



February 29, 2024

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 February 29, 2024, 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. Clarify that ADUs built within Article 10 or Article 11 individual landmarks or in a Historic or Conservation district trigger the notification requirements of Article 10 and Article 11 and not Section 311.
2. Retain the existing 311, Article 10, and Article 11 notification requirements for ADUs.

The proposed Ordinance has been determined to be within the scope of the analysis within the San Francisco Housing Element 2022 Update FEIR, certified November 17, 2022 [2019-016230ENV](#).

Mayor, 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,

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. 21527

HEARING DATE: FEBRUARY 29, 2024

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 PLANNING CODE TO CLARIFY THE MINISTERIAL APPROVAL PROCESS FOR CERTAIN ACCESSORY DWELLING UNITS (ADUS) 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 March 20, 2023 Mayor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 230310, which would amend Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units (ADUs) 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 February 29, 2024; and,

WHEREAS, the proposed Ordinance has been determined to be within the scope of the analysis within the San Francisco Housing Element 2022 Update FEIR, certified November 17, 2022 [2019-016230ENV](#); 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 modifications** the proposed ordinance. The Commission's proposed recommendation are as follows:

1. Clarify that ADUs built within Article 10 or Article 11 individual landmarks or in a Historic or Conservation district trigger the notification requirements of Article 10 and Article 11 and not Section 311.
2. Retain the existing 311, Article 10, and Article 11 notification requirements for ADUs.

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 and the Commission's recommended modifications are 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 MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 29, 2024.



Jonas P. Ionin
Commission Secretary

Jonas P Ionin

Digitally signed by Jonas P Ionin
Date: 2024.02.29 14:55:59
-08'00'

AYES: Braun, Ruiz, Imperial, Koppel, Moore, Diamond
NOES: None
ABSENT: None
ADOPTED: February 29, 2024



MEMO TO THE PLANNING COMMISSION

HEARING DATE: February 29, 2024

90-Day Deadline: May 7, 2024

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: San Francisco Housing Element 2022 Update FEIR, certified November 17, 2022
[2019-016230ENV](#)

Recommendation: Approval with Modifications

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.

Background

The proposed Ordinance previously appeared in front of the Planning Commission on September 28, 2023. The Executive Summary for that hearing is included under Exhibit C. Additional amendments were adopted at the Land Use and Transportation Committee hearing on February 5, 2024 and the proposed Ordinance was referred back to the Planning Commission. Most of the additional amendments are in response to the State Housing and Community Development Agency’s (HCD’s) review of Ordinance No. 053-23 in their letter dated October 26, 2023 (see Exhibit D). That Ordinance was the prior State ADU legislation that became effective in May of 2023, and is

currently reflected in the Planning Code. The proposed Ordinance also includes minor amendments and clarifications.

Pro-Housing Designation

San Francisco funds 30% of the total cost of producing affordable housing. The remaining funds come from State and Federal sources. The competition for State funds is significant. Jurisdictions with a “Pro-Housing Designation (PHD)” receive additional points when applying for competitive state funding. Upon review of San Francisco’s application for the PHD, HCD has determined these proposed ADU changes are required to meet the criteria for Pro-Housing Designation. There are two funding programs that the PHD will affect in the next month: the Affordable Housing and Sustainable Communities (applications due March 19) and the Pro-Housing Incentives Program (applications due March 15). If San Francisco can demonstrate that we meet the criteria for a Pro-Housing Designation by March 1, San Francisco applicants will have a significantly better chance of getting state funding to produce hundreds of units of affordable housing.

THE WAY CODE WAS PRESENTED DURING THE 09/28/23 PLANNING COMMISSION HEARING	THE WAY IT IS BASED ON NEW STATE LAWS EFFECTIVE 01/01/23 AND BASED ON HCD FEEDBACK
AMENDMENTS REQUIRED BY HCD	
A Junior ADU (JADU) must be owner-occupied unless the owner resides in the remaining portion of the structure.	Clarifies that JADU owner-occupancy is not required if the owner is another governmental agency, land trust, or housing organization.
Planning Code Section 136 states that if an ADU is proposed within a single-family home, the rear yard must be 25 percent of the lot depth, or 15 feet, whichever is greater. Section 136 is silent on the lot coverage allowances for the construction of an ADU that is no greater than 800 square feet with four-foot side and rear setbacks.	Clarify and explicitly note that the lot coverage requirements of Planning Code Section 136 do not prohibit the construction of an ADU that is no greater than 800 square feet with four-foot side and rear setbacks. (Clarification only)
State-Mandated ADUs proposed within historic resources are subject to objective architectural review standards.	The proposed Ordinance emphasizes that any architectural review standards adopted by the Historic Preservation Commission that are applicable to State-Mandated ADUs must remain objective. Additional findings are also added to explain why the City’s ADU controls comply with applicable requirements.
The Hybrid ADU Program permits the construction of up to two ADUs within a single-family dwelling. This may be either an ADU converted from existing living space <u>or</u> a detached ADU, plus an additional JADU.	The Hybrid ADU program is amended to permit the construction of up to three ADUs within a single-family dwelling. This allows a converted, detached, and JADU.

<p>The Code 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...”</p>	<p>The Code is amended to match the State’s more comprehensive list of requirements that do not permit construction of at least an 800 square foot ADU with four-foot side and rear setbacks. (Clarification only)</p>
<p>State ADUs require notice to a tenant(s) of the property for any ADUs or JADUs proposed on a lot containing a proposed or existing single-family dwelling.</p>	<p>Per HCD’s direction, the notification requirement is removed for State-Mandated ADUs.</p>
<p>OTHER AMENDMENTS AND CLARIFICATIONS</p>	
<p>ADUs and JADUs under the Hybrid Program cannot seek a Planning Code waiver under the Local ADU Program. Such waivers typically include waivers from the open space or exposure requirements of the Planning Code.</p>	<p>This is simplified to clarify and explicitly note that Hybrid ADUs must comply with applicable Planning Code standards, including open space, exposure, and buildable area.</p>
<p>The Hybrid ADU Program is silent on the permitted density.</p>	<p>There is a clarifying amendment (no substantive change) to the Hybrid ADU program controls clarifying that adding an ADU or JADU does not exceed the allowable density on the lot.</p>
<p>The Local ADU projects are generally exempt from 311 notice. However, Article 10 and Article 11 notice is required if the existing building or authorized detached structure is on the same lot as an Article 10 or Article 11 individual landmark or is in an Article 10 or Article 11 District.</p>	<p>The proposed Ordinance would also require 311 notice if the existing building or authorized detached structure is on the same lot as a property that is listed in or previously determined to be eligible in the California Register of Historic Places or designated individually or as part of a historic or conservation district under Article 10 or Article 11.</p>
<p>State and Hybrid ADU Programs require the applicant to record a Notice of Special Restrictions (NSR). The NSR states that the ADU may be rented out and shall be subject to all applicable provisions of the Residential Rent Stabilization and Arbitration Ordinance and may not be subdivided.</p>	<p>Removes the requirement to record an NSR under the State and Hybrid ADU Programs, except for the recordation of JADUs, as required per State law.</p>

Recommendation

The Department recommends that the Commission *approve with modification* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department’s proposed recommendations are as follows:

1. Clarify that ADUs built within Article 10 or Article 11 individual landmarks or in a Historic or Conservation

district trigger the notification requirements of Article 10 and Article 11 and not Section 311.

2. Retain the existing 311, Article 10, and Article 11 notification requirements for ADUs.

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. Additionally, the proposed Ordinance responds to HCD's latest feedback. These amendments are required to receive the Pro-Housing Designation from HCD. However, staff believes the proposed Ordinances would benefit from the following recommended modifications:

Recommendation 1: Clarify that ADUs built within Article 10 or Article 11 individual landmarks or in a Historic or Conservation district trigger the notification requirements of Article 10 and Article 11 and not Section 311.

With the passage of the Constraint's Reduction Ordinance, projects outside of the Priority Equity Geographies SUD that add units, including ADUs, are exempt from 311 notification. Inside the Priority Equity Geographies SUD, local ADU projects are generally exempt from 311 notice if they are constructed entirely within the existing built envelope, of an existing building or authorized detached structure on the same lot, or where an existing detached garage or storage structure has been expanded to add dormers. The Department interpretation is that ADUs built within Article 10 and Article 11 individual landmarks or in a Historic or Conservation trigger notice requirements under Article 10 and Article 11, but not 311 notice. Article 10 and Article 11 notices include hearing notices for Certificates of Appropriateness (CoA) or Permits to Alter (PtA). The recommendation is to note this explicitly in the Code to avoid confusion.

Recommendation 2: Retain the existing 311, Article 10, and Article 11 notification requirements for ADUs.

As clarified above, 311 notice is generally not required for ADUs, but any applicable historic preservation notice is. The proposed Ordinance would require 311 notice for ADUs on the same lot as properties listed in or previously determined to be eligible for listing in the California Register of Historic Places or designated individually or as part of a historic or conservation district pursuant to Article 10 or Article 11. This is a major departure from the Department practice today and would impact more than 10,000 properties.

The Department believes the intent was to expand the types of historic resources that the objective architectural standards apply to, not to expand 311 notice requirements for ADUs. The objective architectural review standards are applicable to properties 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 Department is amenable to also applying the objective architectural review standards to properties previously determined to be eligible in the California Register of Historic Places. As drafted, however, the proposed Ordinance would trigger 311 notice for all these historic resources. This would add an additional requirement and additional time to the review within the required 120 day-timeframe.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 230310
- Exhibit C: Executive Summary from September 28, 2023
- Exhibit D: Response letter from HCD dated October 26, 2023

This page intentionally blank.



PLANNING COMMISSION DRAFT RESOLUTION

HEARING DATE: February 29, 2024

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 PLANNING CODE TO CLARIFY THE MINISTERIAL APPROVAL PROCESS FOR CERTAIN ACCESSORY DWELLING UNITS (ADUS) 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 March 20, 2023 Mayor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 230310, which would amend Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units (ADUs) 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 February 29, 2024; and,

WHEREAS, the proposed Ordinance has been determined to be within the scope of the analysis within the San Francisco Housing Element 2022 Update FEIR, certified November 17, 2022 [2019-016230ENV](#); 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 modifications** the proposed ordinance. The Commission's proposed recommendation are as follows:

1. Clarify that ADUs built within Article 10 or Article 11 individual landmarks or in a Historic or Conservation district trigger the notification requirements of Article 10 and Article 11 and not Section 311.
2. Retain the existing 311, Article 10, and Article 11 notification requirements for ADUs.

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 and the Commission's recommended modifications are 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 MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 29, 2024.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: February 29, 2024

This page intentionally blank.

1 [Various Codes - State-Mandated Accessory Dwelling Unit Controls]

2

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.

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~~

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 _____September 28, 2023, the Planning Commission, in Resolution
2 No. _____21397, adopted findings that the actions contemplated in this ordinance are
3 consistent, on balance, with the City’s General Plan and eight priority policies of Planning
4 Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolution
5 is on file with the Clerk of the Board of Supervisors in File No. _____230310, and is
6 incorporated herein by reference.

7 (~~edc~~) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
8 ordinance will serve the public necessity, convenience, and welfare for the reasons stated in
9 Planning Commission Resolution No. _____21397.

10 (d) On October 18, 2023, the Building Inspection Commission considered this
11 ordinance at a duly noticed public hearing pursuant to Charter Section 4.121.

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

17 (f) This ordinance amends the Planning Code to restate existing law that any
18 architectural review standards adopted by the Historic Preservation Commission that are
19 applicable to State-mandated Accessory Dwelling Units (“ADU”) must remain objective.
20 California Government Code Section 65852.2, subdivision (a)(1)(b)(i) broadly permits the City
21 to impose objective architectural review standards on ADUs seeking approval under the City’s
22 State ADU program. This grant of authority is separate from, and in addition to, subdivision
23 (a)(1)(b)(i)’s authorization of local “standards that prevent adverse impacts on any real
24 property that is listed in the California Register of Historical Resources.” Furthermore,
25 California Government Code Section 65852.2, subdivision (e)(7) also broadly permits the City

1 to impose objective standards, “including, but not limited to . . . historic standards” on ADUs
2 under the City’s Hybrid ADU program. State ADU law therefore authorizes the City to impose
3 objective architectural review standards on ADUs seeking approval under either of the City’s
4 State-mandated programs.

5
6 Section 2. The Planning Code is hereby amended by revising Sections 102, 136,
7 155.1, 207, 207.6, 207.7, 1005, and 1110, and adding Sections 207.1 and 207.2, to read as
8 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 ~~sub~~Section 207.1(e)(4) or ~~sub~~Section
14 207.2(e)(6) and that is accessory to at least one other Dwelling Unit on the same lot. A
15 detached ADU shall not share structural walls with ~~either the primary structure or any other~~
16 ~~structure~~ on the lot. Height for detached ADUs located outside the buildable area shall be
17 measured from existing grade at any given point to either a) the highest point of a finished
18 roof in the case of a flat roof or b) the average height of a pitched roof or stepped roof, or
19 similarly sculptured roof form. Height for detached ADUs located outside the buildable area
20 shall not be eligible for any exemptions described in Planning Code subsection 260(b).

21
22 **Dwelling Unit, Junior Accessory, or JADU.** A Dwelling Unit that meets all the requirements
23 of Section 207.2(e)(6), and that:

- 24 (a) is accessory to at least one other Dwelling Unit on the same lot;
- 25 (b) is no more than 500 square feet of Gross Floor Area;

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

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

4 (e) is owner-occupied, unless the owner resides in the remaining portion of the
5 structure; provided, however, that owner-occupancy shall not be required if the owner is a
6 governmental agency, land trust, or housing organization;

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

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

13 * * * *

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

17 * * * *

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

19 * * * *

20 (32) Infill under decks and cantilevered rooms when adding an Accessory
21 Dwelling Unit; provided, however, that such infill shall comply with Section 207.1(e)(4) or
22 ~~Section 207(c)(6)~~ of this Code, ~~whichever is applicable~~; and provided further that if the ADU is
23 proposed for a single-family home under Section 207.1, the rear yard must be 25% of the lot
24 depth but in no case less than 15 feet.

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

3 (34) An Accessory Dwelling Unit proposed for approval under Section 207.2
4 that is no greater than 800 square feet in Gross Floor Area with four-foot side and rear yard
5 setbacks.

6 * * * *

7
8 **SEC. 155.1. BICYCLE PARKING: DEFINITIONS AND STANDARDS.**

9 * * * *

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

17 * * * *

18 (c) **Design Standards for Bicycle Parking Spaces.** These design standards apply to
19 all bicycle parking spaces subject to Sections 155.2 and 155.3. Bicycle parking shall follow the
20 design standards established in Zoning Administrator Bulletin No. 9, which includes specific
21 requirements on bicycle parking layout and acceptable types of Class 1 and Class 2 bicycle
22 parking spaces. For Accessory Dwelling Units, the requirements of this subsection (c) may be
23 modified or waived pursuant to the procedures and criteria set forth in Sections 307(l) and
24 207.1(c)(4)(G).

25 * * * *

1
2 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

3 * * * *

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

6 * * * *

7 (4) The exception to Dwelling Unit density limits for certain Accessory
8 Dwelling Units under the City’s Local Accessory Dwelling Unit Program is set forth in Section
9 207.1 of this Code. ~~Accessory Dwelling Units — Local Program: Accessory Dwelling Units in~~
10 ~~Multifamily Buildings and Accessory Dwelling Units in Single-Family Homes That Do Not~~
11 ~~Strictly Meet the Requirements in subsection (c)(6).~~

12 ~~————— (A) — Definition. An “Accessory Dwelling Unit” (ADU) is defined in~~
13 ~~Section 102.~~

14 ~~————— (B) — Applicability. This subsection (c)(4) shall apply to the construction~~
15 ~~of ADUs on all lots located within the City and County of San Francisco in areas that allow~~
16 ~~residential use, except ADUs regulated by subsection (c)(6) below.~~

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

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

1 ~~————— (ii) ———~~ The Department shall not approve an application for construction
2 of an ADU where a tenant on the lot was evicted pursuant to Administrative Code Sections
3 37.9(a)(9) through (a)(12) and 37.9(a)(14) under a notice of eviction served within 10 years
4 prior to filing the application for a building permit to construct the ADU, or where a tenant was
5 evicted pursuant to Administrative Code Section 37.9(a)(8) under a notice of eviction served
6 within five years prior to filing the application for a building permit to construct the ADU. This
7 subsection ~~(c)(4)(C)(ii)~~ shall not apply if the tenant was evicted under Section 37.9(a)(11) or
8 37.9(a)(14) and the applicant(s) either (A) have certified that the original tenant reoccupied the
9 unit after the temporary eviction or (B) have submitted to the Department and to the
10 Residential Rent Stabilization and Arbitration Board (Rent Board) a declaration from the
11 property owner or the tenant certifying that the property owner notified the tenant of the
12 tenant's right to reoccupy the unit and the tenant chose not to reoccupy it.

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

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

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

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

16 _____ (vi) _____ When a detached garage, storage, or other auxiliary structure is
17 being converted to an ADU, an expansion to the envelope is allowed to add dormers even if
18 the detached 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
21 one additional story in order to create a consistent street wall and improve the continuity of
22 buildings on the block.

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

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

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

10 ~~————— (xi) — Notwithstanding any other provision of this Code, an ADU~~
11 ~~authorized under this Section 207(c)(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~~
14 ~~would eliminate or reduce a ground-story retail space, unless the Accessory Dwelling Unit is a~~
15 ~~Designated Child Care Unit, as defined in Section 102, and meets all applicable standards of~~
16 ~~Planning Code Section 414A.6(e).~~

17 ~~————— (xiii) — An Accessory Dwelling Unit shall not be permitted under this~~
18 ~~subsection (c)(4) if it would result in the reduction or removal of on-site laundry service, unless~~
19 ~~that laundry service is replaced with at least the same number or capacity of washers and~~
20 ~~dryers within the same 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(c)(4)(C) shall not be subject to the notification~~
23 ~~requirements of Section 311 of this Code; however, any application for a permit to construct~~
24 ~~the proposed building shall be subject to any applicable notification requirements of Section~~
25 ~~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 ADU shall not be used for Short-~~
10 ~~Term Residential Rentals under Chapter 41A of the Administrative Code, which restriction~~
11 ~~shall be recorded as a Notice of Special Restriction on the subject lot.~~

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

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

1 allowed by the Building Code, a building in which an ADU is constructed may be raised up to
2 three feet to create ground floor ceiling heights suitable for residential use. Such a raise in
3 height

4 _____ (i) _____ Shall be exempt from the notification requirements of Section 314
5 of this Code; and

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

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

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

19 _____ (G) _____ Waiver of Code Requirements; Applicability of Rent Ordinance. Pursuant
20 to the provisions of Section 307(l) of this Code, the Zoning Administrator may grant a
21 complete or partial waiver of the density limits and bicycle parking, rear yard, exposure, or
22 open space standards of this Code for ADUs constructed within an existing building, and may
23 grant a waiver of the density limits of this Code for ADUs constructed within a proposed
24 building. If the Zoning Administrator grants a complete or partial waiver of the requirements of
25 this Code and the subject lot contains any Rental Units at the time an application for a building

1 permit is filed for construction of the ADU(s), the property owner(s) shall enter into a
2 Regulatory Agreement with the City under subsection (c)(4)(H) subjecting the ADU(s) to the
3 San Francisco Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the
4 Administrative Code) as a condition of approval of the ADU(s). For purposes of this
5 requirement, Rental Units shall be as defined in Section 37.2(r) of the Administrative Code.

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

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

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

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

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

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

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

8 ~~————— (l) ———~~ Monitoring Program.

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

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

1 ~~————— (iii) — Department Report. As part of the annual Housing Inventory, the~~
2 ~~Department shall report the types of units being developed pursuant to this subsection~~
3 ~~207(c)(4), their affordability rates, their use as Short-Term Residential Rentals, and such~~
4 ~~additional information as the Director or the Board of Supervisors determines would inform~~
5 ~~decision makers and the public on the effectiveness and implementation of this subsection~~
6 ~~207(c)(4), and shall include recommendations for any amendments to the requirements of this~~
7 ~~Section 207(c)(4).~~

8 * * * *

9 (6) The exception to Dwelling Unit density limits for certain Accessory Dwelling
10 Units under the State-Mandated Accessory Dwelling Unit Program is set forth in Section 207.2
11 of this Code. ~~Accessory Dwelling Units – State Mandated Program: Accessory Dwelling Units~~
12 ~~in Existing or Proposed Dwellings or in a Detached Structure on the Same Lot.~~

13 ~~————— (A) — Applicability. This subsection 207(c)(6) shall apply to the construction of~~
14 ~~ADUs and Junior Accessory Dwelling Units (“JADUs”) (as defined in Section 102) in existing~~
15 ~~or proposed dwellings, or in a detached structure on the same lot, if the ADU meets the~~
16 ~~applicable requirements of this subsection 207(c)(6). An ADU constructed pursuant to this~~
17 ~~subsection is considered a residential use that is consistent with the General Plan and the~~
18 ~~zoning designation for the lot. Adding an ADU or JADU in compliance with this subsection~~
19 ~~207(c)(6) does not exceed the allowable density for the lot. Unless otherwise specified, for~~
20 ~~purposes of this subsection 207(c)(6), a “detached” structure or ADU shall not share structural~~
21 ~~walls with either the primary structure or any other structure on the lot. If construction of the~~
22 ~~ADU will not meet the requirements of this subsection, the ADU is regulated pursuant to~~
23 ~~subsection 207(c)(4) and not this subsection 207(c)(6).~~

24 ~~————— (B) — General Controls on Construction. An ADU constructed pursuant to this~~
25 ~~subsection (c)(6) shall meet all of the following:~~

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

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

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

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

13 ~~————— (C) — Specific Controls for Ministerial ADUs. The purpose of this subsection~~
14 ~~207(c)(6)(C) is to implement California Government Code Sections 65852.2(e) and 65852.22,~~
15 ~~which requires ministerial consideration of ADUs and JADUs that meet certain standards~~
16 ~~(“Ministerial ADUs”). ADUs and JADUs shall strictly meet the requirements set forth in this~~
17 ~~subsection (c)(6)(C) without requiring a waiver of Code requirements pursuant to subsection~~
18 ~~(c)(4)(G). The City shall approve ADUs and JADUs meeting the following requirements, in~~
19 ~~addition to the requirements of subsection 207(c)(6)(B) and any other applicable standards:~~

20 ~~————— (i) — ADUs and JADUs within proposed space of a proposed single-~~
21 ~~family dwelling or within existing space of a single-family dwelling or accessory structure~~
22 ~~meeting the following conditions:~~

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

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

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

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

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

8 f. — If a JADU is proposed, it meets the requirements of
9 California Government Code Section 65852.22.

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

12 a. — The lot on which the detached ADU is proposed contains an
13 existing or proposed single-family dwelling.

14 b. — The lot on which the ADU is proposed does not contain
15 another ADU, but may contain a JADU.

16 c. — The proposed ADU is detached from the single-family
17 dwelling and any other structure.

18 d. — The proposed ADU is new construction.

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

22 (iii) — ADUs within existing space of a multifamily dwelling meeting the
23 following conditions:

24 a. — The lot on which the ADU is proposed contains an existing
25 multifamily dwelling.

1 ~~_____ b. — The ADU is proposed within a portion of the multifamily~~
2 ~~dwelling structure that is not used as livable space, including but not limited to storage rooms,~~
3 ~~boiler rooms, passageways, attics, basements, or garages.~~

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

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

11 ~~_____ a. — The lot on which the ADU is proposed contains an existing~~
12 ~~multifamily dwelling.~~

13 ~~_____ b. — The proposed ADU is detached from the multifamily~~
14 ~~dwelling.~~

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

17 ~~_____ d. — No more than two ADUs shall be permitted per lot pursuant~~
18 ~~to this subsection 207(c)(6)(C)(iv).~~

19 ~~_____ (D) — Specific Controls for Streamlined ADUs. The purpose of this subsection~~
20 ~~207(c)(6)(D) is implement California Government Code Sections 65852.2(a) through (d),~~
21 ~~which requires streamlined, ministerial approval of ADUs meeting certain standards~~
22 ~~(“Streamlined ADUs”). An ADU located on a lot that is zoned for single-family or multifamily~~
23 ~~use and contains an existing or proposed dwelling, and that is constructed pursuant to this~~
24 ~~subsection 207(c)(6)(D), shall meet all of the following requirements, in addition to the~~
25 ~~requirements of subsection 207(c)(6)(B) and any other applicable standards. Provided,~~

1 however, that the City shall not impose limits on lot coverage, floor area ratio, open space,
2 and minimum lot size, for either attached or detached dwellings, that does not permit
3 construction of an ADU meeting all other requirements that is 800 square feet or less in Gross
4 Floor Area, 16 feet or less in height, and with four foot side and rear yard setbacks. ADUs
5 under this subsection 207(c)(6)(D) shall meet the following conditions:

6 (i) Only one ADU will be constructed.

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

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

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

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

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

1 ~~————— (vii) —~~ Setbacks. No setback is required for an ADU located within an
2 existing living area or an existing accessory structure, or an ADU that replaces an existing
3 structure and is located in the same location and constructed to the same dimensions as the
4 structure being replaced. A setback of no more than four feet from the side and rear lot lines
5 shall be required for an ADU that is not converted from either an existing structure or a new
6 structure constructed in the same location and to the same dimensions as an existing
7 structure.

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

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

12 ~~————— (E) —~~ Notification requirements for ADUs on a lot containing a proposed or
13 existing single-family dwelling. Prior to submitting an application to construct an ADU or
14 JADU on a lot containing a proposed or existing single-family dwelling under subsection
15 207(c)(6)(D), the property owner shall notify all tenants on the subject property of the
16 application, including tenants of the subject property in unauthorized residential units. The
17 property owner shall satisfy this notification requirement in one of the following two ways.

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

22 ~~————— (ii) —~~ Cause a notice describing the proposed project to be posted on
23 the subject property for at least 15 days, cause a written notice describing the proposed
24 project to be mailed to the tenants of the subject property, and submit proof of these notices to
25 the Planning Department as part of the application to construct an ADU or JADU. These

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

9 ~~——— (F) —— Permit Application Review and Approval. The City shall act on an~~
10 ~~application for a permit to construct an ADU or JADU under this subsection 207(c)(6) within~~
11 ~~60 days from receipt of the complete application, without modification or disapproval, if the~~
12 ~~proposed construction fully complies with the requirements set forth in this subsection~~
13 ~~207(c)(6). No requests for discretionary review shall be accepted by the Planning Department~~
14 ~~for permit applications meeting the requirements of this subsection 207(c)(6). The Planning~~
15 ~~Commission shall not hold a public hearing for discretionary review of permit applications~~
16 ~~meeting the requirements of this subsection 207(c)(6). Permit applications meeting the~~
17 ~~requirements of this subsection 207(c)(6) shall not be subject to the notification or review~~
18 ~~requirements of Section 311 of this Code.~~

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

22 ~~——— (H) —— Prohibition of Short-Term Rentals. An ADU or JADU authorized under~~
23 ~~this subsection 207(c)(6) shall not be used for Short-Term Residential Rentals under Chapter~~
24 ~~41A of the Administrative Code. This restriction shall be recorded as a Notice of Special~~
25 ~~Restriction on the subject lot.~~

1 ~~(I) 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 subsection 207(c)(6) and shall be binding on all future owners and
4 successors in interest:

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

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

14 ~~(iii) The size and attributes of a JADU constructed pursuant to this~~
15 ~~subsection 207(c)(6) shall comply with the requirements of this subsection 207(c)(6) and~~
16 ~~Government Code 65852.22.~~

17 ~~(J) Department Report.~~ In addition to the information required by subsection
18 ~~207(c)(4)(I)(iii), the annual Housing Inventory shall include a description and evaluation of the~~
19 ~~number and types of units being developed pursuant to this subsection (c)(6), their~~
20 ~~affordability rates, and such other information as the Director or the Board of Supervisors~~
21 ~~determines 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(c)(6), where the ADU or JADU is smaller than seven hundred and fifty~~
24 ~~square feet of Gross Floor Area, or for ADUs that are proposed in lots with three existing units~~
25

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

3 * * * *

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

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

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

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

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

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

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

7 (3) Prior to submitting an application to construct an ADU under this Section
8 207.1, the property owner shall file with the Rent Board a written declaration, signed under
9 penalty of perjury, demonstrating that the project will comply with the requirements of
10 Administrative Code Sections 37.2(r) and 37.9 relating to severance, substantial reduction, or
11 removal of a housing service. The Rent Board shall determine the form and content of said
12 declaration, which shall include the following information: (i) a description of any housing
13 services supplied in connection with the use or occupancy of any units on the subject property
14 that are located in the area of the property or building where the ADU would be constructed;
15 (ii) whether construction of the ADU would result in the severance, substantial reduction, or
16 removal of any such housing services; and (iii) whether any of the just causes for eviction
17 under Administrative Code Section 37.9(a) would apply. The property owner shall also file a
18 copy of the notice required under Section 207.1(j) with the declaration.

19 (4) Tenants at the subject property may contest the information in the
20 declaration required by subsection 207.1(c)(3) by petitioning for a written determination from
21 the Rent Board verifying the presence and defining characteristics of the housing service or
22 services in question, and whether any such housing services would be severed, substantially
23 reduced, or removed by the project as proposed. Petitions must be filed with the Rent Board
24 within 30 calendar days after the notice required under Section 207.1(j) has been provided. If
25 no such petition is timely filed, the Rent Board shall promptly transmit the declaration to the

1 Planning Department. If any such petition is timely filed, the Rent Board shall endeavor to
2 transmit the declaration and its final written determination on the petition to the Planning
3 Department within 90 calendar days of receipt of said petition. The Department shall not
4 approve an application to construct an ADU under this Section 207.1 unless (i) the Rent
5 Board has transmitted the declaration and final written determination required by subsections
6 (c)(3) and (c)(4), and (ii) the materials transmitted by the Rent Board indicate that construction
7 of the ADU would not result in the severance, substantial reduction, or removal without just
8 cause of any tenant housing service set forth in Administrative Code Section 37.2(r) that is
9 supplied in the area of the property or building where the ADU would be constructed, unless
10 the property owner demonstrates that the tenant supplied with that housing service has given
11 their express written consent for the severance, substantial reduction, or removal of the
12 housing service.

13 (5) Except as provided in subsections (6), (7), and (8) below, an ADU shall
14 be constructed (i) entirely within the buildable area of an existing lot, provided that the ADU
15 does not include a vertical addition, or (ii) within the built envelope of an existing and
16 authorized detached garage, storage structure, or other detached structure on the same lot.
17 For purposes of this subsection 207.1, a “detached” structure or ADU shall not share
18 structural walls with either the primary structure or any other structure on the lot. For purposes
19 of this subsection 207.1, the “built envelope” shall include the open area under an existing and
20 authorized cantilevered room or room built on columns; decks, except for decks that are
21 supported by columns or walls other than the building wall to which they are attached and are
22 multi-level or more than 10 feet above grade; and lightwell infills provided that the infill will be
23 against a blank neighboring wall at the property line and not visible from any off-site location;
24 as these spaces exist as of July 11, 2016. An ADU constructed entirely within the existing built
25 envelope, as defined in this subsection 207.1, along with permitted obstructions allowed in

1 Section 136(c)(32), of an existing building or authorized detached structure on the same lot, or
2 where an existing detached garage or storage structure has been expanded to add dormers,
3 is exempt from the notification requirements of Section 311 of this Code unless the existing
4 building or authorized detached structure on the same lot is listed in or previously determined
5 to be eligible for listing in the California Register of Historic Places, or designated individually
6 or as part of a historic or conservation district pursuant to Article 10 or Article 11, in which
7 case the notification requirements will apply. If an ADU will be constructed under a
8 cantilevered room or deck that encroaches into the required rear yard, a pre-application
9 meeting that complies with the Planning Commission’s Pre-Application policy is required.

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

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

17 (8) ADUs shall comply with any applicable controls in Planning Code Section
18 134(f).

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

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

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

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

10 (13) An Accessory Dwelling Unit shall not be permitted under this Section 207.1
11 if it would result in the reduction or removal of on-site laundry service, unless that laundry
12 service is replaced with at least the same number or capacity of washers and dryers within the
13 same building and as accessible as before to all building tenants.

14 (14) An application for a permit solely to construct an ADU in a proposed
15 building pursuant to this subsection 207.1(c) shall not be subject to the notification
16 requirements of Section 311 of this Code; however, any application for a permit to construct
17 the proposed building shall be subject to any applicable notification requirements of Section
18 311 of this Code.

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

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

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

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

7 (e) Restrictions on Subdivisions. Notwithstanding the provisions of Article 9 of
8 the Subdivision Code, a lot with an ADU authorized under this Section 207.1 shall not be
9 subdivided in a manner that would allow for the ADU to be sold or separately financed
10 pursuant to any condominium plan, housing cooperative, or similar form of separate
11 ownership. This prohibition on separate sale or finance of the ADU shall not apply to an ADU
12 in a building that consisted entirely of condominium units as of July 11, 2013, and has had no
13 evictions pursuant to Sections 37.9(a) through 37.9(a)(12) and 37.9(a)(14) of the
14 Administrative Code since July 11, 1996. This prohibition on separate sale or finance of the
15 ADU shall not apply to an ADU that meets the requirements of California Government Code
16 Section 65852.26.

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

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

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

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

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

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

1 (h) **Regulatory Agreements.** A Regulatory Agreement required by subsection
2 207.1(g) as a condition of approval of an Accessory Dwelling Unit shall contain the following:

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

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

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

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

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

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

1 (i) **Monitoring Program.**

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

13 (2) **Monitoring of Prohibition on Use as Short Term Rentals.** The
14 Department shall collect data on the use of ADUs authorized to be constructed by this Section
15 207.1 as Short-Term Residential Rentals, as that term is defined in Administrative Code
16 Section 41A.4, and shall use such data to evaluate and enforce Notices of Special Restriction
17 pursuant to Section 207.1(d) and the requirements of Administrative Code Chapter 41A.

18 (3) **Department Report.** As part of the annual Housing Inventory, the
19 Department shall report the types of units being developed pursuant to this Section 207.1,
20 their affordability rates, their use as Short-Term Residential Rentals, and such additional
21 information as the Director or the Board of Supervisors determines would inform decision
22 makers and the public on the effectiveness and implementation of this Section 207.1, and
23 shall include recommendations for any amendments to the requirements of this Section 207.1.

24
25 **SEC. 207.2 STATE MANDATED ACCESSORY DWELLING UNIT PROGRAM.**

1 (a) Exception to Dwelling Unit Density Limits for Certain Accessory Dwelling
2 Units Under the State-Mandated Program. An exception to the calculations under Section
3 207 of this Code shall be made for Accessory Dwelling Units (“ADUs”) and Junior Accessory
4 Dwelling Units (“JADUs”), as defined in Section 102 of this Code, meeting the requirements of
5 this Section 207.2. The purpose of this Section 207.2 is to implement California Government
6 Code Sections 65852.2 and 65852.22, which require ministerial consideration of ADUs and
7 JADUs that meet certain standards.

8 (b) Applicability. This Section 207.2 shall apply to the construction of ADUs and
9 JADUs in existing or proposed dwellings, or in a detached structure on the same lot, if the
10 ADU meets the applicable requirements of this Section 207.2. An ADU constructed pursuant
11 to this Section 207.2 is considered a residential use that is consistent with the General Plan
12 and the zoning designation for the lot. Adding an ADU or JADU in compliance with this
13 Section 207.2 does not exceed the allowable density for the lot. Unless otherwise specified,
14 for purposes of this Section 207.2, a “detached” structure or ADU shall not share structural
15 walls with the primary structure on the lot. If construction of the ADU will not meet the
16 requirements of this Section, the ADU is regulated pursuant to Section 207.1 and not this
17 Section 207.2.

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

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

23 (2) For projects involving a property listed in the California Register of
24 Historic Places, or a property designated individually or as part of a historic or conservation
25 district pursuant to Article 10 or Article 11, the ADU or JADU shall comply with any objective

1 architectural review standards adopted by the Historic Preservation Commission to prevent
2 adverse impacts to such historic resources. Such projects shall not be required to obtain a
3 Certificate of Appropriateness or a Permit to Alter.

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

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

7 (d) **Specific Controls for Hybrid ADUs.** The purpose of this subsection 207.2(d)
8 is to implement California Government Code Sections 65852.2(e) and 65852.22, which
9 require ministerial consideration of ADUs and JADUs that meet certain standards (“Hybrid
10 ADUs”). California Government Code Section 65852.2(e)(6) authorizes the City to impose
11 objective standards, including, but not limited to, design, development, and historic standards,
12 on ADUs approved under this subsection 207.2(d). ADUs and JADUs shall strictly meet the
13 requirements set forth in this subsection 207.2(d), and all other applicable Planning Code
14 standards, including open space, exposure, buildable area, and other standards, without
15 requiring a waiver of Code requirements pursuant to subsection 207.1(g); provided, however,
16 that adding an ADU or JADU in compliance with this subsection 207.2(d) does not exceed the
17 allowable density for the lot. The City shall approve ADUs and JADUs meeting the following
18 requirements, in addition to the requirements of subsection 207.2(b) and any other applicable
19 standards:

20 (1) **ADUs and JADUs within proposed space of a proposed single-**
21 **family dwelling or within existing space of a single-family dwelling or accessory**
22 **structure meeting the following conditions:**

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

1 (B) Only one detached ADU, and one JADU, are permitted per lot in
2 addition to an ADU permitted under this subsection 207.2(d)(1).

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

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

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

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

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

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

16 (B) The lot on which the ADU is proposed does not contain more than
17 one other ADU and one JADU.

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

20 (D) The proposed ADU is new construction.

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

24 (3) ADUs within existing space of a multifamily dwelling meeting the
25 following conditions:

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

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

6 (C) The total number of ADUs within the dwelling structure would not
7 exceed 25% of the existing number of primary dwelling units within the structure, provided that
8 all multifamily dwelling structures shall be permitted to have at least one ADU pursuant to this
9 subsection 207.2(d)(3) if all other applicable standards are met.

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

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

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

15 (C) The proposed ADU is located at least four feet from the side and
16 rear lot lines, except that if the existing multifamily dwelling has a side or rear setback of less
17 than four feet, modification of the existing multifamily dwelling shall not be required as a
18 condition of approving a proposed ADU that otherwise satisfies the requirements of this
19 subsection 207.2(c)(4).

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

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

24 (e) **Specific Controls for State ADUs.** The purpose of this subsection 207.2(e) is
25 implement California Government Code Sections 65852.2(a) through (d), which require

1 streamlined, ministerial approval of ADUs meeting certain standards (“State ADUs”). An ADU
2 located on a lot that is zoned for single-family or multifamily use and contains an existing or
3 proposed dwelling, and that is constructed pursuant to this subsection 207.2(e), shall meet all
4 of the following requirements, in addition to the requirements of subsection 207.2(b) and any
5 other applicable standards. Provided, however, that the City shall not impose any
6 requirement for a zoning clearance or separate zoning review, any minimum or maximum size
7 for an ADU, any size based upon a percentage of the proposed or existing primary dwelling,
8 or any limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot
9 size, for either attached or detached dwellings, that does not permit construction of an ADU
10 meeting all other requirements that is 800 square feet or less in Gross Floor Area, 16 feet or
11 less in height, and with four foot side and rear yard setbacks. ADUs under this subsection
12 207.2(e) shall meet the following conditions:

13 (1) Only one ADU will be constructed.

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

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

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

24 (5) 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% of the Gross Floor

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

5 (6) 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
7 more than one bedroom shall not exceed 1,000 square feet.

8 (7) **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
10 and is located in the same location and constructed to the same dimensions as the structure
11 being replaced. A setback of no more than four feet from the side and rear lot lines shall be
12 required for an ADU that is not converted from either an existing structure or a new structure
13 constructed in the same location and to the same dimensions as an existing structure.

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

19 (9) **Height limits.** The ADU shall not exceed the following height limits:
20 (A) A height of 16 feet for a detached ADU on a lot with an existing or
21 proposed dwelling.
22 (B) A height of 18 feet for a detached ADU on a lot with an existing or
23 proposed dwelling that is within one-half of one mile walking distance of a major transit stop or
24 a high-quality transit corridor, as defined in Section 21155 of the California Public Resources
25

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

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

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

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

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

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

21 (i) **Rental; Restrictions on Subdivisions.** An ADU or JADU constructed
22 pursuant to this Section 207.2 may be rented and is subject to all applicable provisions of the
23 Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative
24 Code). Notwithstanding the provisions of Article 9 of the Subdivision Code, a lot with an ADU
25 or JADU authorized under this Section 207.2 shall not be subdivided in a manner that would

1 allow for the ADU or JADU to be sold or separately financed pursuant to any condominium
2 plan, housing cooperative, or similar form of separate ownership, except that this prohibition
3 on separate sale or finance of the ADU shall not apply to an ADU that meets the requirements
4 of California Government Code Section 65852.26.

5 (i) **Recordation for Junior ADUs.** The following restrictions shall be recorded as
6 a Notice of Special Restriction on the subject lot on which a JADU is constructed under this
7 Section 207.2 and shall be binding on all future owners and successors in interest:

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

14 (2) 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 California Government
16 Code 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 Section 207.2, where the ADU or JADU is smaller than 750 square feet of Gross Floor
24 Area, or for ADUs that are proposed in lots with three existing units or fewer. Impact fees for
25

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

3
4 **SEC. 207.6. REQUIRED MINIMUM DWELLING UNIT MIX IN RTO, RCD, NCT, DTR,**
5 **EASTERN NEIGHBORHOODS MIXED USE DISTRICTS, THE VAN NESS & MARKET**
6 **RESIDENTIAL SPECIAL USE DISTRICT, AND THE POLK STREET AND PACIFIC**
7 **AVENUE NEIGHBORHOOD COMMERCIAL DISTRICTS.**

8 * * * *

9 (b) **Applicability.**

10 (1) This Section shall apply in the RTO, RCD, NCT, DTR, Eastern
11 Neighborhoods Mixed Use Districts, the Van Ness & Market Residential Special Use District,
12 and the Pacific Avenue and Polk Street NCDs.

13 (2) This Section shall apply to all applications for building permits and/or
14 Planning Commission entitlements that propose the creation of five or more Dwelling Units.

15 (3) This Section does not apply to buildings for which 100 percent of the
16 residential uses are: Group Housing, Dwelling Units that are provided at below market rates
17 pursuant to Section 406(b)(1) of this Code, Single Room Occupancy (SRO) Units, Student
18 Housing (all as defined in Section 102 of this Code) or housing specifically and permanently
19 designated for seniors or persons with physical disabilities.

20 (4) This Section 207.6 shall not apply to applications for permits or entitlements
21 to construct Accessory Dwelling Units or Junior Accessory Dwelling Units.

22 * * * *

23
24 **SEC. 207.7. REQUIRED MINIMUM DWELLING UNIT MIX.**
25

1 (a) **Purpose.** To ensure an adequate supply of family-sized units in new housing
2 stock, new residential construction must include a minimum percentage of units of at least two
3 and three bedrooms.

4 (b) **Applicability.**

5 (1) This Section 207.7 shall apply to all applications for building permits and/or
6 Planning Commission entitlements that propose the creation of 10 or more Dwelling Units in
7 all districts that allow residential uses, unless that project is located in the RTO, RCD, NCT,
8 DTR, and Eastern Neighborhoods Mixed Use Districts, or in an area or Special Use District
9 with higher specific bedroom mix requirements, or is a HOME SF project subject to the
10 requirements of Planning Code Section 206.3.

11 (2) This Section 207.7 shall not apply to buildings for which 100% of the
12 residential uses are: Group Housing, Dwelling Units that are provided at below market rates
13 pursuant to Section 406(b)(1) of this Code, Single Room Occupancy (SRO) Units, Student
14 Housing (all as defined in Section 102 of this Code), or housing specifically and permanently
15 designated for seniors or persons with physical disabilities, including units to be occupied by
16 staff serving any of the foregoing residential uses. This Section 207.7 shall apply to Student
17 Housing unless the educational institution with which it is affiliated has an Institutional Master
18 Plan that the City has accepted, as required under Planning Code Section 304.5.

19 (3) This Section 207.7 shall not apply to projects that filed a complete
20 Environmental Evaluation Application on or prior to January 12, 2016, or to projects that have
21 received an approval, including approval by the Planning Commission, as of June 15, 2017.

22 (4) In accordance with Section 210.5, this Section 207.7 shall not apply to
23 Commercial to Residential Adaptive Reuse projects.

24 (5) This Section 207.7 shall not apply to applications for permits or entitlements
25 to construct Accessory Dwelling Units or Junior Accessory Dwelling Units.

1 * * * *

2
3 **SEC. 1005. CONFORMITY AND PERMITS.**

4 * * * *

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

17 * * * *

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

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

25 * * * *

1
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 ~~sub~~Section 207.2(c)(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, subsections, and tables listed below with the term "Section 207.1". If any

1 references in the Planning Code to “subsection 207(c)(4)” and “section 207(c)(4)” have been
2 inadvertently omitted from the above list, the City Attorney is authorized to cause such
3 references to be changed to “Section 207.1”.

- 4 - Subsection 134(f)
- 5 - Subsection 138.1(c)(1)
- 6 - Subsection 140(c)(2)
- 7 - Subsection 172(a)
- 8 - Table 209.1, Note 6
- 9 - Table 209.2, Note 7
- 10 - Table 209.3, Note 7
- 11 - Table 209.4, Note 7
- 12 - Table 210.1, Note 5
- 13 - Table 210.2, Note 7
- 14 - Table 210.4, Note 3
- 15 - Subsection 307(l) (2 references)
- 16 - Section 710
- 17 - Table 710 (2 references)
- 18 - Section 711
- 19 - Table 711 (2 references)
- 20 - Section 712
- 21 - Table 712 (2 references)
- 22 - Section 713
- 23 - Table 713 (2 references)
- 24 - Section 714
- 25 - Table 714 (2 references)

- 1 - Section 715
- 2 - Table 715 (2 references)
- 3 - Section 716
- 4 - Table 716 (2 references)
- 5 - Section 717
- 6 - Table 717 (2 references)
- 7 - Section 718
- 8 - Table 718 (2 references)
- 9 - Section 719
- 10 - Table 719 (2 references)
- 11 - Table 720
- 12 - Table 721
- 13 - Section 722
- 14 - Table 722 (2 references)
- 15 - Section 723
- 16 - Table 723 (2 references)
- 17 - Section 724
- 18 - Table 724 (2 references)
- 19 - Section 725
- 20 - Table 725 (2 references)
- 21 - Section 726
- 22 - Table 726 (2 references)
- 23 - Section 727
- 24 - Table 727 (2 references)
- 25 - Section 728

- 1 - Table 728 (2 references)
- 2 - Section 729
- 3 - Table 729 (2 references)
- 4 - Section 730
- 5 - Table 730 (2 references)
- 6 - Table 731 (2 references)
- 7 - Table 732 (2 references)
- 8 - Table 733 (2 references)
- 9 - Table 734 (2 references)
- 10 - Section 735
- 11 - Table 735 (2 references)
- 12 - Section 736
- 13 - Table 736 (2 references)
- 14 - Section 737
- 15 - Table 737 (2 references)
- 16 - Section 738
- 17 - Table 738 (2 references)
- 18 - Section 739
- 19 - Table 739 (2 references)
- 20 - Section 740
- 21 - Table 740 (2 references)
- 22 - Section 741
- 23 - Table 741 (2 references)
- 24 - Section 742
- 25 - Table 742 (2 references)

- 1 - Section 743
- 2 - Table 743 (2 references)
- 3 - Section 744
- 4 - Table 744 (2 references)
- 5 - Section 745
- 6 - Table 745 (2 references)
- 7 - Table 750 (2 references)
- 8 - Table 751 (2 references)
- 9 - Section 752
- 10 - Table 752 (2 references)
- 11 - Section 753
- 12 - Table 753 (2 references)
- 13 - Section 754
- 14 - Table 754 (2 references)
- 15 - Section 755
- 16 - Table 755 (2 references)
- 17 - Section 756
- 18 - Table 756 (2 references)
- 19 - Section 757
- 20 - Table 757 (2 references)
- 21 - Section 758
- 22 - Table 758 (2 references)
- 23 - Section 759
- 24 - Table 759 (2 references)
- 25 - Section 760

- 1 - Table 760 (2 references)
- 2 - Table 761 (2 references)
- 3 - Section 762
- 4 - Table 762 (2 references)
- 5 - Table 763 (2 references)
- 6 - Section 764
- 7 - Table 764 (2 references)
- 8 - Section 827
- 9 - Table 827 (2 references)
- 10 - Section 828
- 11 - Section 829
- 12 - Table 829 (2 references)
- 13 - Table 830
- 14 - Section 831
- 15 - Section 832
- 16 - Section 833
- 17 - Section 834
- 18 - Section 835
- 19 - Section 836
- 20 - Section 837
- 21 - Section 838
- 22 - Section 839
- 23 - Section 840
- 24
- 25

1 Section 4. Articles 1, 2, 3, 7, and 8 of the Planning Code are hereby amended by
2 replacing all references to Planning Code “subsection 207(c)(6)” and “section 207(c)(6)” in
3 each of the Sections, subsections, and tables listed below with the term “Section 207.2”. If any
4 references in the Planning Code to “subsection 207(c)(4)” and “section 207(c)(4)” have been
5 inadvertently omitted from the above list, the City Attorney is authorized to cause such
6 references to be changed to “Section 207.1”.

- 7 - Subsection 138.1(c)(1)
- 8 - Table 209.1, Note 6
- 9 - Table 209.2, Note 7
- 10 - Table 209.3, Note 7
- 11 - Table 209.4, Note 7
- 12 - Table 210.1, Note 5
- 13 - Table 210.2, Note 7
- 14 - Table 210.4, Note 3
- 15 - Subsection 311(b)
- 16 - Table 710 (2 references)
- 17 - Table 711 (2 references)
- 18 - Table 712 (2 references)
- 19 - Table 713 (2 references)
- 20 - Table 714 (2 references)
- 21 - Table 715 (2 references)
- 22 - Table 716 (2 references)
- 23 - Table 717 (2 references)
- 24 - Table 718 (2 references)
- 25 - Table 719 (2 references)

- 1 - Table 720
- 2 - Table 721
- 3 - Table 722 (2 references)
- 4 - Table 723 (2 references)
- 5 - Table 724 (2 references)
- 6 - Table 725 (2 references)
- 7 - Table 726 (2 references)
- 8 - Section 727
- 9 - Table 727 (2 references)
- 10 - Table 728 (2 references)
- 11 - Table 729 (2 references)
- 12 - Table 730 (2 references)
- 13 - Table 731 (2 references)
- 14 - Table 732 (2 references)
- 15 - Table 733 (2 references)
- 16 - Table 734 (2 references)
- 17 - Section 735
- 18 - Table 735 (2 references)
- 19 - Section 736
- 20 - Table 736 (2 references)
- 21 - Section 737
- 22 - Table 737 (2 references)
- 23 - Section 738
- 24 - Table 738 (2 references)
- 25 - Section 739

- 1 - Table 739 (2 references)
- 2 - Section 740
- 3 - Table 740 (2 references)
- 4 - Section 741
- 5 - Table 741 (2 references)
- 6 - Section 742
- 7 - Table 742 (2 references)
- 8 - Section 743
- 9 - Table 743 (2 references)
- 10 - Section 744
- 11 - Table 744 (2 references)
- 12 - Section 745
- 13 - Table 745 (2 references)
- 14 - Table 750 (2 references)
- 15 - Table 751 (2 references)
- 16 - Section 752
- 17 - Table 752 (2 references)
- 18 - Table 753 (2 references)
- 19 - Table 754 (2 references)
- 20 - Table 755 (2 references)
- 21 - Table 756 (2 references)
- 22 - Table 757 (2 references)
- 23 - Table 758 (2 references)
- 24 - Table 759 (2 references)
- 25 - Table 760 (2 references)

- 1 - Table 761 (2 references)
- 2 - Table 762 (2 references)
- 3 - Table 763 (2 references)
- 4 - Section 764
- 5 - Table 764 (2 references)
- 6 - Subsection 1005(e)(10)
- 7 - Subsection 1110(g)(4)

8

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

11 **SEC. 37.2. DEFINITIONS.**

12 * * * *

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

17 Garage facilities, parking facilities, driveways, storage spaces, laundry rooms,
18 decks, patios, or gardens on the same lot, or kitchen facilities or lobbies in single room
19 occupancy (SRO) hotels, supplied in connection with the use or occupancy of a unit, may not
20 be severed from the tenancy by the landlord without just cause as required by Section
21 37.9(a). Any severance, substantial reduction, or removal of a housing service, even if
22 permitted under Section 37.9(a), shall be offset by a corresponding reduction in rent. Either a
23 landlord or a tenant may file a petition with the Rent Board to determine the amount of the rent
24 reduction. In addition, a tenant may petition the Rent Board for a determination on whether an
25 Accessory Dwelling Unit proposed to be constructed under Planning Code Section 207.1(e)(4)

1 would sever, substantially reduce, or remove a housing service, pursuant to the procedures
2 set forth in ~~Subsection 207.1(e)(4)(C)(iii)~~. The issuance of a permit for construction of an
3 Accessory Dwelling Unit does not, in and of itself, constitute a just cause for the purpose of
4 severing a housing service.

5 Notwithstanding the preceding paragraph, a landlord may temporarily sever one or
6 more housing services listed in that paragraph in order to perform seismic work required by
7 Building Code "Mandatory Earthquake Retrofit of Wood-Frame Buildings" ("mandatory
8 seismic work") if: (1) the landlord has given the notice to temporarily sever as required by
9 Administrative Code Section 65A.2; (2) the landlord has obtained all necessary permits on or
10 before the date the notice to temporarily sever is given; (3) the housing service(s) will only be
11 severed for the minimum time required to complete the mandatory seismic work and in no
12 event for a longer period than provided by Building Code Section 106A.4.4, Table B; and (4)
13 the temporarily severed housing service(s) will be fully restored immediately upon completion
14 of the mandatory seismic work. For such temporary severance of one or more of the specified
15 housing services due to mandatory seismic work required by Building Code Chapter 34B,
16 tenants will not be entitled to a reduction in rent, but tenants shall be entitled to either
17 compensation or a substitute housing service as provided in Administrative Code Chapter
18 65A.

19 The term "rental units" shall not include:

20 * * * *

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

1 Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the
2 ordinance is not in conflict with the seismic strengthening bond program or with the program's
3 loan agreements or with any regulations promulgated thereunder;

4 * * * *

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

10 * * * *

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

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

15 * * * *

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

18 * * * *

19 (9) Additional Requirements.

20 * * * *

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

25 * * * *

1 (iii) In the case of a decision on a permit application made
2 pursuant to Planning Code Section 207.2, ~~subsection (c)(6)~~, the Board of Appeals shall set
3 the hearing not less than 10 days after the filing of said appeal, shall act thereon not more
4 than 30 days 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 (c)(6)~~, shall govern actions taken on the granting, denial, amendment, suspension,
10 and revocation of permits regulated under that ~~subsection 207.2(c)(6)~~, not the standards set
11 forth in subsection (a) of this Section 26.

12
13 Section 7. The Building Code is hereby amended by adding Section 106A.1.19,
14 including Sections 106A.1.19.1 and 106A.1.19.2, to read as follows:

15 **106A.1.19 State-Mandated Accessory Dwelling Unit Program.** California
16 Government Code Sections 65852.2 and 65852.22 require expedited, ministerial
17 consideration of Accessory Dwelling Units (“ADUs”) and Junior Accessory Dwelling Units
18 (“JADUs”) that meet the requirements of Planning Code Section 207.2.

19 **106A.1.19.1 Permit Application Review and Approval.** The City shall approve or
20 deny an application for a permit to construct an ADU or JADU on a lot containing an existing
21 dwelling within 60 days from receipt of the complete application if the proposed construction
22 fully complies with the requirements set forth in Planning Code Section 207.2 and any other
23 applicable requirements. If the applicant requests a delay, the 60-day time period shall be
24 tolled for the period of the delay. If the City has not approved or denied the completed
25 application within 60 days, the application shall be deemed approved.

1 **106A.1.19.2 Notice of Garage Demolition.** Written and posted notice shall not be
2 required for the demolition of a detached garage that is to be replaced with an ADU, unless
3 the property is located within a historic or conservation district pursuant to Article 10 or Article
4 11 of the Planning Code.

5
6 Section 38. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
9 of Supervisors overrides the Mayor’s veto of the ordinance.

10
11 Section 49. Scope of Ordinance. Except as stated in Sections 3 and 4 of this
12 ordinance, in enacting this ordinance, the Board of Supervisors intends to amend only those
13 words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks,
14 charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly
15 shown in this ordinance as additions, deletions, Board amendment additions, and Board
16 amendment deletions in accordance with the “Note” that appears under the official title of the
17 ordinance.

18
19 Section 510. Directions to Clerk. The Clerk of the Board of Supervisors is hereby
20 directed to submit a copy of this ordinance to the California Department of Housing and
21 Community Development within 60 days after adoption pursuant to Section 65852.2(h) of the
22 California Government Code.

23
24 Section 11. Corrected Presentation of Existing Code. On March 20, 2023, the Land
25 Use and Transportation Committee created this ordinance by duplicating Board File No.

1 210585. Ordinance No. 53-23, in Board of Supervisors File No. 210585, took effect on May
2 22, 2023. This ordinance has been updated to accurately represent recent amendments to
3 Sections 102, 136, 207, 1005, and 1110 of the Planning Code enacted by Ordinance No. 53-
4 23 as existing text of the Planning Code. Said revisions do not change the substance of this
5 ordinance.

6
7

8 APPROVED AS TO FORM:
9 DAVID CHIU, City Attorney

10

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

13

14 n:\legana\as2023\2100022\01734511.docx

15

16

17

18

19

20

21

22

23

24

25



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

This page intentionally blank.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



October 26, 2023

Rich Hillis, Planning Director
Planning Department
City of San Francisco
49 South Van Ness Avenue
San Francisco, CA 94103

Dear Planning Director Hillis:

**RE: Review of San Francisco's Accessory Dwelling Unit (ADU) Ordinance
under State ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City and County of San Francisco's (City) accessory dwelling unit (ADU) Ordinance No. 053-23 (Ordinance) adopted April 21, 2023, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and is submitting these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the Ordinance does not comply with section 65852.2 in the manner noted below. Under that statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than November 27, 2023.

The Ordinance addresses many statutory requirements, and HCD commends the City's Local Program that allows, under certain conditions, unlimited ADUs and supports removing roadblocks to safe and affordable housing through such programs. However, there is not a clear distinction between the City's Local Program and the State Mandated Program which would allow for an applicant to choose their desired pathway. In addition, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

- **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.
- **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.

- 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).
- 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.
- 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.

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.

- 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.
- 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.
- 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.

- 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.

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinance to comply with State ADU Law or adopt the Ordinance without changes. Should the City choose to adopt the Ordinance without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinance complies with State ADU Law despite the findings made by HCD. Accordingly, the City’s response should provide a plan and timeline to bring the Ordinance into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

HCD appreciates the City’s efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Tyler Galli, of our staff, at (916) 776-7613 or at Tyler.Galli@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Zisser", with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability