filing.

Another important distinction is that ADUs approved under State law are not subject to the rent stabilization provisions of the San Francisco Rent Ordinance. ADUs added under the Local ADU Program are subject to Rent Control when a complete or partial waiver, or an administrative exception, is granted from the Planning Code requirements and when the lot contains a Rental Unit. State-Mandated ADUs do not receive waivers and thus there is no opportunity to impose Rent Control on such ADUs.

While these ministerial ADUs are subject to State law, we are still maximizing the number of ADUs we can subject to Rent Control. In some cases, the Local ADU Program offers more opportunities for ADUs, including potentially an unlimited number of ADUs in certain cases. If the property is eligible for more than one program, the property owner will be able to decide which program best suits their needs.

Ability to be Less Restrictive

The proposed Ordinance is implementing only what is required by State law, except for the following items:

- *Exempting impact fees for State and Hybrid Program ADUs proposed on properties with three or fewer units.* The proposed Ordinance exempts more ADUs from impact fees than required by State law in efforts to incentivize more ADUs.
- *The way height is measured for Hybrid Program detached ADUs.* The proposed Ordinance clarifies this height measurement as it is not currently defined under State law.

State law permits local jurisdictions to legislate changes that are less restrictive, so long as the minimum requirements under State law are still allowed. The Department recommends the Commission consider potential changes (if any) at a later date.

Junior ADUs

State law introduces a new type of ADU within single-family dwellings: a Junior ADU (JADU), which can convert up to 500 square feet of habitable space from the primary unit. The JADU requires their own entrance separate from the main entrance of the primary dwelling and an efficiency kitchen for the ADU.

This proposed change better accommodates multi-generational households, which has been a recurring concern for San Francisco residents. Intergenerational living has increased further under the current COVID-19 conditions and job uncertainties. However, JADUs are a stark contrast to the current “Zoning Administrator Bulletin: Rooms Down” policy, a set of standards that encourages additional habitable space on the ground floor of residential buildings without creating illegal units. The JADU option now allows for an efficiency kitchen in the additional habitable space on the ground floor, discounting the Rooms Down policy that currently prevents this. The Rooms Down Policy was reevaluated, partly due to the new State law changes, and has recently been repealed as described below.

Update on Zoning Administrator Interpretations

Pursuant to Planning Code Section 307(a), the Zoning Administrator issues rules, regulations, and interpretations they deem necessary to administer and enforce the provisions of the Code. Formal interpretations are listed within the Planning Code, as well as a series of topical bulletins (i.e. neighborhood notice, bicycle parking, affordable housing, etc.).

During the November 2020 hearings, the Zoning Administrator provided a brief preview of forthcoming interpretations. On March 22, 2021, the Zoning Administrator issued a sizeable set of amendments to existing interpretations and bulletins which are available in a [memo](#) on the Planning Department website. Many of these interpretations pertain to housing-related definitions and controls, including those related to ADUs. The need for these amendments and new interpretations stem from new local and state programs in recent years (i.e. ADUs, Unauthorized Dwelling Units, density bonus programs, etc.), new types of development proposals, and the evolving nature and impacts of the COVID-19 pandemic.

Most of these interpretations are technical and minor in nature, but some will have potentially greater impact. Specifically, the “Rooms Down” bulletin (Zoning Administrator Bulletin No. 1), which limits the development of ground floor spaces in existing Dwelling Units to help prevent the creation of Unauthorized Dwelling Units has been repealed. This transition serves to better respond to our evolving ADU programs and the Code requirement to legalize Unauthorized Dwelling Units. Additional interpretations relate to dwelling unit exposure, housing-related definitions (i.e. Dwelling Unit and Group Housing), and a variety of other issues.

Delegation Agreement and Historic Preservation

Since the November 2020 hearings, staff revised the Historic Preservation Delegation Agreement, including items related to review of ADUs. State law allows the local jurisdictions to implement objective architectural review standards. The Historic Preservation Commission adopted “Accessory Dwelling Units Architectural Review Standards” via [Resolution No. 1041](#) on April 3, 2019. Some of these objective standards now conflict with new State law requirements. During the November 4, 2020 State-Mandated ADUs hearing, the Historic Preservation and Planning Commissions expressed desire to retain reference to these objective review standards where appropriate. In response, the relevant objective review standards that are still compliant with State law have been incorporated into the Delegation Agreement. The revised Delegation Agreement appeared in front of the Historic Preservation Commission on August 4, 2021 and is now in effect.

Mid-Block Open Space

The proposed Ordinance permits Streamlined detached ADUs in the required rear yard so long as the ADU complies with the following requirements listed in the table below.

	State Detached ADUs
Number of ADUs permitted	1
Height	16 feet
Rear and side setbacks	4 feet
Square footage	850 for studio & 1-bedroom ADUs 1,000 for 2+ bedroom ADUs

These detached ADUs may encroach into the mid-block open space, pending on the proposed location of the ADU and the size of the lot. The required side and rear setbacks and height limitations per State law provide some relief between properties; however, some proposed ADUs may cause minor light or privacy issues that the Commission is typically concerned about. In the case where the proposed ADU complies with these requirements, the Commission would have no opportunity to weigh in on such concerns. If neighbors opposed the detached ADU within the mid-block open space, they would only be able to appeal directly to the Board of Appeals without the opportunity to make their case in front of Planning Commission like they can today. In the case of such an appeal, the Board of Appeals would not have discretion over the project and would be limited to verifying if the State law requirements were followed or not.

Hybrid Program detached ADUs still need to be located within the buildable area of the lot. In this case, the proposed location of the ADU(s) will likely still be in keeping with the general pattern of the neighborhood block.

Tenant Noticing

The Ordinance removes a noticing requirement for single-family dwellings that was added in 2019 and replaces it with new noticing requirements, which apply only if there is a tenant in a single-family home. No Waiver ADUs in single-family dwellings currently require a 30-day notice, even if there is no tenant. It is not logical to require sending a notice to the property owner if they are the only residents in the dwelling. If there is a tenant at the property, the Ordinance would require the property owner to submit one of the following with their permit application:

- A copy of a completed Department of Building Inspection [Screening Form](#), if applicable.
- Posting a 15-day notice at the property and mailing the notice to all tenants. If electing this option, the notices must comply with the Planning Code requirements.

This change ensures that tenants are notified in advance of a new ADU permit and removes the unnecessary notice for owners when there are no tenants impacted. Additionally, the proposed Ordinance requires that this outreach is completed before the ADU permit application is submitted. This earlier timeframe would also help the City ensure the new 60-day review timeframe is met and would provide an earlier opportunity for any impacted tenant(s) to engage with property owner.

Supervisor Mandelman introduced a separate piece of legislation under [Board File 210699](#), which is scheduled to appear before the Planning Commission on September 9, 2021. This Ordinance requires that all Local ADU Program applicants submit a declaration to the Rent Board with a written description of housing services that are located where the ADU(s) are proposed; whether ADU construction would result in severance, reduction, or removal of housing services; and the just cause for the aforementioned. Tenants would have the opportunity to contest the information provided in the declaration and petition the Rent Board for a written determination verifying the presence and defining characteristics of the housing service(s) in question. If no petition is filed, the Rent Board would have 30 days to transmit the declaration to Planning Department. If a petition is filed, the Rent Board would have 90 days to transmit the declaration and their written determination to the Planning Department. The Planning Department would not be able to approve an ADU under the Local Program if either 1) the Rent Board declaration is missing or 2) the Rent Board declaration indicates that the ADU construction would result in severance, reduction, or removal of housing services without just cause.

Timeline for Review

Since the launch of the initial ADU program, the Planning Department has improved efforts to more effectively and efficiently review ADU permits. To help facilitate review, the Planning Department has created a team of ADU specialists. Effective August 2018, Planning established an ADU counter with dedicated staff at the DBI permit center. Due to COVID-19 related impacts, this physical counter has transitioned into electronic format and dedicated ADU planners are available for virtual appointments or via email.

The Planning Department has also collaborated more with other City agencies involved in the review of ADUs and introduced parallel review efforts. One of the biggest time-savings has been the “Roundtable” review where different City agencies meet and review ADU permits together. This allows the City to discuss any conflicting policies and provide applicants with consolidated comments. Additionally, staff review and this “Roundtable” have shifted to an electronic format during the COVID-19 pandemic to ensure the review timeframes are still met.

Beginning November 2020, the Planning Department took on the role of accepting and issuing all new ADU permits to temporarily assist DBI during the COVID-19 pandemic. This effort has led to truly concurrent review and numerous process improvements.

The State law ([Senate Bill 1069](#)), effective January 1, 2017, required jurisdictions to complete approval of Code-complying ADUs in single-family homes within 120 days. The proposed Ordinance requires jurisdictions to act on these ministerial ADU permits within 60 days of receipt of a complete application. The Department is unable to estimate how many or what percentage of ADU permits would trigger this new timeline; however, there has been much public and applicant interest in this Ordinance. That said, the Department will continue to refine internal review processes and work with other City agencies to ensure the new 60-day review timeframe is met.

General Plan Compliance

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

Racial and Social Equity Analysis

The Planning Code amendments in the proposed Ordinance help clarify and provide more options to add ministerial ADUs. The ADU program provides a quicker, and often more financially feasible path for property owners to add to the housing stock and different types of housing. The proposed Ordinance includes a JADU, which requires an efficiency kitchen. This provides more options for multi-generational households, which is often found in communities of color, and allows seniors to age in place more easily within their same community and household. ADUs also help advance racial and social equity by allowing for more affordable dwellings due to their smaller sizes. Even if ADUs are less costly due to smaller square footages, ADUs are not typically rented at very low- or low-income AMI levels so there is still an affordability issue.

ADUs are permitted both within existing and new construction buildings. Naturally, adding ADUs within existing structures is much cheaper than new construction projects. However, households with lower incomes pursuing ADUs may experience disproportionate costs in general. The same permit and construction costs may require a much larger percentage of their income compared to moderate-income households. This may be a barrier for lower-income households to pursue ADUs, in which case they do not benefit from the ADU program or the proposed Ordinance. One consideration to help alleviate such financial burden may include a permit or fee waiver for low-income households. Supervisor Mar launched a pilot program in District 4 in September 2020 to provide professional services to 25 qualifying households interested in adding ADU(s) on their property using grant monies awarded by the State. The pilot program's goals include 1) providing services to lower-income households that otherwise would not be able to afford to hire an architect/developer and 2) to better understand what barriers lower-income households encounter when pursuing an ADU. If successful, the Department recommends the pilot program be modified and expanded to benefit the entire city, pending funding availability.

Implementation

The Department has determined that this Ordinance will impact our current implementation procedures in that State-Mandated ADUs will be subject to a 60-day review timeframe. This is half the time prescribed in Mayoral Directive No. 17-02 which required ADUs be acted upon within 120 days of receipt of a complete application. The Department already collaborates with other City agencies for ADU review. Below includes a list of changes and other measures the Department will take to help achieve the 60-day timeframe:

- This 60-day timeframe is more feasible for State Program ADUs, which requires less review time since staff would review the ADU based on the strict State law requirements, rather than for full Planning Code compliance.
- The City's fully concurrent electronic review allows all required Agencies to review ADU applications for completeness at the same time. This will help ensure the 60-day time clock only starts when we have all the required information.
- Today, staff issues the 30-day notice during the 120-day review timeframe for all single-family dwellings. For single-family dwellings with tenants, outreach and noticing would be required before submitting an application. This helps inform the tenant earlier, but also removes that noticing period from the 60-day clock.

Recommendation

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

Basis for Recommendation

The Department supports the proposed Ordinance because it supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans. Specifically, the Ordinance increases the potential for Accessory Dwelling Units by bringing the Planning Code into compliance with State law. These changes are

significant and far reaching as is, and before more relaxed controls are considered staff recommends only adopting what State law requires and then refining later after we can assess the program.

Update on Forthcoming Amendments

The Department is working on future legislation that would serve two primary purposes:

1. **Reorganize the ADU Planning Code subsections.** The ADU code subsection is currently housed within Planning Code Section 207, Dwelling Unit Density Limits. The ADU Programs have evolved tremendously since the original pilot program in the Castro. The goal is to take the ADU Program language within Section 207 and move it to its own section, like other density bonus programs such as HOME-SF. This move will make the ADU Programs section easier to read, understand, and use.
2. **Incentivize the Local ADU Program.** Recent changes to State law have been difficult to apply to San Francisco, which has a unique urban fabric compared to the rest of the State. In some cases, the height and building envelope permitted under State law do not match the neighborhood context, but the City has no choice but to approve if compliant with State law. Additionally, there is the concern that ADUs proposed under the State and Hybrid ADU Programs will not result in a Rent Control unit for the City. The Department is crafting ways to make it easier to apply for and more appealing to pursue an ADU under the Local Program.

The Department will continue working on this legislation with a goal to have it ready to be Initiated at Planning Commission during the 2021-2022 fiscal year.

Required Commission Action

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

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Historic Preservation Commission Resolution
Exhibit B: Board of Supervisors File No. 210585

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HISTORIC PRESERVATION COMMISSION DRAFT RESOLUTION

HEARING DATE: September 1, 2021

Project Name: State-Mandated Accessory Dwelling Unit Controls
Case Number: 2021-006260PCA [Board File No. 210585]
Initiated by: Mayor Breed / Introduced June 8, 2021
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, (628) 652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND 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; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; AND ADOPTING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on June 8, 2021 Mayor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 210585, which would amend the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units meeting certain requirements in single-family and multifamily buildings;

WHEREAS, the Historic Preservation Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 1, 2021; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2) and 15378; and

WHEREAS, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Commission has reviewed the proposed Ordinance; and

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

MOVED, that the Commission hereby **approves** the proposed ordinance.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission finds that the proposed Ordinance supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans by increasing the potential for new Accessory Dwelling Units.
2. The Commission finds that the proposed Ordinance will help align the Planning Code with the State Law.
3. The Commission finds that the proposed Ordinance will further streamline the ADU review process and clarify current processes. Such changes will make the City's ADU program more effective and flexible.

General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.5

Consider secondary units in community plans where there is neighborhood support and when other neighborhood goals can be achieved, especially if that housing is made permanently affordable to lower-income households.

OBJECTIVE 3

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

Policy 3.4

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

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

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City’s supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City’s supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an

earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved.

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 1, 2021

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: September 1, 2021

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; making findings of consistency with the General**
7 **Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting**
8 **findings of public necessity, convenience, and welfare under Planning Code, Section**
9 **302.**

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

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

18

19 Section 1. Findings.

20 (a) The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
23 Supervisors in File No. 210585 and is incorporated herein by reference. The Board affirms
24 this determination.

25 (b) On _____, the Planning Commission, in Resolution No. _____,
adopted findings that the actions contemplated in this ordinance are consistent, on balance,
with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
2 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

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

6
7 Section 2. The Planning Code is hereby amended by revising Sections 102, 207,
8 1005, and 1110, to read as follows:

9
10 **SEC. 102. DEFINITIONS.**

11 * * * *

12 **Dwelling Unit, Accessory, or ADU.** Also known as a Secondary Unit or In-Law Unit, is a
13 Dwelling Unit that meets all the requirements of subsection 207(c)(4) or subsection 207(c)(6) and that
14 is accessory to at least one other Dwelling Unit on the same lotis ~~constructed either entirely within the~~
15 existing built envelope, the “living area” as defined in State law, or the buildable area of an existing or
16 proposed building in areas that allow residential use; or is constructed within the existing built
17 envelope of an existing and authorized auxiliary structure on the same lot. A detached ADU shall not
18 share structural walls with either the primary structure or any other structure on the lot. Height for
19 detached ADUs located outside the buildable area shall be measured from existing grade at any given
20 point to either a) the highest point of a finished roof in the case of a flat roof or b) the average height of
21 a pitched roof or stepped roof, or similarly sculptured roof form.

22
23 **Dwelling Unit, Junior Accessory, or JADU.** A Dwelling Unit that meets all the requirements of
24 subsection 207(c)(6), and that:

25 (a) is accessory to at least one other Dwelling Unit on the same lot;

- 1 ***(b) is no more than 500 square feet of Gross Floor Area;***
- 2 ***(c) is contained entirely within an existing or proposed single-family structure;***
- 3 ***(d) may include separate sanitation facilities, or may share sanitation facilities with the***
- 4 ***existing structure;***
- 5 ***(e) is owner-occupied, unless the owner resides in the remaining portion of the structure;***
- 6 ***(f) includes an entrance to the Junior Accessory Dwelling Unit that is separate from the***
- 7 ***main entrance to the proposed or existing single-family structure; and***
- 8 ***(g) includes an efficiency kitchen that meets the requirements of Government Code Section***
- 9 ***65852.22(a)(6), including a cooking facility with appliances, and a food preparation counter and***
- 10 ***storage cabinets that are of reasonable size in relation to the size of the Junior Accessory Dwelling***
- 11 ***Unit.***

12 * * * *

13

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

15 * * * *

16 **(c) Exceptions to Dwelling Unit Density Limits.** An exception to the calculations

17 under this Section 207 shall be made in the following circumstances:

18 * * * *

19 **(4) Accessory Dwelling Units – Local Accessory Dwelling Unit Program:**

20 **Accessory Dwelling Units in Multifamily Buildings and Accessory Dwelling Units in**

21 **Single-Family Homes That Do Not Strictly Meet the Requirements in subsection (c)(6).**

22 **(A) Definition.** An “Accessory Dwelling Unit” (ADU) is defined in

23 Section 102.

24 **(B) Applicability.** This subsection (c)(4) shall apply to the construction

25 of ~~Accessory Dwelling Units~~ ADUs on all lots located within the City and County of San Francisco

1 in areas that allow residential use, except ~~that construction of an Accessory Dwelling Unit is~~ ADUs
2 regulated by subsection (c)(6) below, ~~and not this subsection (c)(4), if all of the following~~
3 ~~circumstances exist:~~

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

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

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

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

24 (i) For lots that have four existing Dwelling Units or fewer, or where
25 the zoning would permit the construction of four or fewer Dwelling Units, one ADU is

1 permitted, ~~For~~ for lots that have more than four existing Dwelling Units or are undergoing
2 seismic retrofitting under subsection (c)(4)(F) below, or where the zoning would permit the
3 construction of more than four Dwelling Units, there is no limit on the number of ADUs
4 permitted, as long as all other health and safety requirements are met, provided,

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

18 (iii) Except as provided in subsections (i) ~~ii~~ and (iv) below, an
19 ~~Accessory Dwelling Unit~~ ADU shall be constructed a. entirely within the buildable area of an
20 existing lot, provided that the ADU does not exceed the existing height of ~~an existing the~~
21 building in which it is constructed, or b. within the built envelope of an existing and authorized
22 ~~stand-alone~~ detached garage, storage structure, or other ~~auxiliary~~ detached structure on the same
23 lot, ~~as the built envelope existed three years prior to the time the application was filed for a building~~
24 ~~permit to construct the ADU. For purposes of this subsection 207(c)(4), a "detached" structure or~~
25 ADU shall not share structural walls with either the primary structure or any other structure on the lot.

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

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

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

1 (vi) ADUs shall comply with any applicable controls in Planning Code Section
2 134(f).

3 (vii) An Accessory Dwelling Unit ADU shall not be constructed using
4 space from an existing Dwelling Unit, except that an ADU may expand into habitable space on
5 the ground or basement floors provided that it does not exceed 25% of the total gross square
6 footage of such space on the ground and basement floors. The Zoning Administrator may waive
7 this 25% limitation if (a) the resulting space would not be usable or would be impractical to
8 use for other reasonable uses, including, but not limited to, storage or bicycle parking or (b)
9 waiving the limitation would help relieve any negative layout issues for the proposed ADU.

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

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

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

18 (xi) An application for a permit to construct an ADU in a proposed building
19 pursuant to this subsection 207(c)(4)(C) shall not be subject to the notification requirements of Section
20 311 of this Code. The application for a permit to construct the proposed building shall be subject to any
21 applicable notification requirements of Section 311 of this Code.

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

1 (E) **Restrictions on Subdivisions.** Notwithstanding the provisions of Article
2 9 of the Subdivision Code, a lot with an *Accessory Dwelling Unit*ADU authorized under this
3 Section 207(c)(4) shall not be subdivided in a manner that would allow for the ADU to be sold
4 or separately financed pursuant to any condominium plan, housing cooperative, or similar
5 form of separate ownership; ~~provided, however, that~~ This prohibition on separate sale or
6 finance of the ADU shall not apply to an ADU in a building that (i) within three years prior to July
7 11, 2016 was an existing~~consisted entirely of~~ condominium with no Rental Unit as defined in Section
8 37.2(r) of the Administrative Code units as of July 11, 2013, and (ii) has had no evictions pursuant
9 to Sections 37.9(a) through 37.9(a)(12) and 37.9(a)(14) of the Administrative Code within 10
10 years prior to since July 11, 2011 1996. This prohibition on separate sale or finance of the ADU shall
11 not apply to an ADU that meets the requirements of California Government Code Section 65852.26.

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

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

21 (ii) May expand a noncomplying structure, as defined in Section
22 180(a)(2) of this Code and further regulated in Sections 172, 180, and 188, without obtaining
23 a variance for increasing the discrepancy between existing conditions on the lot and the
24 required standards of this Code.

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

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

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

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

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

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

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

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

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

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

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

25 (I) **Monitoring Program.**

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

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

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

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

3 * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~(C) — **Permit Application Review and Approval.** The Department shall approve an~~
22 ~~application for a permit to construct an Accessory Dwelling Unit within 120 days from receipt of the~~
23 ~~complete application, without modification or disapproval, if the proposed construction fully complies~~
24 ~~with the requirements set forth in subsection (c)(6)(B). No requests for discretionary review shall be~~
25 ~~accepted by the Planning Department for permit applications meeting the requirements of this~~

1 ~~subsection (c)(6). The Planning Commission shall not hold a public hearing for discretionary review of~~
2 ~~permit applications meeting the requirements of this subsection (c)(6). Permit applications meeting the~~
3 ~~requirements of this subsection (c)(6) shall not be subject to the notification or review requirements of~~
4 ~~Section 311 of this Code.~~

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

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

12 ~~(F) — **Rental; Restrictions on Subdivisions.**~~

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

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

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

24 ~~(H) — **Notification.** Upon determination that an application is in compliance with the~~
25 ~~standards of subsection 207(c)(6) of the Planning Code, the Planning Department shall cause a notice~~

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

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

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

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

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

4 (v) — ~~The building permit application number(s) shall be disclosed in the~~
5 ~~written notice.~~

6 (vi) — ~~11x17 sized or equivalent drawings to scale shall be included with the~~
7 ~~written notice. The drawings shall illustrate the existing and proposed conditions in relationship to the~~
8 ~~adjacent properties. All dimensions and text throughout the drawings shall be legible. The drawings~~
9 ~~shall include a site plan, floor plans, and elevations documenting dimensional changes that correspond~~
10 ~~to the basic features included in the written notice. The existing and proposed site plan shall illustrate~~
11 ~~the project including the full lots and structures of the directly adjacent properties. The existing and~~
12 ~~proposed floor plans shall illustrate the location and removal of interior and exterior walls. The use of~~
13 ~~each room shall be labeled. Significant dimensions shall be provided to document the change proposed~~
14 ~~by the project. The existing and proposed elevations shall document the change in building volume:~~
15 ~~height and depth. Dimensional changes shall be documented, including overall building height and~~
16 ~~also parapets, penthouses, and other proposed vertical and horizontal building extensions. The front~~
17 ~~and rear elevations shall include the full profiles of the adjacent structures including the adjacent~~
18 ~~structures' doors, windows, and general massing. Each side elevation shall include the full profile of~~
19 ~~the adjacent building in the foreground of the project, and the adjacent windows, lightwells and~~
20 ~~general massing shall be illustrated.~~

21 (vii) — **Language Access.** ~~All forms of public notice provided pursuant to this~~
22 ~~subsection 207(c)(6)(H) shall comply with the requirements of the Language Access Ordinance,~~
23 ~~Chapter 91 of the Administrative Code, to provide vital information about the Planning Department's~~
24 ~~services or programs in the languages spoken by a Substantial Number of Limited English Speaking~~
25 ~~Persons, as defined in Chapter 91. The notices required by this subsection 207(c)(6)(H) shall contain~~

1 ~~the information set forth in subsection 207(c)(6)(h)(ii)-(v) in the languages spoken by a Substantial~~
2 ~~Number of Limited English Speaking Persons, as defined in Administrative Code Chapter 91.~~

3 ~~(viii) **Online Notice.** For 30 calendar days, on a publicly accessible website~~
4 ~~that is maintained by the Planning Department, the Planning Department shall provide a digital copy~~
5 ~~formatted to print on 11 x 17 inch paper of the posted notice, including the contents set forth in~~
6 ~~subsection 207(c)(6)(h)(ii)-(v) for the application; and digital copies of any architectural and/or site~~
7 ~~plans that are sealed and formatted to print on 11 x 17 inch paper, are consistent with Plan Submittal~~
8 ~~Guidelines maintained and published by the Planning Department, and that describe and compare, at a~~
9 ~~minimum, the existing and proposed conditions at the subject property, the existing and proposed~~
10 ~~conditions in relationship to adjacent properties, and that may include a site plan, floor plans, and~~
11 ~~elevations documenting dimensional changes required to describe the proposal.~~

12 (C) **Specific Controls for Ministerial ADUs.** The purpose of this subsection
13 207(c)(6)(C) is to implement California Government Code Sections 65852.2(e) and 65852.22, which
14 requires ministerial consideration of ADUs and JADUs that meet certain standards (“Ministerial
15 ADUs”). ADUs and JADUs shall strictly meet the requirements set forth in this subsection (c)(6)(C)
16 without requiring a waiver of Code requirements pursuant to subsection (c)(4)(G). The City shall
17 approve ADUs and JADUs meeting the following requirements, in addition to the requirements of
18 subsection 207(c)(6)(B) and any other applicable standards:

19 (i) **ADUs and JADUs within proposed space of a proposed single-family**
20 **dwelling or within existing space of a single-family dwelling or accessory structure meeting the**
21 **following conditions:**

22 a. **The lot on which the ADU or JADU is proposed contains an**
23 **existing or proposed single-family dwelling.**

24 b. **Only one ADU and one JADU is permitted per lot.**

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 that provides one bedroom
20 shall not exceed 850 square feet. The Gross Floor Area of a detached ADU that provides more than
21 one bedroom shall not exceed 1,000 square feet.

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

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 (ix) The ADU shall not exceed a height of 16 feet.

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

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

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

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 or JADUs authorized under this
16 subsection 207(c)(6), where the ADU or JADU is smaller than seven hundred and fifty square feet of
17 Gross Floor Area, or for ADUs that are proposed in lots with three existing units or fewer. Impact fees
18 for all other ADUs shall be imposed proportionately in relation to the Gross Floor Area of the primary
19 dwelling unit.

20 * * * *

23 **SEC. 1005. CONFORMITY AND PERMITS.**

24 * * * *

1 (e) After receiving a permit application from the Central Permit Bureau in accordance
2 with the preceding subsection, the Department shall ascertain whether a Certificate of
3 Appropriateness is required or has been approved for the work proposed in such permit
4 application. If a Certificate of Appropriateness is required and has been issued, and if the
5 permit application conforms to the work approved in the Certificate of Appropriateness, the
6 permit application shall be processed without further reference to this Article 10. If a
7 Certificate of Appropriateness is required and has not been issued, or if the permit application
8 does not conform to what was approved, the permit application shall be disapproved or held
9 by the Department until such time as conformity does exist either through modifications to the
10 proposed work or through the issuance of an amended or new Certificate of Appropriateness.
11 Notwithstanding the foregoing, in the following cases the Department shall process the permit
12 application without further reference to this Article 10:

13 * * * *

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

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

20 * * * *

21
22 **SEC. 1110. CONSTRUCTION, ALTERATION OR DEMOLITION OF SIGNIFICANT**
23 **OR CONTRIBUTORY BUILDINGS OR BUILDINGS IN CONSERVATION DISTRICTS.**

24 * * * *

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

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

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

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

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

18
19 Section 3. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor's veto of the ordinance.

23
24 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
25 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the "Note" that appears under
4 the official title of the ordinance.

5

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

10

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

13

14

14 By: /s/ Peter R. Miljanich
15 PETER R. MILJANICH
16 Deputy City Attorney

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1 [Approval of a 180-Day Extension for Planning Commission Review of State-Mandated
2 Accessory Dwelling Unit Controls (File No. 230310)]

3 **Resolution extending by 180 days the prescribed time within which the Planning**
4 **Commission may render its decision on an Ordinance (File No. 230310) amending the**
5 **Planning Code to clarify the ministerial approval process for certain Accessory**
6 **Dwelling Units (ADUs) meeting certain requirements in single-family and multifamily**
7 **buildings and to permit certain ADUs in the rear yard under the City's local,**
8 **discretionary approval program; making findings under the California Environmental**
9 **Quality Act; making findings of consistency with the General Plan, and the eight**
10 **priority policies of Planning Code, Section 101.1; and adopting findings of public**
11 **necessity, convenience, and welfare under Planning Code, Section 302.**

12
13 WHEREAS, On March 20, 2023, the Land Use and Transportation Committee
14 duplicated this legislation from File No. 210585 amending the Planning Code to clarify the
15 ministerial approval process for certain Accessory Dwelling Units (ADUs) meeting certain
16 requirements in single-family and multifamily buildings and to permit certain ADUs in the rear
17 yard under the City's local, discretionary approval program; making findings under the
18 California Environmental Quality Act; making findings of consistency with the General Plan,
19 and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public
20 necessity, convenience, and welfare under Planning Code, Section 302.; and

21 WHEREAS, On or about April 3, 2023, the Clerk of the Board of Supervisors referred
22 the proposed Ordinance to the Planning Commission; and

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

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

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

7 WHEREAS, Mayor Breed has requested additional time for the Planning Commission
8 to review the proposed Ordinance; and

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

12 RESOLVED, That by this Resolution, the Board hereby extends the prescribed time
13 within which the Planning Commission may render its decision on the proposed Ordinance for
14 approximately 180 additional days, until December 29, 2023.



City and County of San Francisco

Tails
Resolution

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

File Number: 230742

Date Passed: June 27, 2023

Resolution extending by 180 days the prescribed time within which the Planning Commission may render its decision on an Ordinance (File No. 230310) amending the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units (ADUs) meeting certain requirements in single-family and multifamily buildings and to permit certain ADUs in the rear yard under the City's local, discretionary approval program; making findings under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

June 27, 2023 Board of Supervisors - ADOPTED

Ayes: 10 - Chan, Dorsey, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton
Absent: 1 - Engardio

File No. 230742

I hereby certify that the foregoing Resolution was ADOPTED on 6/27/2023 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

7/6/23

Date Approved



STATE ADU UPDATE



San Francisco
Planning

Veronica Flores

March 2023

Land Use and

Transportation Committee

STATE-MANDATED ADU BUCKETS

STATE

Allows only 1 ADU

Permitted in existing and proposed single-family or multi-family dwellings

Does not require Planning Code compliance

HYBRID

Allows at least 1 ADU, in some cases multiple

Permitted in existing and proposed single-family or existing multi-family dwellings

Most similar to status quo today and requires Planning Code compliance

STATE-MANDATED ADU BUCKETS

STATE

Allows only 1 ADU

Permitted in existing and proposed single-family or multi-family dwellings

Does not require Planning Code compliance

HYBRID

Allows at least 1 ADU, in some cases multiple

Permitted in existing and proposed single-family or existing multi-family dwellings

Most similar to status quo today and requires Planning Code compliance

JUNIOR ADU

A type of Ministerial ADU

JADU can convert up to 500 square feet of an existing or proposed single-family home into a JADU

ORDINANCE OVERVIEW

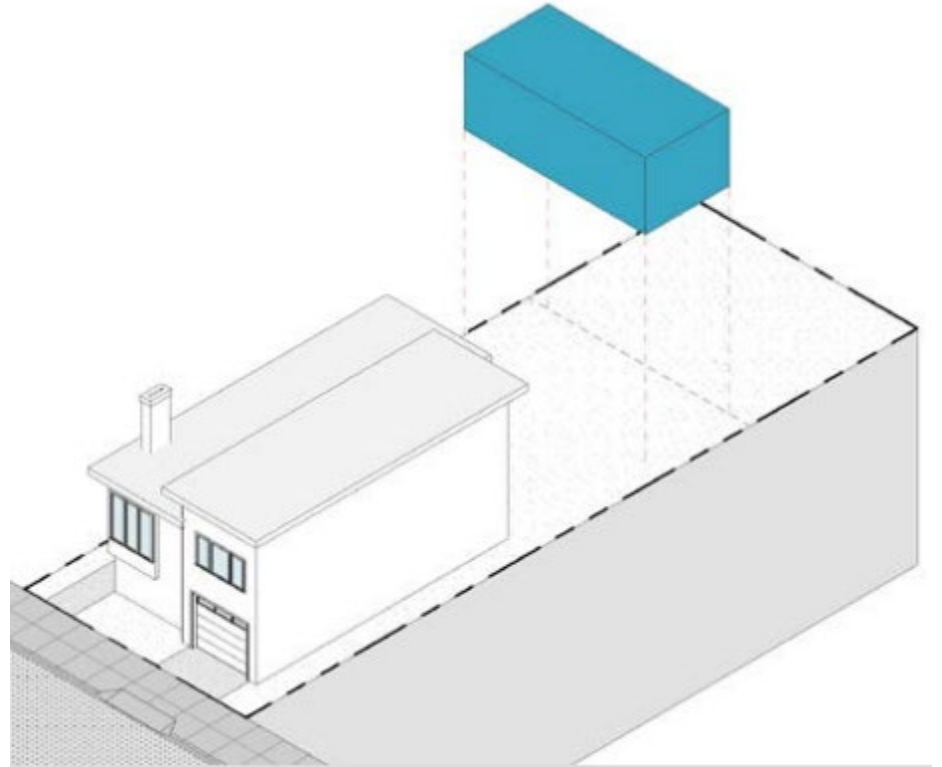
- Review timeframe would be 60 days (half of 120-day timeframe today)
- Articles 10 and 11 would explicitly exempt ADUs from Certificate of Appropriateness and Permit to Alter reviews
- Impact fees would be exempted or reduced
- Notice required for ADUs added to existing or proposed single-family homes would be removed and replaced with a notice prior to application submittal

CLARIFICATIONS TO AND CLEAN-UP FOR LOCAL ADU PROGRAM

- Waivers may only be granted for ADUs added to existing buildings. Only the density waiver may be granted for ADUs within new construction buildings.
- Clarify notice requirements are only required for new construction building itself, not for the ADU which is under a separate permit
- Detached ADUs located in the rear yard be measured from grade to either a) top of flat roof or b) mid-point of pitched roof

NEW CHANGE TO LOCAL ADU PROGRAM

- Allow one detached ADU in the rear yard under the Local ADU Program





THANK YOU



**San Francisco
Planning**

Veronica Flores
Senior Legislative Planner
San Francisco Planning

veronica.flores@sfgov.org
www.sfplanning.org


BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

Date: March 28, 2023
To: Planning Department / Commission
From: Erica Major, Clerk of the Land Use and Transportation Committee
Subject: Board of Supervisors Legislation Referral - File No. 230310
Planning Code - State-Mandated Accessory Dwelling Unit Controls

- California Environmental Quality Act (CEQA) Determination CEQA clearance under Addendum No. 9 to the Final EIR, dated September 9, 2022 to the 2004 and 2009 Housing Element Final EIR certified 4/24/2014.
(California Public Resources Code, Sections 21000 et seq.)
 - Ordinance / Resolution 04/21/2023 
 - Ballot Measure
- Amendment to the Planning Code, including the following Findings:
(Planning Code, Section 302(b): 90 days for Planning Commission review)
 - General Plan
 - Planning Code, Section 101.1
 - Planning Code, Section 302
- Amendment to the Administrative Code, involving Land Use/Planning
(Board Rule 3.23: 30 days for possible Planning Department review)
- General Plan Referral for Non-Planning Code Amendments
(Charter, Section 4.105, and Administrative Code, Section 2A.53)
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
- Historic Preservation Commission
 - Landmark (Planning Code, Section 1004.3)
 - Cultural Districts (Charter, Section 4.135 & Board Rule 3.23)
 - Mills Act Contract (Government Code, Section 50280)
 - Designation for Significant/Contributory Buildings (Planning Code, Article 11)

Please send the Planning Department/Commission recommendation/determination to Erica Major at Erica.Major@sfgov.org.

BOARD of SUPERVISORS



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June 11, 2021

File No. 210585

Lisa Gibson
Environmental Review Officer
Planning Department
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

Dear Ms. Gibson:

On June 8, 2021, Mayor Breed submitted the following legislation:

File No. 210585

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; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

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

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

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

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

July 22, 2021

A handwritten signature in cursive script, appearing to read "Joy Navarrete".

BOARD of SUPERVISORS



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San Francisco 94102-4689
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MEMORANDUM

TO: Robert Collins, Executive Director, Rent Board
Patrick O'Riordan, Director, Department of Building Inspection

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

DATE: June 11, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Breed on June 8, 2021:

File No. 210585

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; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

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

cc: Patty Lee, Department of Building Inspection
John Murray, Department of Building Inspection

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
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June 11, 2021

File No. 210585

Lisa Gibson
Environmental Review Officer
Planning Department
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

Dear Ms. Gibson:

On June 8, 2021, Mayor Breed submitted the following legislation:

File No. 210585

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; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

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

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

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

BOARD of SUPERVISORS



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San Francisco 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

June 11, 2021

Planning Commission
Attn: Jonas Ionin
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

Dear Commissioners:

On June 8, 2021, Mayor Breed introduced the following legislation:

File No. 210585

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; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

The proposed ordinance is being transmitted for review. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

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

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

c: Rich Hillis, Director
Scott Sanchez, Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
Adam Varat, Acting Director of Citywide Planning
AnMarie Rodgers, Legislative Affairs
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning

From: [Ryan Patterson](#)
To: [Carroll, John \(BOS\)](#); [MelgarStaff \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#)
Subject: Public Comment on Agenda Item 6 - SFBOS File No. 230310 - Planning, Business and Tax Regulations Codes - Accessory Dwelling Units in New Construction
Date: Monday, December 11, 2023 2:21:38 PM
Attachments: [Planning Ltr 112723.pdf](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Chair Melgar and Supervisors:

Our office represents Yes In My Back Yard (YIMBY Law) and Sonja Trauss, its executive director. We were disappointed to learn of the proposed ordinance's inconsistencies with state law – especially its imposition of new constraints on the creation of accessory dwelling units (ADUs).

As a preliminary matter, we object to the lack of notice of today's hearing on the Ordinance, despite having requested notice through the Board's Legistar legislative alerts system.

In particular, we object to the reduction of allowable square footage for state-law ADUs. There was no cap on the size of such ADUs on January 1, 2018. A limit of 1,200 square feet was subsequently imposed in Ordinance 116-19. Now, this proposed Ordinance would limit ADU size to 850 or 1,000 square feet. This would lessen the intensity of housing allowed in San Francisco in violation of state law.

SB 330 prohibits:

Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B). For purposes of this subparagraph, "less intensive use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing. (Gov. Code § 66300(b)(1)(A).)

Additionally, we object to the inconsistencies with state law identified in the Planning Department's letter of **November 27, 2023 (attached)**. As discussed in the letter, a number of inconsistencies are itemized (1-9) and admitted but not resolved.

Further, there is no prohibition in state ADU law against ADUs that are attached to existing detached accessory structures. The proposed ordinance seeks to prohibit such ADUs, which is unlawful.

We urge the Board of Supervisors to eliminate the proposed inconsistencies with state law.

Very truly yours,

PATTERSON & O'NEILL, PC

Ryan Patterson

Attorneys for YIMBY Law and Sonja Trauss

Ryan J. Patterson
Patterson & O'Neill, PC
Main: (415) 907-9110
Direct: (415) 907-7701
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November 27, 2023

Mr. David Zisser
Assistant Deputy Director
Local Government Relations & Accountability
Housing Policy Development Division
California Department of Housing and Community Development
2020 W. El Camino Avenue, Suite 552
Sacramento, CA 95833
via email to David.Zisser@hcd.ca.gov

Re: HCD Review of San Francisco's Accessory Dwelling Unit Ordinance No. 053-23

Dear Assistant Deputy Director Zisser,

Thank you for your October 26, 2023 transmittal of the California Department of Housing and Community Development's ("HCD") findings regarding San Francisco's accessory dwelling unit ("ADU") Ordinance No. 053-23. The purpose of this letter is to respond to those findings pursuant to California Government Code section 65852.2, subdivision (h)(2)(A). We appreciate your recognition of the City's local ADU approval program, and share HCD's goal of maximizing ADU production under the City's State-mandated ADU programs.

On September 28, 2023, the San Francisco Planning Commission recommended approval, with modifications, of a new proposed ADU ordinance contained in San Francisco Board of Supervisors File. No. 230310 (the "pending ADU ordinance"). That ordinance is now pending at the Land Use and Transportation Committee of the Board of Supervisors. HCD's October 26 letter requests nine amendments to the City's ADU ordinance. As explained further below, the pending ADU ordinance, if enacted with the modifications recommended by the Planning Commission, would address three of HCD's findings.

The Planning Department and Mayor Breed will seek additional amendments to the pending ADU ordinance to address HCD's remaining findings. Some of these additional amendments must be referred back to the City's Planning Commission under section 4.105 of the City's Charter and Planning Code section 302, subsection (d). We are confident that these anticipated changes to San Francisco's ADU approval process will conform the City's State-mandated ADU programs to State law requirements and further facilitate construction of this important type of housing. In the portion of this letter that follows, we restate HCD's findings and describe specifically how we propose to address each of them.

1. **Section 102 – Definitions / JADU** – The Ordinance defines a junior accessory dwelling unit (JADU) as a Dwelling Unit meeting the requirements of subsection 207(c)(6) and is "owner-occupied, unless the

owner resides in the remaining portion of the structure.” Government Code section 65852.22, subdivision (a)(2), does not require owner-occupancy if the owner is another governmental agency, land trust, or housing organization. The Ordinance must be amended to reflect when owner-occupancy is not required.

Response. We will seek an amendment to the pending ADU ordinance to add an exception from the owner occupancy requirements in Government Code section 65852.22, subdivision (a)(2) into the Planning Code's definition of Junior ADU.

2. Section 136(c)(32) – *Lot Depth* – The Ordinance provides that if an ADU is proposed for a single-family home, the rear yard must be 25 percent of the lot depth but in no case less than 15 feet. Government Code section 65852.2, subdivision (c)(2)(C), prohibits any requirements on lot coverage that does not permit at least an 800 square-foot ADU with four-foot side and rear setbacks. The Ordinance must be amended to make clear an 800 square-foot ADU is allowed notwithstanding any limits on rear yard percentage or depth.

Response. Despite the language in question, the City does not currently enforce any lot depth requirements that do not permit at least an 800 square-foot ADU with four-foot side and rear setbacks, nor will it do so upon passage of the pending ADU ordinance. Nonetheless, we will seek a clarifying amendment to the pending ADU ordinance to be explicit that the lot coverage requirements of Planning Code Section 136 do not prohibit construction of an ADU that is no more than 800 square feet with four-foot side and rear setbacks.

3. Section 207(c)(6)(A) – *Applicability* – The Ordinance states, “If construction of the ADU will not meet the requirements of this subsection, the ADU is regulated pursuant to subsection 207(c)(4) and not this subsection 207(c)(6).” The programs presented here – the State Mandated Program and the Local Program – are not sufficiently distinct and do not appear to allow applicants to choose which route they would like to take regarding their ADU or JADU application. The State Mandated Program implements State ADU Law, which creates two paths. First, Government Code section 65852.2, subdivision (a)(3)(A), provides that “[a] permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing....” Second, Subdivision (e)(1) provides that “notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit” for ADUs meeting the requirements under (e)(1). The Local Program creates yet another path. The City must amend the Ordinance to make it clear that there are distinct and separate paths for the development of ADUs and to allow applicants, at their election, to participate in either the State Mandated Program or the Local Program. The City may not automatically transfer an application to Section 207 (c)(4) if the application does not meet the requirements of section 207 (c)(6).

Response. In addition to its Local ADU program, the City allows applicants to elect to participate in either of its two State-mandated ADU programs: the “Hybrid ADU” program, which implements Government Code section 65852.2, subdivision (e); and the “State ADU” program, which implements Government Code section 65852.2, subdivisions (a)-(d). The City does not require ADU permit applicants to participate in the Local ADU program, and does not automatically transfer permit applications from either of the State-mandated approval programs to the Local program. The City and the Planning Department maintain ADU-related websites that both identify all of the City's ADU programs and provide information to help applicants choose the most suitable approval

pathway for their ADU project.¹ The pending ADU ordinance, with the Planning Commission's recommended modifications, would further distinguish the City's State-Mandated ADU programs from the City's Local ADU program by relocating these programs to new, separate sections of the Planning Code and clarifying the text of the Code.

4. Section 207(c)(6)(B)(ii) – *Historic Designation* – The Ordinance states that “[f]or projects involving a property listed in the California Register of Historic Places, or a property designated individually or as part of a historic or conservation district pursuant to Article 10 or Article 11, the ADU or JADU shall comply with any architectural review standards adopted by the Historic Preservation Commission to prevent adverse impacts to such historic resources. Such projects shall not be required to obtain a Certificate of Appropriateness or a Permit to Alter.” These standards under Government Code section 65852.2, subdivision (a)(1)(B), apply to ADUs permitted under section 65852.2, subdivisions (a)-(d); however, ADUs under section (c)(6) of the Ordinance apply to state mandated ADUs permitted under Government Code section 65852.2, subdivision (e). These historic designation standards must be moved to section 207(c)(4) of the Ordinance. Further, under Government Code section 65852.2, subdivision (a)(1)(B), only the California Register of Historic Resources may be used to restrict ADUs. Utilizing a local register of historic resources, or a special district, could preclude ADUs from being created in those areas. Therefore, the City must amend this section to remove the other restriction on special districts or significant lots and move these standards to section 207(c)(4) of the Ordinance.

Response. Government Code section 65852.2, subdivision (a)(1)(b)(i) broadly permits the City to impose objective architectural review standards on ADUs seeking approval under the City's State ADU program. This grant of authority is separate from, and in addition to, subdivision (a)(1)(b)(i)'s authorization of local “standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources.” Furthermore, Government Code section 65852.2, subdivision (e)(7) also broadly permits the City to impose objective standards, “including, but not limited to . . . historic standards” on ADUs under the City's Hybrid ADU program. State ADU law therefore authorizes the City to impose objective architectural review standards on ADUs seeking approval under either of the City's State-mandated programs. We will seek an amendment to the pending ADU ordinance to restate existing law that any architectural review standards adopted by the Historic Preservation Commission that are applicable to State-mandated ADUs must remain objective. We will also seek to add findings to the pending ADU ordinance to explain why the City's ADU controls comply with applicable requirements, pursuant to Government Code section 65852.2(h)(2)(B)(ii).

5. 207(c)(6)(C)(i)(b), (c)(6)(C)(ii)(b), 207(c)(6)(D)(i) and (c)(6)(D)(iii) – *Number of ADUs* – The Ordinance states that “[o]nly one ADU and one JADU is permitted per lot” in (c)(6)(C)(i)(b) and “[t]he lot on which the ADU is proposed does not contain another ADU, but may contain a JADU” in (c)(6)(C)(ii)(b). However, under Government Code section 65852.2, subdivision (e), which this section of the Ordinance is intended to implement, a residential lot may create a minimum of one ADU converted from existing space; one new construction, detached ADU under 800 square feet; and one JADU. Therefore, the City must amend these sections to allow for at least by-right units.

¹ For example, see <https://sfplanning.org/accessory-dwelling-units> and <https://sf.gov/topics/accessory-dwelling-unit-adu>. The Planning Department has prepared extensive materials to assist applicants seeking to construct an ADU, including a chart comparing the City's ADU programs, which may be found at https://sfplanning.org/sites/default/files/documents/adu/ADU_programs_comparison_chart.pdf.

Additionally, the Ordinance states that “[o]nly one ADU will be constructed” in (c)(6)(D)(i) and “[t]he lot on which the ADU is proposed does not contain another ADU or JADU” in (c)(6)(D)(iii). The Ordinance allows only one ADU per lot; however, units created within the proposed or existing space of a primary dwelling, or an existing accessory structure would be created pursuant to Government Code 65852.2, subdivision (e)(1)(A). Subdivision (e) allows for a combination of units to be created such that there may be up to three additional dwelling units. Therefore, the City must amend this section to remove this restriction.

Response. In order to comply with HCD’s interpretation of Government Code section 65852.2, subdivision (e), we will seek amendments to the pending ADU ordinance to permit the construction of up to three ADUs that meet applicable requirements under the City’s Hybrid ADU program.

6. 207(c)(6)(C)(ii)(e), (c)(6)(C)(iv)(c), & (c)(6)(D)(ix) – *Height Restrictions* – The Ordinance requires “a height no greater than sixteen feet.” However, Government Code section 65852.2, subdivision (c)(2)(D), allows for a height of 16, 18, 20, or 25 feet, as applicable. The City must amend the Ordinance to comply with State ADU Law.

Response. To comply with the State ADU law requirements referenced in this finding, the Planning Commission recommended modifications to the pending ADU ordinance to increase height limits to 16, 18, 20, or 25 feet, as applicable.

7. 207(c)(6)(D) – *Subdivision (c)(2)(C) Restrictions* – The Ordinance states that “the City shall not impose limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings, that does not permit construction of an ADU meeting all other requirements that is 800 square feet or less...” However, Government Code section 65852.2, subdivision (c)(2)(C), is more comprehensive, stating that “a local agency shall not establish by ordinance...[a]ny requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Imposing additional planning reviews or front setbacks which could preclude ADUs of 800 square feet or less would violate statute. Therefore, the City must amend this section to include these items.

Response. The City does not currently impose any zoning clearance, separate zoning review, or size requirements that do not permit construction of at least an 800 square foot ADU with four-foot side and rear setbacks, nor will it do so upon passage of the pending ADU ordinance. We will seek an amendment to the pending ADU ordinance to incorporate these additional restrictions on City authority into the text of the Planning Code.

8. 207(c)(6)(E)(ii) – *Notification* – The Ordinance states that prior to permit application, a property owner must “[c]ause a notice describing the proposed project to be posted on the subject property for at least 15 days...” However, Government Code section 65852.2, subdivision (a)(7), states that “[n]o other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use

permit under this subdivision.” Requiring 15 days of notification prior to the submittal of an application for an ADU would cause an undue delay in the permitting process. Therefore, the City must remove this requirement.

Response. We will seek amendments to the pending ADU ordinance to remove this notification requirement for ADUs seeking approval under the City's State ADU approval pathway. Nonetheless, we note that Government Code section 65852.2, subdivision (e)(7) grants the City broad authority to impose objective standards, including reasonable notification requirements, on ADUs seeking approval under the City's Hybrid ADU approval pathway. To this end, we will also seek to add findings to the pending ADU ordinance to explain why the City's ADU controls comply with the applicable requirements, pursuant to Government Code section 65852.2(h)(2)(B)(ii).

9. 207(c)(6)(F) – *Review and Approval* – The Ordinance states that “[t]he City shall act on an application for a permit to construct an ADU or JADU under this subsection 207(c)(6) within 60 days from receipt of the complete application, without modification or disapproval, if the proposed construction fully complies with the requirements set forth in this subsection 207(c)(6).” However, “act on” is outdated language, and as of January 1, 2023, Government Code section 65852.2, subdivision (a)(3), states that “[t]he permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days...” (Emphasis added.) Therefore, the City must amend this language to comply with the updated State ADU Law.

Response. The pending ADU ordinance, with the Planning Commission's recommended modifications, would amend the Building Code to require the City to approve or deny a permit to construct an ADU or Junior ADU within 60 days from receipt of a complete application.

We look forward to continuing our collaboration with HCD to help achieve our shared goal of addressing the housing needs of the City and State.

Sincerely,

Rich Hillis
Director of Planning

CC (all electronic)

- Mayor London Breed
- Members of the Board of Supervisors
- City Attorney David Chiu
- Director Patrick O'Riordan, DBI
- Neville Pereira, DBI
- Lisa Gluckstein, Office of the Mayor
- Judson True, Office of the Mayor
- Tyler Galli, California Department of Housing and Community Development
- Jamie Candelaria, California Department of Housing and Community Development

From: [Ryan Patterson](#)
To: [Carroll, John \(BOS\)](#); [MelgarStaff \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#)
Subject: Public Comment on Agenda Item 6 - SFBOS File No. 230310 - Planning, Business and Tax Regulations Codes - Accessory Dwelling Units in New Construction
Date: Monday, December 11, 2023 2:21:38 PM
Attachments: [Planning Ltr 112723.pdf](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Chair Melgar and Supervisors:

Our office represents Yes In My Back Yard (YIMBY Law) and Sonja Trauss, its executive director. We were disappointed to learn of the proposed ordinance's inconsistencies with state law – especially its imposition of new constraints on the creation of accessory dwelling units (ADUs).

As a preliminary matter, we object to the lack of notice of today's hearing on the Ordinance, despite having requested notice through the Board's Legistar legislative alerts system.

In particular, we object to the reduction of allowable square footage for state-law ADUs. There was no cap on the size of such ADUs on January 1, 2018. A limit of 1,200 square feet was subsequently imposed in Ordinance 116-19. Now, this proposed Ordinance would limit ADU size to 850 or 1,000 square feet. This would lessen the intensity of housing allowed in San Francisco in violation of state law.

SB 330 prohibits:

Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B). For purposes of this subparagraph, "less intensive use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing. (Gov. Code § 66300(b)(1)(A).)

Additionally, we object to the inconsistencies with state law identified in the Planning Department's letter of **November 27, 2023 (attached)**. As discussed in the letter, a number of inconsistencies are itemized (1-9) and admitted but not resolved.

Further, there is no prohibition in state ADU law against ADUs that are attached to existing detached accessory structures. The proposed ordinance seeks to prohibit such ADUs, which is unlawful.

We urge the Board of Supervisors to eliminate the proposed inconsistencies with state law.

Very truly yours,

PATTERSON & O'NEILL, PC

Ryan Patterson

Attorneys for YIMBY Law and Sonja Trauss

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This email may contain privileged or confidential material for the sole use of the intended recipient. Review or distribution by others is strictly prohibited. If you are not the intended recipient, please contact the original sender and delete all copies. Nothing in this email or any attachments should be regarded as tax advice unless expressly stated.



November 27, 2023

Mr. David Zisser
Assistant Deputy Director
Local Government Relations & Accountability
Housing Policy Development Division
California Department of Housing and Community Development
2020 W. El Camino Avenue, Suite 552
Sacramento, CA 95833
via email to David.Zisser@hcd.ca.gov

Re: HCD Review of San Francisco's Accessory Dwelling Unit Ordinance No. 053-23

Dear Assistant Deputy Director Zisser,

Thank you for your October 26, 2023 transmittal of the California Department of Housing and Community Development's ("HCD") findings regarding San Francisco's accessory dwelling unit ("ADU") Ordinance No. 053-23. The purpose of this letter is to respond to those findings pursuant to California Government Code section 65852.2, subdivision (h)(2)(A). We appreciate your recognition of the City's local ADU approval program, and share HCD's goal of maximizing ADU production under the City's State-mandated ADU programs.

On September 28, 2023, the San Francisco Planning Commission recommended approval, with modifications, of a new proposed ADU ordinance contained in San Francisco Board of Supervisors File. No. 230310 (the "pending ADU ordinance"). That ordinance is now pending at the Land Use and Transportation Committee of the Board of Supervisors. HCD's October 26 letter requests nine amendments to the City's ADU ordinance. As explained further below, the pending ADU ordinance, if enacted with the modifications recommended by the Planning Commission, would address three of HCD's findings.

The Planning Department and Mayor Breed will seek additional amendments to the pending ADU ordinance to address HCD's remaining findings. Some of these additional amendments must be referred back to the City's Planning Commission under section 4.105 of the City's Charter and Planning Code section 302, subsection (d). We are confident that these anticipated changes to San Francisco's ADU approval process will conform the City's State-mandated ADU programs to State law requirements and further facilitate construction of this important type of housing. In the portion of this letter that follows, we restate HCD's findings and describe specifically how we propose to address each of them.

1. **Section 102 – Definitions / JADU** – The Ordinance defines a junior accessory dwelling unit (JADU) as a Dwelling Unit meeting the requirements of subsection 207(c)(6) and is "owner-occupied, unless the

owner resides in the remaining portion of the structure.” Government Code section 65852.22, subdivision (a)(2), does not require owner-occupancy if the owner is another governmental agency, land trust, or housing organization. The Ordinance must be amended to reflect when owner-occupancy is not required.

Response. We will seek an amendment to the pending ADU ordinance to add an exception from the owner occupancy requirements in Government Code section 65852.22, subdivision (a)(2) into the Planning Code's definition of Junior ADU.

2. **Section 136(c)(32) – Lot Depth** – The Ordinance provides that if an ADU is proposed for a single-family home, the rear yard must be 25 percent of the lot depth but in no case less than 15 feet. Government Code section 65852.2, subdivision (c)(2)(C), prohibits any requirements on lot coverage that does not permit at least an 800 square-foot ADU with four-foot side and rear setbacks. The Ordinance must be amended to make clear an 800 square-foot ADU is allowed notwithstanding any limits on rear yard percentage or depth.

Response. Despite the language in question, the City does not currently enforce any lot depth requirements that do not permit at least an 800 square-foot ADU with four-foot side and rear setbacks, nor will it do so upon passage of the pending ADU ordinance. Nonetheless, we will seek a clarifying amendment to the pending ADU ordinance to be explicit that the lot coverage requirements of Planning Code Section 136 do not prohibit construction of an ADU that is no more than 800 square feet with four-foot side and rear setbacks.

3. **Section 207(c)(6)(A) – Applicability** – The Ordinance states, “If construction of the ADU will not meet the requirements of this subsection, the ADU is regulated pursuant to subsection 207(c)(4) and not this subsection 207(c)(6).” The programs presented here – the State Mandated Program and the Local Program – are not sufficiently distinct and do not appear to allow applicants to choose which route they would like to take regarding their ADU or JADU application. The State Mandated Program implements State ADU Law, which creates two paths. First, Government Code section 65852.2, subdivision (a)(3)(A), provides that “[a] permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing....” Second, Subdivision (e)(1) provides that “notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit” for ADUs meeting the requirements under (e)(1). The Local Program creates yet another path. The City must amend the Ordinance to make it clear that there are distinct and separate paths for the development of ADUs and to allow applicants, at their election, to participate in either the State Mandated Program or the Local Program. The City may not automatically transfer an application to Section 207 (c)(4) if the application does not meet the requirements of section 207 (c)(6).

Response. In addition to its Local ADU program, the City allows applicants to elect to participate in either of its two State-mandated ADU programs: the “Hybrid ADU” program, which implements Government Code section 65852.2, subdivision (e); and the “State ADU” program, which implements Government Code section 65852.2, subdivisions (a)-(d). The City does not require ADU permit applicants to participate in the Local ADU program, and does not automatically transfer permit applications from either of the State-mandated approval programs to the Local program. The City and the Planning Department maintain ADU-related websites that both identify all of the City's ADU programs and provide information to help applicants choose the most suitable approval

pathway for their ADU project.¹ The pending ADU ordinance, with the Planning Commission's recommended modifications, would further distinguish the City's State-Mandated ADU programs from the City's Local ADU program by relocating these programs to new, separate sections of the Planning Code and clarifying the text of the Code.

4. Section 207(c)(6)(B)(ii) – *Historic Designation* – The Ordinance states that “[f]or projects involving a property listed in the California Register of Historic Places, or a property designated individually or as part of a historic or conservation district pursuant to Article 10 or Article 11, the ADU or JADU shall comply with any architectural review standards adopted by the Historic Preservation Commission to prevent adverse impacts to such historic resources. Such projects shall not be required to obtain a Certificate of Appropriateness or a Permit to Alter.” These standards under Government Code section 65852.2, subdivision (a)(1)(B), apply to ADUs permitted under section 65852.2, subdivisions (a)-(d); however, ADUs under section (c)(6) of the Ordinance apply to state mandated ADUs permitted under Government Code section 65852.2, subdivision (e). These historic designation standards must be moved to section 207(c)(4) of the Ordinance. Further, under Government Code section 65852.2, subdivision (a)(1)(B), only the California Register of Historic Resources may be used to restrict ADUs. Utilizing a local register of historic resources, or a special district, could preclude ADUs from being created in those areas. Therefore, the City must amend this section to remove the other restriction on special districts or significant lots and move these standards to section 207(c)(4) of the Ordinance.

Response. Government Code section 65852.2, subdivision (a)(1)(b)(i) broadly permits the City to impose objective architectural review standards on ADUs seeking approval under the City's State ADU program. This grant of authority is separate from, and in addition to, subdivision (a)(1)(b)(i)'s authorization of local “standards that prevent adverse impacts on any real property that is listed in the California Register of Historical Resources.” Furthermore, Government Code section 65852.2, subdivision (e)(7) also broadly permits the City to impose objective standards, “including, but not limited to . . . historic standards” on ADUs under the City's Hybrid ADU program. State ADU law therefore authorizes the City to impose objective architectural review standards on ADUs seeking approval under either of the City's State-mandated programs. We will seek an amendment to the pending ADU ordinance to restate existing law that any architectural review standards adopted by the Historic Preservation Commission that are applicable to State-mandated ADUs must remain objective. We will also seek to add findings to the pending ADU ordinance to explain why the City's ADU controls comply with applicable requirements, pursuant to Government Code section 65852.2(h)(2)(B)(ii).

5. 207(c)(6)(C)(i)(b), (c)(6)(C)(ii)(b), 207(c)(6)(D)(i) and (c)(6)(D)(iii) – *Number of ADUs* – The Ordinance states that “[o]nly one ADU and one JADU is permitted per lot” in (c)(6)(C)(i)(b) and “[t]he lot on which the ADU is proposed does not contain another ADU, but may contain a JADU” in (c)(6)(C)(ii)(b). However, under Government Code section 65852.2, subdivision (e), which this section of the Ordinance is intended to implement, a residential lot may create a minimum of one ADU converted from existing space; one new construction, detached ADU under 800 square feet; and one JADU. Therefore, the City must amend these sections to allow for at least by-right units.

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Additionally, the Ordinance states that “[o]nly one ADU will be constructed” in (c)(6)(D)(i) and “[t]he lot on which the ADU is proposed does not contain another ADU or JADU” in (c)(6)(D)(iii). The Ordinance allows only one ADU per lot; however, units created within the proposed or existing space of a primary dwelling, or an existing accessory structure would be created pursuant to Government Code 65852.2, subdivision (e)(1)(A). Subdivision (e) allows for a combination of units to be created such that there may be up to three additional dwelling units. Therefore, the City must amend this section to remove this restriction.

Response. In order to comply with HCD’s interpretation of Government Code section 65852.2, subdivision (e), we will seek amendments to the pending ADU ordinance to permit the construction of up to three ADUs that meet applicable requirements under the City’s Hybrid ADU program.

6. 207(c)(6)(C)(ii)(e), (c)(6)(C)(iv)(c), & (c)(6)(D)(ix) – *Height Restrictions* – The Ordinance requires “a height no greater than sixteen feet.” However, Government Code section 65852.2, subdivision (c)(2)(D), allows for a height of 16, 18, 20, or 25 feet, as applicable. The City must amend the Ordinance to comply with State ADU Law.

Response. To comply with the State ADU law requirements referenced in this finding, the Planning Commission recommended modifications to the pending ADU ordinance to increase height limits to 16, 18, 20, or 25 feet, as applicable.

7. 207(c)(6)(D) – *Subdivision (c)(2)(C) Restrictions* – The Ordinance states that “the City shall not impose limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings, that does not permit construction of an ADU meeting all other requirements that is 800 square feet or less...” However, Government Code section 65852.2, subdivision (c)(2)(C), is more comprehensive, stating that “a local agency shall not establish by ordinance...[a]ny requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Imposing additional planning reviews or front setbacks which could preclude ADUs of 800 square feet or less would violate statute. Therefore, the City must amend this section to include these items.

Response. The City does not currently impose any zoning clearance, separate zoning review, or size requirements that do not permit construction of at least an 800 square foot ADU with four-foot side and rear setbacks, nor will it do so upon passage of the pending ADU ordinance. We will seek an amendment to the pending ADU ordinance to incorporate these additional restrictions on City authority into the text of the Planning Code.

8. 207(c)(6)(E)(ii) – *Notification* – The Ordinance states that prior to permit application, a property owner must “[c]ause a notice describing the proposed project to be posted on the subject property for at least 15 days...” However, Government Code section 65852.2, subdivision (a)(7), states that “[n]o other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use

permit under this subdivision.” Requiring 15 days of notification prior to the submittal of an application for an ADU would cause an undue delay in the permitting process. Therefore, the City must remove this requirement.

Response. We will seek amendments to the pending ADU ordinance to remove this notification requirement for ADUs seeking approval under the City's State ADU approval pathway. Nonetheless, we note that Government Code section 65852.2, subdivision (e)(7) grants the City broad authority to impose objective standards, including reasonable notification requirements, on ADUs seeking approval under the City's Hybrid ADU approval pathway. To this end, we will also seek to add findings to the pending ADU ordinance to explain why the City's ADU controls comply with the applicable requirements, pursuant to Government Code section 65852.2(h)(2)(B)(ii).

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Response. The pending ADU ordinance, with the Planning Commission's recommended modifications, would amend the Building Code to require the City to approve or deny a permit to construct an ADU or Junior ADU within 60 days from receipt of a complete application.

We look forward to continuing our collaboration with HCD to help achieve our shared goal of addressing the housing needs of the City and State.

Sincerely,

Rich Hillis
Director of Planning

CC (all electronic)

- Mayor London Breed
- Members of the Board of Supervisors
- City Attorney David Chiu
- Director Patrick O'Riordan, DBI
- Neville Pereira, DBI
- Lisa Gluckstein, Office of the Mayor
- Judson True, Office of the Mayor
- Tyler Galli, California Department of Housing and Community Development
- Jamie Candelaria, California Department of Housing and Community Development

From: [Ken Mandler](#)
To: [Major, Erica \(BOS\)](#)
Subject: Public Comment on Board File #210585
Date: Monday, October 25, 2021 9:23:03 AM
Attachments: [SF-BOS-LAND-USE-COMMITTEE-210585-102221.pdf](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Ms. Major:

Board File #210585 has been sent to the Land Use and Transportation Committee by the San Francisco Planning Commission for recommendation. It has not yet been calendared by your committee. I have attached my written "public comment" to the proposed legislation. I would like you to include it in the legislative file and distributed in the legislative packet when the legislation is set for hearing.

I understand that we treat "future hearing dates" as a more closely held secret than the nuclear codes the president needs to launch a nuclear war. Therefore, you are unable to provide me with an estimated date for the hearing in this matter. I, of course, would be interested in that information so that I, a citizen of San Francisco, can set aside, on my calendar, that time. That would all sound normal in a democratic society. However, I know where I live, but if you can spill any beans here, better to me, than to the FBI!

Thanks.

Kenneth Mandler
A Citizen of San Francisco

October 25, 2021

Supervisor Myrna Melgar, Land Use and Transportation Committee
Supervisor Dean Preston, Land Use and Transportation Committee
Supervisor Aaron Peskin, Land Use and Transportation Committee
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

**Re: File #210585 San Francisco ADU Ordinance Update:
This Proposed Legislation Restricts Housing Development
During a HOUSING CRISIS; Please VOTE NO**

The City and County of San Francisco has a long history of enacting “restrictions” on housing development. Our very first zoning law, known as the Cubic Air Ordinance, was enacted during a period of rampant real estate speculation in the 1870s. The Cubic Air Ordinance required boarding houses to offer a minimum amount of space per tenant—supposedly a social “good.” However, the law’s true purpose, accord to Hunter Oatman-Stanford in his 2018 article, “Demolishing the California Dream: How San Francisco Planned its Own Housing Crisis,” was to criminalize Chinese renters and landlords so their jobs and living space could be reclaimed for San Francisco’s white residents, thereby “setting an ominous precedent” that continues today, in your consideration of File #210585, the ADU Ordinance. File #210585 was recommended for passage by the San Francisco Planning Commission on 9/2/21 and is now before your committee for recommendation. The proposed legislation has not yet been set on your agenda.

Down through the years until the equally disastrous 1978 Downzoning that even Rai Okamoto, the SF Planning Director at the time, expressed reservations about, the restrictions on housing development in San Francisco continued to be tightened. The minutes of the 6/27/1978 SF Planning Commission meeting ended with this conclusion, ***“As a result, the cost of housing may increase, and that with increasing housing costs, some population groups may find it difficult to live in San Francisco. The proposed zoning will affect the low-and-moderate income households more than any other group.”***

In two recent articles in the San Francisco Chronicle, Rich Hillis, the SF Planning Director (aka SF Planner Oligarch-in-Chief) was quoted as favoring “upzoning.”

These articles by Heather Knight were entitled #1 (7/24/21) "Go big or go home; SF supervisor juices housing legislation to allow fourplexes on every single family lot," and #2 (8/27/21) "One housing project has turned into an epic San Francisco battle."

In the 7/24/21 article, Hillis noted that San Francisco's zoning has meant a lot of development on the east side and too little on the west side. He stated "we've gotten what we've zoned for. We need to make changes if we're going to meet our housing goals, and fourplexes are part of the answer."

In the 8/27/21 article Knight wrote "Even Rich Hillis, the city's planning director agreed with the assessment that the culprit here is the city's own rules, which vastly limit new housing in wide swaths of the city despite the need for more housing." Hillis was quoted by Knight as stating "There was a lot to like about this proposal, but our 1960s-era code doesn't allow us to approve it."

Basically, Rich Hillis has good public relations and access to reporters who write for our oligarchs. A good quote is a good quote. Basically, Hillis says he cannot do anything!

Land Use & Transportation Committee's Consideration of File #210585

And here he is, along with his legislative representative, Veronica Flores, proposing to prohibit TRIPLEXES in San Francisco in File #210585. Remember, he was quoted above pushing FOURPLEXES in those articles. And now he brings legislation before you that will prohibit fully legal (under state law) TRIPLEXES.

Here is the background. The new state ADU laws enacted in 2019 allow single family homeowners, and there are over 128,000 in San Francisco, to build TWO ADUs on their lot, one in the house and one in the backyard. That creates a TRIPLEX. This has been the law of the land in San Francisco since 1/1/2020.

Now comes SF Planning's proposal in File #210585 to eliminate this option. How can they do that? It is state law. Well if you have good lobbyists, and the City and County of San Francisco has good lobbyists in Sacramento, you can insert an "exception." And, lo and behold, in the midst of an existential HOUSING CRISIS, the city did succeed in getting this exception and now is utilizing this "exception"

in state law to propose in File #210585, to eviscerate the state's ADU law allowing TRIPLEXES.

And let's be clear; they are not making this easy for you to figure out! The proposed law, as Flores and Hillis will assure you, will allow TWO ADUs on a single lot in San Francisco, theoretically! That is TRUE. However, the devil is in the details and if you have a MASSIVE backyard in San Francisco, you can probably meet the conditions. On my lot at 466 Country Club Drive (In District 7, Myrna Melgar's district), the law that you are prepared to approve would allow a 16 square foot ADU. My proposal, as submitted on 2/19/21 under the state ADU law was for a 454 square foot ADU. The 16 square feet provided for by the proposed law you are about to approve does not meet the standards for habitable space in San Francisco which is a minimum of 120 square feet. There you have it, yes, theoretically triplexes are allowed under File #210585—and Hillis and Flores will forcefully state this—but they know you will not have the time and inclination to figure out their scam!

The law in front of you, File #210585, is unnecessary. State ADU laws are currently applicable in San Francisco and there is no requirement that a local ADU law be implemented, particularly when it DISCOURAGES housing development during a HOUSING CRISIS.

Purportedly, File #210585 is being proposed to allow "less restrictive" provisions for the Local ADU program as allowed by the state ADU program. On page 6 of the Executive Summary as prepared by Veronica Flores, there is a paragraph about "Ability to be Less Restrictive." Two minor "less restrictive" points (impact fees and measuring of height) are described, thereby, described by Ms. Flores. ***Nowhere in the Executive Summary does Ms. Flores clearly describe the "ABILITY TO BE MORE RESTRICTIVE THAN STATE LAW," points that File #201585 includes.*** That is quite interesting, is it not? In fact, the File #210585 and File #210699 (unanimously approved by your committee on October 18, 2021) will virtually shut off ADU development in San Francisco. And it will be done the same way that San Francisco officials enacted the Cubic Air Ordinance in the 1870s to rid the city of Chinese residents—without a clear discussion about the ACTUAL impact of complex and confusing legislation! History repeats itself quite often, and on a regular basis, in San Francisco!

Why is this law then being proposed?

1)SF PLANNING COMMISSIONER SUE DIAMOND'S BACKYARD FOCUS

If you go back and watch the 9/2/21 SF Planning Commission hearing and the previously proposed File #201008 one on 11/5/20, you will see the SF Planning Staff Member Veronica Flores playing up to a specific Planning Commissioner, Sue Diamond. Ms. Diamond is the proud homeowner of a single-family San Francisco residence appraised at \$6 million on a 4800 square foot lot and she has personally reaped a \$5 million, "something from nothing," San Francisco oligarch windfall by owning this property since 1990 when she paid \$891,000 for it. She likes her backyard!

Does File #210585 prohibit backyard ADUs in San Francisco. The answer is "NO." Therefore, Ms. Diamond's quest to ban backyard ADUs is not satisfied by File #210585. However, for the SF Planning staff to curry favor with the Commissioner (which they do to get their jobs done; and sometimes to get their jobs; looking at you, Mr. Hillis); they have to "play" to the audience. They know what they are doing; but in the world of zoning/planning complexity, it is very difficult for civilians, such as you and myself, to figure out (hence the steady growth in the employment of permit expeditors, including SF Planning Director Rich Hillis' employment of the notorious, unregistered "permit expeditor" Jeremy Paul, to ensure final approval of a second unit in his own home!)

Here is what #210585 actually does. It bans backyard ADUs in San Francisco only in situations where there is also an ADU in the house. That's two ADUs on one Single Family lot. Does that happen often? The UC Berkeley Turner Center for Housing Innovation just released a study in April 2021 about recent ADU homeowners and the study indicated that 97% of ADU homeowners had only ONE ADU at their home! So why all the fuss and commotion?

How many San Francisco homeowners have actually proposed to build TWO ADUs on their Single Family Lot since state law allowed it on 1/1/2020? EXACTLY ONE. Me! On 2/19/21, I applied for a permit to build TWO ADUs on my Single-Family Lot at 466 Country Club Drive. On October 4, 2021, Natalia Kwiatkowska of SF Planning, forcibly stated that unless I withdrew one, no ADU permit would be issued to me. This was before File #210585 was enacted by you, the people's

representatives at the Board of Supervisors. Don't ask...it is how SF Planning operates; they make the rules first; ask for your approval later; all while restricting new housing in San Francisco during a HOUSING CRISIS. You really do not want to know how that happens!

On October 22, 2021, I filed a "withdrawal" of my permit application for the 2nd ADU on my single-family lot at 466 Country Club Drive per Ms. Kwiatkowska's intimidating request. I was hoping to satisfy her and get my project moving forward. We will see!

2) SAN FRANCISCO REAL ESTATE OLIGARCHS (SF PLANNING DIRECTOR RICH HILLIS INCLUDED) BENEFIT FROM REDUCED HOUSING SUPPLY

Who has an interest in restricting new housing in San Francisco? Well, you know. Our existing real estate oligarchs do! With less housing available, their wealth increases. Mr. Hillis, the SF Planning Director, is an example. His multi-million dollar wealth has been solely derived by skillful manipulation of the SF Planning/Permitting rules and a strategic hire of a permit expeditor in 2018, Jeremy Paul. Hillis made good "hay" at his properties, 4983 17th Street, 830 Stanyan Street, and 417 Lyon Street. And next door, associates of Mr. Paul, utilized complex planning procedures to turn a \$1.6 million home (413 Lyon Street; right next door to Mr. Hillis' home) bought in 2018 into a \$5.5 million condominium complex sale on 9/9/21. With renovation costs, the profit was a cool \$3 million in 3 years of work! Mostly paperwork "work." How did they figure out how to utilize a condominium conversion law that required long-term occupancy as a flipper, well, you might not have to look too far to understand where they got that advice (next door!). Mr. Jeremy Paul, a notorious "permit operator," and Mr. Hillis have a "relationship," a very profitable one.

VOTE NO ON FILE #210585

I ask that you not approve the proposed legislation, File #210585. No legislation is needed. The state ADU laws apply to San Francisco already and in actuality ENCOURAGE ADU development. The alternative is for your names to be associated with voting to DISCOURAGE housing development during an existential HOUSING CRISIS in San Francisco. That will be some legacy!

Please ask the following TOUGH questions:

1) Your proposed legislation allows detached backyard ADUs in all 128,000 single family lots in San Francisco, correct? (ANSWER: YES)

2) Then why are you so intent upon banning a backyard ADU in the very few situations where there is possible a second ADU in the house, as allowed by state law? The UC Berkeley study found that 97% of ADU homeowners only had one ADU. Is this not a very rare circumstance that we are addressing with this legislation?

3) Exactly how many single-family homes in San Francisco do you foresee having two ADUs? Do any have two ADUs now?

4) Can we wait and see if we have an ACTUAL problem? Why must we ban something that may theoretically happen or not happen? Our time is valuable. We have big issues here at the Board of Supervisors-Crime, Evictions, Housing. And you want us to focus our precious attention on what, in the end, is a theoretical issue.

5) Does the proposed legislation, in any way, decrease Sue Diamond's enjoyment of her backyard?

6) Does the legislation, due to its opaqueness and complexity, enhance the ability of an individual, with the help of a permit expediter, to extract unforeseen benefits from the various confusing and complex provisions of the proposed legislation? Remember, Mr. Hillis' neighbors were able to extract \$3 million in windfall profits from a very similar "2 unit condominium" law we enacted for "long-term owners." There must have been a little "unforeseen" loop-hole in that complex law, or maybe it was just too complex for the staff to properly administer and a skilled expeditor knew which buttons to push. Are we not creating a similarly complex law here in File #210585, unnecessarily?

7) Does this legislation restrict housing development in San Francisco? If so, does it make existing San Francisco homeowners, the "real estate oligarchs" more wealthy?

8) Are you familiar with Mr. Mandler's proposal and permit applications for 466 Country Club Drive? Will this legislation prohibit Mr. Mandler's second ADU that he is privately financing?

ONE LAST QUESTION. Mr. Mandler submitted his permit applications many months prior to your presentation of File #210585 to our committee, the legislation that would prohibit his TWO ADU development on a single family lot in San Francisco. At the time he submitted his permit applications, such a development was LEGAL in San Francisco. How does it happen that the San Francisco Planning Department, under the leadership of Director Rich Hillis decides to declare something illegal, and then, only later, to seek legislation to be approved, AFTER THE FACT. Mr. Mandler attended Lowell High School. He had a Civics class. In that Civics class, he learned that legislation was proposed, then considered by the legislative body, here the Board of Supervisors, passed, and then sent on to the executive, the Mayor in this case, to sign. Only then was a law effective. Was Mr. Mandler's Civics class at Lowell High providing him with "fake news?" Or does Mr. Hillis and the SF Planning department just make up and impose "laws as they go.....?"

FILE #210585 IS DESIGNED TO RESTRICT HOUSING DEVELOPMENT IN SAN FRANCISCO DURING A HOUSING CRISIS; PLEASE VOTE NO.

Sincerely,

Kenneth Mandler
466 Country Club Drive
San Francisco, CA 94132
kenmandler@gmail.com

Attachment: File #210585



EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: September 2, 2021

90-Day Deadline: September 9, 2021

Project Name: State-Mandated Accessory Dwelling Unit Controls
Case Number: 2021-006260PCA [Board File No. 210585]
Initiated by: Mayor Breed / Introduced June 8, 2021
Staff Contact: Veronica Flores, Legislative Affairs
Veronica.Flores@sfgov.org, 628-652-7525
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

Recommendation: Approval

Planning Code Amendment

The proposed Ordinance would amend the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units (ADUs) meeting certain requirements in single-family and multi-family buildings. The changes in the proposed Ordinance are required to bring the Planning Code into compliance with State law.

Before comparing the changes between the Planning Code today and the proposed Ordinance, it is important to understand that there are now two different categories of ADUs under State law. The City is required to act on all these ADUs within 60 days of receipt of a complete application and shall be ministerial. These State-Mandated ADUs have no discretionary action, are not subject to review under the California Environmental Quality Act (CEQA), no subjective design review, and have a shortened appeal window. A brief description is included below to help clarify the comparisons in the following table. In efforts to clarify the different types of ADUs, the names have been simplified since the November 2020 Commission hearings as follows.

- **State Program** (known as Streamlined ADUs in the proposed Ordinance): These ADUs are the most permissive in that the City has no ability to require Code compliance for anything that is not listed in State law; however, State Program ADUs are only permitted on properties where there are no other ADUs. This program allows one ADU (conversion, attached, or detached) per lot.
- **Hybrid Program** (known as Ministerial ADUs in the proposed Ordinance): These ADUs need to comply with all Planning Code requirements (e.g. rear yard, exposure, etc.), except for density and cannot

require a waiver. Number of ADUs (conversion, detached, and/or junior) allowed per this program varies. This most closely resembles what is allowed today under the Section 207(c)(6) or previously known as “No Waiver ADUs”. Additionally, Hybrid Program ADUs include a new type of ADU for existing and proposed single-family dwellings called the Junior ADU (JADU), which is described below.

- o **Junior ADUs:** Junior ADUs would be allowed within existing or proposed single-family dwellings. General eligibility requirements include, but are not limited to, the following:
 - Converting no more than 500 square feet of the existing or proposed single-family dwelling;
 - Owner occupancy in either the primary unit or JADU;
 - An entrance that is separate from the main entrance of the primary unit;
 - Must include an efficiency kitchen; and
 - May or may not include shared sanitation facilities.

For further details, see the [ADU Programs Comparison Handout](#) available on the Planning Department website.

The Way It Is Now	The Way It Would Be
Review timeline: The Department is required to complete review of an ADU within 120 days from receipt of a complete application.	The City would be required to act on a permit for an ADU or JADU under State law within 60 days from receipt of a complete application.
Articles 10 and 11: ADUs proposed within Article 10 and 11 buildings and districts would be required to comply with architectural review standards as adopted by the Historic Preservation Commission. These projects are not subject to the Certificate of Appropriateness or Permit to Alter review processes.	Articles 10 and 11 would explicitly exempt State and Hybrid Program ADUs and JADUs proposed within landmark buildings and districts from Certificate of Appropriateness and Permit to Alter review processes.
Planning Code compliance: State-Mandated ADUs (also known as No Waiver ADUs) must comply with all Planning Code requirements except for density limitations.	Hybrid Program ADUs would still require Planning Code compliance except for density. However, State Program ADUs would not be required to comply with Planning Code requirements that are not listed in State law.
Impact fees: All ADUs are subject to impact fees, which are calculated based on standard thresholds such as adding a new unit or square footage.	State and Hybrid Program ADUs smaller than 750 square feet would be exempt from impact fees. State and Hybrid Program ADUs proposed on properties with three or fewer units would also be exempt from impact fees. State and Hybrid Program ADUs 750 square feet or larger would be subject to a reduced impact fee. The reduced impact fee would be based on the ADU’s proportion in relation to the primary unit for single-family dwellings, or the average of existing units for multi-family dwellings.
Noticing for single-family dwellings: All ADUs proposed within existing or new construction single-family dwellings require a 30-day notice posted at the	ADUs proposed within an existing or new construction single-family dwelling that have tenant(s) would be required to complete either a) the

The Way It Is Now	The Way It Would Be
<p>property, a mailed notice, and an online notice. The Planning Department issues such notices during the 120-day review timeframe.</p>	<p>Department of Building Inspection (DBI) Screening Form, if applicable or b) if the DBI Screening Form is not applicable, send a notice per the Planning Code requirements. Proof of this notice needs to be submitted with a complete application.</p>
<p>Density: One ADU is permitted in an existing or new construction single-family dwelling or existing authorized detached structure. Proposed ADUs may be located within non-habitable space and may take habitable space away from an existing dwelling.</p>	<p>One State Program ADU (conversion, attached, or detached) would be permitted for existing or proposed single- or multi-family dwellings so long as there are no other ADUs on the properties.</p> <p>Hybrid Program ADUs would be permitted as follows:</p> <p>Existing or new construction single-family dwellings or existing authorized detached structures would be permitted to add one ADU (conversion or detached) and/or one JADU.</p> <p>Existing multi-family dwellings would be permitted to add either 1) one conversion ADU or up to 25% of the existing number of legal dwelling units within the primary structure, whichever is greater, or 2) up to two detached ADUs.</p>
<p>Size restrictions: ADUs proposed within an existing or proposed single-family dwelling or within an existing authorized detached structure are limited to 1,200 square feet in size.</p>	<p>Hybrid Program detached ADUs would be permitted up to 800 square feet for properties with existing or proposed single-family dwellings. JADUs would be permitted up to 500 square feet within existing or proposed single-family dwellings.</p> <p>State Program detached ADUs would be permitted up to 850 square feet for studio and one-bedrooms and up to 1,000 square feet for two or more bedrooms for existing or proposed single- or multi-family dwellings. Additionally, if there is an existing dwelling, State Program attached ADUs have the following size restrictions: a) studios and 1-bedroom ADUs would be permitted up to 850 sf or 50% of existing primary dwelling, whichever is greater and b) ADUs with two or more bedrooms would be permitted up to 1,000 sf or 50% of existing primary dwelling, whichever is greater.</p>
<p>Expansions: Existing authorized detached structures may be expanded with dormers. If said structure is</p>	<p>The specific provisions related to expansions on existing authorized detached structures would be removed since detached ADUs would be permitted</p>

The Way It Is Now	The Way It Would Be
located on a corner lot, an additional story above the existing footprint is permitted.	per State law. However, Hybrid Program ADUs on properties with an existing or proposed single-family dwelling may expand an existing authorized detached structure by up to 150 square feet to accommodate ingress/egress.
Height: ADUs must comply with the height requirements	<p>State Program ADUs (attached and detached) would be limited to 16 feet in height.</p> <p>Hybrid Program detached ADUs would be limited to 16 feet in height.</p> <p>Further, detached ADUs located outside of the buildable area (only allowed under the State Program) would be measured from existing grade at any given point to either a) the highest point of a finished roof in the case of a flat roof or b) the average height of a pitched roof or stepped roof, or similarly sculptured roof form.</p>
Setbacks: ADUs must comply with all required setbacks.	<p>State Program ADUs (attached and detached) would require a setback of four feet from the side and rear property lines. No setback is required if the ADU is located within an existing living area or an existing accessory structure, or an ADU that replaces an existing structure, is in the same location, and constructed to the same dimensions as the structure being replaced.</p> <p>Hybrid Program detached ADUs would require a setback of four feet from the side and rear property lines and need to comply with all local Planning Code setback requirements.</p>
TECHNICAL CLARIFICATIONS FOR LOCAL PROGRAM	
Noticing for Waiver Program: Notice is required for new construction or expansions that are not exempt from noticing.	Notice would only be required for any proposed new construction building, not for any scopes of work related to the ADU itself.
Waivers: Waivers may be granted for ADUs added to existing buildings under the Waiver Program.	Waivers may only be granted for ADUs proposed within existing buildings. ADUs proposed within new construction buildings may only be granted the density waiver.

Background

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

San Francisco first adopted a local ADU program in 2014 and made several updates since the initial inception both in response to changes to the State law and to improve the City's local ADU program. The most recent ADU changes prior to this Ordinance occurred in 2019, which allowed ADUs in new construction. The proposed Ordinance will update San Francisco's ADU programs to comply with the latest amendments to the State law, per Section 3 of [Senate Bill 13](#), Section 2 of [Assembly Bill 68](#), and Section 1.5 of [Assembly Bill 881](#), all of which were effective beginning January 1, 2020. The proposed Ordinance also incorporates changes made to State law under [Assembly Bill 3182](#), which was effective beginning January 1, 2021. All these changes are required to bring our local code into compliance with State law. Additionally, the proposed Ordinance will clarify the ministerial approval process, restructure the Code to make it more legible to read, and provide technical clarifications.

This Ordinance is the continuation of [Board File 201008](#) which was filed on May 3, 2021. The only changes within this new Ordinance compared to the prior Ordinance includes clarifications or changes required by State law, as well as incorporating the recommended modification from both the Historic Preservation and Planning Commissions from the November 2020 hearings.

Issues and Considerations

Housing Stock

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

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

Ministerial Overview

The latest State law amendments clarify the ministerial review for ADUs in single-family and multi-family dwellings. Ministerial review for such ADUs is defined as follows:

- No subjective design review except for standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places
- Not subject to review under the California Environmental Quality Act (CEQA)
- Not subject to Planning Code Section 311 neighborhood notification requirements
- No discretionary review opportunity

Additionally, the State-Mandated ADUs are also subject to a shortened appeal window requiring that the appeal be heard within 10-30 days from appeal filing.

Another important distinction is that ADUs approved under State law are not subject to the rent stabilization provisions of the San Francisco Rent Ordinance. ADUs added under the Local ADU Program are subject to Rent Control when a complete or partial waiver, or an administrative exception, is granted from the Planning Code requirements and when the lot contains a Rental Unit. State-Mandated ADUs do not receive waivers and thus there is no opportunity to impose Rent Control on such ADUs.

While these ministerial ADUs are subject to State law, we are still maximizing the number of ADUs we can subject to Rent Control. In some cases, the Local ADU Program offers more opportunities for ADUs, including potentially an unlimited number of ADUs in certain cases. If the property is eligible for more than one program, the property owner will be able to decide which program best suits their needs.

Ability to be Less Restrictive

The proposed Ordinance is implementing only what is required by State law, except for the following items:

- *Exempting impact fees for State and Hybrid Program ADUs proposed on properties with three or fewer units.* The proposed Ordinance exempts more ADUs from impact fees than required by State law in efforts to incentivize more ADUs.
- *The way height is measured for Hybrid Program detached ADUs.* The proposed Ordinance clarifies this height measurement as it is not currently defined under State law.

State law permits local jurisdictions to legislate changes that are less restrictive, so long as the minimum requirements under State law are still allowed. The Department recommends the Commission consider potential changes (if any) at a later date.

Junior ADUs

State law introduces a new type of ADU within single-family dwellings: a Junior ADU (JADU), which can convert up to 500 square feet of habitable space from the primary unit. The JADU requires their own entrance separate from the main entrance of the primary dwelling and an efficiency kitchen for the ADU.

This proposed change better accommodates multi-generational households, which has been a recurring concern for San Francisco residents. Intergenerational living has increased further under the current COVID-19 conditions and job uncertainties. However, JADUs are a stark contrast to the current “Zoning Administrator Bulletin: Rooms Down” policy, a set of standards that encourages additional habitable space on the ground floor of residential buildings without creating illegal units. The JADU option now allows for an efficiency kitchen in the additional habitable space on the ground floor, discounting the Rooms Down policy that currently prevents this. The Rooms Down Policy was reevaluated, partly due to the new State law changes, and has recently been repealed as described below.

Update on Zoning Administrator Interpretations

Pursuant to Planning Code Section 307(a), the Zoning Administrator issues rules, regulations, and interpretations they deem necessary to administer and enforce the provisions of the Code. Formal interpretations are listed within the Planning Code, as well as a series of topical bulletins (i.e. neighborhood notice, bicycle parking, affordable housing, etc.).

During the November 2020 hearings, the Zoning Administrator provided a brief preview of forthcoming interpretations. On March 22, 2021, the Zoning Administrator issued a sizeable set of amendments to existing interpretations and bulletins which are available in a [memo](#) on the Planning Department website. Many of these interpretations pertain to housing-related definitions and controls, including those related to ADUs. The need for these amendments and new interpretations stem from new local and state programs in recent years (i.e. ADUs, Unauthorized Dwelling Units, density bonus programs, etc.), new types of development proposals, and the evolving nature and impacts of the COVID-19 pandemic.

Most of these interpretations are technical and minor in nature, but some will have potentially greater impact. Specifically, the “Rooms Down” bulletin (Zoning Administrator Bulletin No. 1), which limits the development of ground floor spaces in existing Dwelling Units to help prevent the creation of Unauthorized Dwelling Units has been repealed. This transition serves to better respond to our evolving ADU programs and the Code requirement to legalize Unauthorized Dwelling Units. Additional interpretations relate to dwelling unit exposure, housing-related definitions (i.e. Dwelling Unit and Group Housing), and a variety of other issues.

Delegation Agreement and Historic Preservation

Since the November 2020 hearings, staff revised the Historic Preservation Delegation Agreement, including items related to review of ADUs. State law allows the local jurisdictions to implement objective architectural review standards. The Historic Preservation Commission adopted “Accessory Dwelling Units Architectural Review Standards” via [Resolution No. 1041](#) on April 3, 2019. Some of these objective standards now conflict with new State law requirements. During the November 4, 2020 State-Mandated ADUs hearing, the Historic Preservation and Planning Commissions expressed desire to retain reference to these objective review standards where appropriate. In response, the relevant objective review standards that are still compliant with State law have been incorporated into the Delegation Agreement. The revised Delegation Agreement appeared in front of the Historic Preservation Commission on August 4, 2021 and is now in effect.

Mid-Block Open Space

The proposed Ordinance permits Streamlined detached ADUs in the required rear yard so long as the ADU complies with the following requirements listed in the table below.

	State Detached ADUs
Number of ADUs permitted	1
Height	16 feet
Rear and side setbacks	4 feet
Square footage	850 for studio & 1-bedroom ADUs 1,000 for 2+ bedroom ADUs

These detached ADUs may encroach into the mid-block open space, pending on the proposed location of the ADU and the size of the lot. The required side and rear setbacks and height limitations per State law provide some relief between properties; however, some proposed ADUs may cause minor light or privacy issues that the Commission is typically concerned about. In the case where the proposed ADU complies with these requirements, the Commission would have no opportunity to weigh in on such concerns. If neighbors opposed the detached ADU within the mid-block open space, they would only be able to appeal directly to the Board of Appeals without the opportunity to make their case in front of Planning Commission like they can today. In the case of such an appeal, the Board of Appeals would not have discretion over the project and would be limited to verifying if the State law requirements were followed or not.

Hybrid Program detached ADUs still need to be located within the buildable area of the lot. In this case, the proposed location of the ADU(s) will likely still be in keeping with the general pattern of the neighborhood block.

Tenant Noticing

The Ordinance removes a noticing requirement for single-family dwellings that was added in 2019 and replaces it with new noticing requirements, which apply only if there is a tenant in a single-family home. No Waiver ADUs in single-family dwellings currently require a 30-day notice, even if there is no tenant. It is not logical to require sending a notice to the property owner if they are the only residents in the dwelling. If there is a tenant at the property, the Ordinance would require the property owner to submit one of the following with their permit application:

- A copy of a completed Department of Building Inspection [Screening Form](#), if applicable.
- Posting a 15-day notice at the property and mailing the notice to all tenants. If electing this option, the notices must comply with the Planning Code requirements.

This change ensures that tenants are notified in advance of a new ADU permit and removes the unnecessary notice for owners when there are no tenants impacted. Additionally, the proposed Ordinance requires that this outreach is completed before the ADU permit application is submitted. This earlier timeframe would also help the City ensure the new 60-day review timeframe is met and would provide an earlier opportunity for any impacted tenant(s) to engage with property owner.

Supervisor Mandelman introduced a separate piece of legislation under [Board File 210699](#), which is scheduled to appear before the Planning Commission on September 9, 2021. This Ordinance requires that all Local ADU Program applicants submit a declaration to the Rent Board with a written description of housing services that are located where the ADU(s) are proposed; whether ADU construction would result in severance, reduction, or removal of housing services; and the just cause for the aforementioned. Tenants would have the opportunity to contest the information provided in the declaration and petition the Rent Board for a written determination verifying the presence and defining characteristics of the housing service(s) in question. If no petition is filed, the Rent Board would have 30 days to transmit the declaration to Planning Department. If a petition is filed, the Rent Board would have 90 days to transmit the declaration and their written determination to the Planning Department. The Planning Department would not be able to approve an ADU under the Local Program if either 1) the Rent Board declaration is missing or 2) the Rent Board declaration indicates that the ADU construction would result in severance, reduction, or removal of housing services without just cause.

Timeline for Review

Since the launch of the initial ADU program, the Planning Department has improved efforts to more effectively and efficiently review ADU permits. To help facilitate review, the Planning Department has created a team of ADU specialists. Effective August 2018, Planning established an ADU counter with dedicated staff at the DBI permit center. Due to COVID-19 related impacts, this physical counter has transitioned into electronic format and dedicated ADU planners are available for virtual appointments or via email.

The Planning Department has also collaborated more with other City agencies involved in the review of ADUs and introduced parallel review efforts. One of the biggest time-savings has been the “Roundtable” review where different City agencies meet and review ADU permits together. This allows the City to discuss any conflicting policies and provide applicants with consolidated comments. Additionally, staff review and this “Roundtable” have shifted to an electronic format during the COVID-19 pandemic to ensure the review timeframes are still met.

Beginning November 2020, the Planning Department took on the role of accepting and issuing all new ADU permits to temporarily assist DBI during the COVID-19 pandemic. This effort has led to truly concurrent review and numerous process improvements.

The State law ([Senate Bill 1069](#)), effective January 1, 2017, required jurisdictions to complete approval of Code-complying ADUs in single-family homes within 120 days. The proposed Ordinance requires jurisdictions to act on these ministerial ADU permits within 60 days of receipt of a complete application. The Department is unable to estimate how many or what percentage of ADU permits would trigger this new timeline; however, there has been much public and applicant interest in this Ordinance. That said, the Department will continue to refine internal review processes and work with other City agencies to ensure the new 60-day review timeframe is met.

General Plan Compliance

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

Racial and Social Equity Analysis

The Planning Code amendments in the proposed Ordinance help clarify and provide more options to add ministerial ADUs. The ADU program provides a quicker, and often more financially feasible path for property owners to add to the housing stock and different types of housing. The proposed Ordinance includes a JADU, which requires an efficiency kitchen. This provides more options for multi-generational households, which is often found in communities of color, and allows seniors to age in place more easily within their same community and household. ADUs also help advance racial and social equity by allowing for more affordable dwellings due to their smaller sizes. Even if ADUs are less costly due to smaller square footages, ADUs are not typically rented at very low- or low-income AMI levels so there is still an affordability issue.

ADUs are permitted both within existing and new construction buildings. Naturally, adding ADUs within existing structures is much cheaper than new construction projects. However, households with lower incomes pursuing ADUs may experience disproportionate costs in general. The same permit and construction costs may require a much larger percentage of their income compared to moderate-income households. This may be a barrier for lower-income households to pursue ADUs, in which case they do not benefit from the ADU program or the proposed Ordinance. One consideration to help alleviate such financial burden may include a permit or fee waiver for low-income households. Supervisor Mar launched a pilot program in District 4 in September 2020 to provide professional services to 25 qualifying households interested in adding ADU(s) on their property using grant monies awarded by the State. The pilot program's goals include 1) providing services to lower-income households that otherwise would not be able to afford to hire an architect/developer and 2) to better understand what barriers lower-income households encounter when pursuing an ADU. If successful, the Department recommends the pilot program be modified and expanded to benefit the entire city, pending funding availability.

Implementation

The Department has determined that this Ordinance will impact our current implementation procedures in that State-Mandated ADUs will be subject to a 60-day review timeframe. This is half the time prescribed in Mayoral Directive No. 17-02 which required ADUs be acted upon within 120 days of receipt of a complete application. The Department already collaborates with other City agencies for ADU review. Below includes a list of changes and other measures the Department will take to help achieve the 60-day timeframe:

- This 60-day timeframe is more feasible for State Program ADUs, which requires less review time since staff would review the ADU based on the strict State law requirements, rather than for full Planning Code compliance.
- The City's fully concurrent electronic review allows all required Agencies to review ADU applications for completeness at the same time. This will help ensure the 60-day time clock only starts when we have all the required information.
- Today, staff issues the 30-day notice during the 120-day review timeframe for all single-family dwellings. For single-family dwellings with tenants, outreach and noticing would be required before submitting an application. This helps inform the tenant earlier, but also removes that noticing period from the 60-day clock.

Recommendation

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

Basis for Recommendation

The Department supports the proposed Ordinance because it supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans. Specifically, the Ordinance increases the potential for Accessory Dwelling Units by bringing the Planning Code into compliance with State law. These changes are

significant and far reaching as is, and before more relaxed controls are considered staff recommends only adopting what State law requires and then refining later after we can assess the program.

Update on Forthcoming Amendments

The Department is working on future legislation that would serve two primary purposes:

1. **Reorganize the ADU Planning Code subsections.** The ADU code subsection is currently housed within Planning Code Section 207, Dwelling Unit Density Limits. The ADU Programs have evolved tremendously since the original pilot program in the Castro. The goal is to take the ADU Program language within Section 207 and move it to its own section, like other density bonus programs such as HOME-SF. This move will make the ADU Programs section easier to read, understand, and use.
2. **Incentivize the Local ADU Program.** Recent changes to State law have been difficult to apply to San Francisco, which has a unique urban fabric compared to the rest of the State. In some cases, the height and building envelope permitted under State law do not match the neighborhood context, but the City has no choice but to approve if compliant with State law. Additionally, there is the concern that ADUs proposed under the State and Hybrid ADU Programs will not result in a Rent Control unit for the City. The Department is crafting ways to make it easier to apply for and more appealing to pursue an ADU under the Local Program.

The Department will continue working on this legislation with a goal to have it ready to be Initiated at Planning Commission during the 2021-2022 fiscal year.

Required Commission Action

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

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
Exhibit B: Board of Supervisors File No. 210585

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PLANNING COMMISSION DRAFT RESOLUTION

HEARING DATE: September 2, 2021

Project Name: State-Mandated Accessory Dwelling Unit Controls
Case Number: 2021-006260PCA [Board File No. 210585]
Initiated by: Mayor Breed / Introduced June 8, 2021
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, (628) 652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND 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; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; AND ADOPTING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on June 8, 2021 Mayor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 210585, which would amend the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units meeting certain requirements in single-family and multifamily buildings;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 2, 2021; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of

Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

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

MOVED, that the Planning Commission hereby **approves** the proposed ordinance.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission finds that the proposed Ordinance supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans by increasing the potential for new Accessory Dwelling Units.
2. The Commission finds that the proposed Ordinance will help align the Planning Code with the State Law.
3. The Commission finds that the proposed Ordinance will further streamline the ADU review process and clarify current processes. Such changes will make the City's ADU program more effective and flexible.

General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.5

Consider secondary units in community plans where there is neighborhood support and when other neighborhood goals can be achieved, especially if that housing is made permanently affordable to lower-income households.

OBJECTIVE 3

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

Policy 3.4

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

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

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City’s supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City’s supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved.

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 2, 2021

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: September 2, 2021

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; making findings of consistency with the General**
7 **Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting**
8 **findings of public necessity, convenience, and welfare under Planning Code, Section**
9 **302.**

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

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

18

19 Section 1. Findings.

20 (a) The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
23 Supervisors in File No. 210585 and is incorporated herein by reference. The Board affirms
24 this determination.

25 (b) On _____, the Planning Commission, in Resolution No. _____,
adopted findings that the actions contemplated in this ordinance are consistent, on balance,
with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
2 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

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

6
7 Section 2. The Planning Code is hereby amended by revising Sections 102, 207,
8 1005, and 1110, to read as follows:

9
10 **SEC. 102. DEFINITIONS.**

11 * * * *

12 **Dwelling Unit, Accessory, or ADU.** Also known as a Secondary Unit or In-Law Unit, is a
13 Dwelling Unit that meets all the requirements of subsection 207(c)(4) or subsection 207(c)(6) and that
14 is accessory to at least one other Dwelling Unit on the same lotis ~~constructed either entirely within the~~
15 existing built envelope, the “living area” as defined in State law, or the buildable area of an existing or
16 proposed building in areas that allow residential use; or is constructed within the existing built
17 envelope of an existing and authorized auxiliary structure on the same lot. A detached ADU shall not
18 share structural walls with either the primary structure or any other structure on the lot. Height for
19 detached ADUs located outside the buildable area shall be measured from existing grade at any given
20 point to either a) the highest point of a finished roof in the case of a flat roof or b) the average height of
21 a pitched roof or stepped roof, or similarly sculptured roof form.

22
23 **Dwelling Unit, Junior Accessory, or JADU.** A Dwelling Unit that meets all the requirements of
24 subsection 207(c)(6), and that:

25 (a) is accessory to at least one other Dwelling Unit on the same lot;

- 1 ***(b)*** is no more than 500 square feet of Gross Floor Area;
- 2 ***(c)*** is contained entirely within an existing or proposed single-family structure;
- 3 ***(d)*** may include separate sanitation facilities, or may share sanitation facilities with the
- 4 existing structure;
- 5 ***(e)*** is owner-occupied, unless the owner resides in the remaining portion of the structure;
- 6 ***(f)*** includes an entrance to the Junior Accessory Dwelling Unit that is separate from the
- 7 main entrance to the proposed or existing single-family structure; and
- 8 ***(g)*** includes an efficiency kitchen that meets the requirements of Government Code Section
- 9 65852.22(a)(6), including a cooking facility with appliances, and a food preparation counter and
- 10 storage cabinets that are of reasonable size in relation to the size of the Junior Accessory Dwelling
- 11 Unit.

12 * * * *

13

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

15 * * * *

16 **(c) Exceptions to Dwelling Unit Density Limits.** An exception to the calculations

17 under this Section 207 shall be made in the following circumstances:

18 * * * *

19 **(4) Accessory Dwelling Units – Local Accessory Dwelling Unit Program:**

20 **Accessory Dwelling Units in Multifamily Buildings and; Accessory Dwelling Units in**

21 **Single-Family Homes That Do Not Strictly Meet the Requirements in subsection (c)(6).**

22 **(A) Definition.** An “Accessory Dwelling Unit” (ADU) is defined in

23 Section 102.

24 **(B) Applicability.** This subsection (c)(4) shall apply to the construction

25 of ~~Accessory Dwelling Units~~ ADUs on all lots located within the City and County of San Francisco

1 in areas that allow residential use, except ~~that construction of an Accessory Dwelling Unit is ADUs~~
2 regulated by subsection (c)(6) below, ~~and not this subsection (e)(4), if all of the following~~
3 ~~circumstances exist:~~

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

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

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

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

19 (v) ~~the permit application does not include seismic upgrade work~~
20 ~~pursuant to subsection (e)(4)(F).~~

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

24 (i) For lots that have four existing Dwelling Units or fewer, or where
25 the zoning would permit the construction of four or fewer Dwelling Units, one ADU is

1 permitted, ~~E~~ for lots that have more than four existing Dwelling Units or are undergoing
2 seismic retrofitting under subsection (c)(4)(F) below, or where the zoning would permit the
3 construction of more than four Dwelling Units, there is no limit on the number of ADUs
4 permitted, as long as all other health and safety requirements are met; provided,

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

18 (iii) Except as provided in subsections (i) ~~ii~~ and (iv) below, an
19 ~~Accessory Dwelling Unit~~ ADU shall be constructed a. entirely within the buildable area of an
20 existing lot, provided that the ADU does not exceed the existing height of ~~an existing the~~
21 building in which it is constructed, or b. within the built envelope of an existing and authorized
22 ~~stand-alone~~ detached garage, storage structure, or other ~~auxiliary~~ detached structure on the same
23 lot, ~~as the built envelope existed three years prior to the time the application was filed for a building~~
24 ~~permit to construct the ADU. For purposes of this subsection 207(c)(4), a "detached" structure or~~
25 ADU shall not share structural walls with either the primary structure or any other structure on the lot.

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

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

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

1 (E) **Restrictions on Subdivisions.** Notwithstanding the provisions of Article
2 9 of the Subdivision Code, a lot with an *Accessory Dwelling Unit*ADU authorized under this
3 Section 207(c)(4) shall not be subdivided in a manner that would allow for the ADU to be sold
4 or separately financed pursuant to any condominium plan, housing cooperative, or similar
5 form of separate ownership; ~~provided, however, that~~ This prohibition on separate sale or
6 finance of the ADU shall not apply to an ADU in a building that (i) within three years prior to July
7 11, 2016 was an existing~~consisted entirely of~~ condominium with no Rental Unit as defined in Section
8 37.2(r) of the Administrative Code units as of July 11, 2013, and (ii) has had no evictions pursuant
9 to Sections 37.9(a) through 37.9(a)(12) and 37.9(a)(14) of the Administrative Code within 10
10 years prior to~~since~~ July 11, 2011~~1996~~. This prohibition on separate sale or finance of the ADU shall
11 not apply to an ADU that meets the requirements of California Government Code Section 65852.26.

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

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

21 (ii) May expand a noncomplying structure, as defined in Section
22 180(a)(2) of this Code and further regulated in Sections 172, 180, and 188, without obtaining
23 a variance for increasing the discrepancy between existing conditions on the lot and the
24 required standards of this Code.

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

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

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

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

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

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

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

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

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

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

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

25 (l) **Monitoring Program.**

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

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

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

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

3 * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~(C)~~ — **Permit Application Review and Approval.** *The Department shall approve an*
22 *application for a permit to construct an Accessory Dwelling Unit within 120 days from receipt of the*
23 *complete application, without modification or disapproval, if the proposed construction fully complies*
24 *with the requirements set forth in subsection (c)(6)(B). No requests for discretionary review shall be*
25 *accepted by the Planning Department for permit applications meeting the requirements of this*

1 ~~subsection (e)(6). The Planning Commission shall not hold a public hearing for discretionary review of~~
2 ~~permit applications meeting the requirements of this subsection (e)(6). Permit applications meeting the~~
3 ~~requirements of this subsection (e)(6) shall not be subject to the notification or review requirements of~~
4 ~~Section 311 of this Code.~~

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

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

12 ~~(F) — **Rental; Restrictions on Subdivisions.**~~

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

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

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

24 ~~(H) — **Notification.** Upon determination that an application is in compliance with the~~
25 ~~standards of subsection 207(e)(6) of the Planning Code, the Planning Department shall cause a notice~~

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

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

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

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

1 ~~the information set forth in subsection 207(c)(6)(h)(ii)-(v) in the languages spoken by a Substantial~~
2 ~~Number of Limited English Speaking Persons, as defined in Administrative Code Chapter 91.~~

3 ~~(viii) — **Online Notice.** For 30 calendar days, on a publicly accessible website~~
4 ~~that is maintained by the Planning Department, the Planning Department shall provide a digital copy~~
5 ~~formatted to print on 11 x 17 inch paper of the posted notice, including the contents set forth in~~
6 ~~subsection 207(c)(6)(h)(ii)-(v) for the application; and digital copies of any architectural and/or site~~
7 ~~plans that are sealed and formatted to print on 11 x 17 inch paper, are consistent with Plan Submittal~~
8 ~~Guidelines maintained and published by the Planning Department, and that describe and compare, at a~~
9 ~~minimum, the existing and proposed conditions at the subject property, the existing and proposed~~
10 ~~conditions in relationship to adjacent properties, and that may include a site plan, floor plans, and~~
11 ~~elevations documenting dimensional changes required to describe the proposal.~~

12 (C) **Specific Controls for Ministerial ADUs.** The purpose of this subsection
13 207(c)(6)(C) is to implement California Government Code Sections 65852.2(e) and 65852.22, which
14 requires ministerial consideration of ADUs and JADUs that meet certain standards (“Ministerial
15 ADUs”). ADUs and JADUs shall strictly meet the requirements set forth in this subsection (c)(6)(C)
16 without requiring a waiver of Code requirements pursuant to subsection (c)(4)(G). The City shall
17 approve ADUs and JADUs meeting the following requirements, in addition to the requirements of
18 subsection 207(c)(6)(B) and any other applicable standards:

19 (i) **ADUs and JADUs within proposed space of a proposed single-family**
20 **dwelling or within existing space of a single-family dwelling or accessory structure meeting the**
21 **following conditions:**

22 a. **The lot on which the ADU or JADU is proposed contains an**
23 **existing or proposed single-family dwelling.**

24 b. **Only one ADU and one JADU is permitted per lot.**

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 that provides one bedroom
20 shall not exceed 850 square feet. The Gross Floor Area of a detached ADU that provides more than
21 one bedroom shall not exceed 1,000 square feet.

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

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 (ix) The ADU shall not exceed a height of 16 feet.

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

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

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

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 or JADUs authorized under this
16 subsection 207(c)(6), where the ADU or JADU is smaller than seven hundred and fifty square feet of
17 Gross Floor Area, or for ADUs that are proposed in lots with three existing units or fewer. Impact fees
18 for all other ADUs shall be imposed proportionately in relation to the Gross Floor Area of the primary
19 dwelling unit.

20 * * * *

23 **SEC. 1005. CONFORMITY AND PERMITS.**

24 * * * *

1 (e) After receiving a permit application from the Central Permit Bureau in accordance
2 with the preceding subsection, the Department shall ascertain whether a Certificate of
3 Appropriateness is required or has been approved for the work proposed in such permit
4 application. If a Certificate of Appropriateness is required and has been issued, and if the
5 permit application conforms to the work approved in the Certificate of Appropriateness, the
6 permit application shall be processed without further reference to this Article 10. If a
7 Certificate of Appropriateness is required and has not been issued, or if the permit application
8 does not conform to what was approved, the permit application shall be disapproved or held
9 by the Department until such time as conformity does exist either through modifications to the
10 proposed work or through the issuance of an amended or new Certificate of Appropriateness.
11 Notwithstanding the foregoing, in the following cases the Department shall process the permit
12 application without further reference to this Article 10:

13 * * * *

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

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

20 * * * *

21
22 **SEC. 1110. CONSTRUCTION, ALTERATION OR DEMOLITION OF SIGNIFICANT**
23 **OR CONTRIBUTORY BUILDINGS OR BUILDINGS IN CONSERVATION DISTRICTS.**

24 * * * *

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

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

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

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

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

18
19 Section 3. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor's veto of the ordinance.

23
24 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
25 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the "Note" that appears under
4 the official title of the ordinance.

5

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

10

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

13

14

15 By: /s/ Peter R. Miljanich
16 PETER R. MILJANICH
17 Deputy City Attorney

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