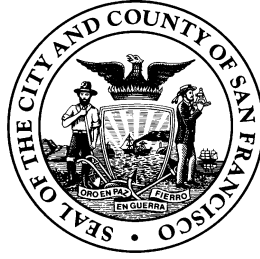


BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Derek Evans, Clerk, Rules Committee
Board of Supervisors

DATE: June 24, 2016

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Rules Committee

The Board of Supervisors' Rules Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 160730 Hearing - Initiative Ordinance - Accessory Dwelling Units

Hearing to consider the proposed initiative ordinance submitted by four or more Supervisors to the voters at the November 8, 2016, Election, entitled "Ordinance amending the Planning Code to allow the construction of Accessory Dwelling Units (ADUs, also known as Secondary or In-Law Units) on all lots in the City in areas that allow residential use; amending the Administrative Code to revise the definition of "rental unit" as it applies to ADUs.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

Submittal Form
For Proposed Initiative Measure(s)
Prior to the Submittal
to the
Department of Elections

By 4 or more Board of Supervisors or the Mayor

I, hereby submit the following proposed initiative measure(s) for hearing before the Board of Supervisors, Rules Committee prior to the submittal of the proposed initiative measure to the Department of Elections. (Prop C. Nov. 2007)

This matter is for the **November 8, 2016** Election.

Sponsor(s): Supervisor Mark Farrell

Mark Farrell 6/24/16

Malia Ober 6/21/16

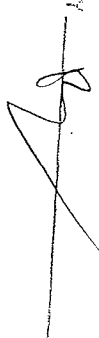
Scott Wiener 6/21/16

Jordan Breed 6-21-16

SUBJECT: Initiative Ordinance – Accessory Dwelling Units

The text is listed below or attached: **Attached**

Time Stamp by Clerk's Office:

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BOARD OF SUPERVISORS
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2016 JUN 21 PM 4:57
BY 

PROPOSED INITIATIVE ORDINANCE TO BE SUBMITTED BY FOUR OR MORE SUPERVISORS TO THE VOTERS AT THE NOVEMBER 8, 2016 ELECTION.

[Under Charter Section 2.113(b), this measure must be submitted to the Board of Supervisors and filed with the Department of Elections no less than *45 days prior* to deadline for submission of such initiatives to the Department of Elections set in Municipal Elections Code Section 300(b).]

[Initiative Ordinance - Accessory Dwelling Units]

Ordinance amending the Planning Code to allow the construction of Accessory Dwelling Units (ADUs, also known as Secondary or In-Law Units) on all lots in the City in areas that allow residential use; amending the Administrative Code to revise the definition of “rental unit” as it applies to ADUs.

NOTE: **Unchanged Code text and uncodified text** are in plain font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in *strikethrough italics Times New Roman font*.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Legislative Findings.

(a) San Francisco's total land area is approximately 49 square miles, and much of this land is not open to development because of prohibitive topography or public ownership.

(b) According to the 2010 United States Census Report, San Francisco is the most densely populated city in California. The San Francisco Bay Area is the second most densely populated metropolitan area in the United States, following only New York City.

(c) Housing costs in San Francisco are beyond the reach of the vast majority of low- and middle-income households. Approximately 90% of individuals earning less than \$35,000

and over 50% of individuals making from \$35,000 to \$75,000 are spending more than 30% of their income on rent.

(d) San Francisco has a shortage of affordable housing units, exacerbated not only by a shortage of new affordable housing units, but also by the continuing loss of affordable housing units across the City. While approximately 6,300 new affordable housing units were built in the period from 2005 to 2015, over 4,500 rent controlled and otherwise protected affordable units were withdrawn from the housing market.

(e) Policy 1.5 of the City's 2014 Housing Element, which is a required element of the City's General Plan, states that adding new units in existing residential buildings represents a simple and cost-effective method of expanding the City's housing supply. These units could be developed to meet the needs of seniors, people with disabilities and others who, because of modest incomes or lifestyles, prefer or need small units at relatively low rents, while simultaneously enhancing their overall safety and habitability.

(f) Section 65852.2 of the California Government Code provides that any local agency may, by ordinance, provide for the creation of Accessory Dwelling Units (also known as "second" or "in-law" units) in zones that allow for residential use. The State Legislature finds and declares that these units are a valuable form of housing in California.

(g) Expanding the ability to construct Accessory Dwelling Units in San Francisco to all areas that allow for residential use will provide additional housing that may be subject to rent control and other rent stabilization protections, without substantially changing their built character and allowing more residents to live within walking distance of transit, shopping, and services.

(h) Allowing Accessory Dwelling Units within existing residential buildings, subject to restrictions that incentivize their use as additional affordable rental housing, is a pragmatic

infill strategy to create more housing for San Francisco residents. This strategy is crucial for San Francisco's housing market in multiple respects.

(i) This infill strategy would create more apartments in the areas of the city that are already built-out without changing the neighborhood character, increasing building heights or altering the built form. Such small-scale residential infill could create additional homes for existing and future San Franciscans spread throughout the city.

(j) A need exists in San Francisco for additional affordable housing. By allowing Accessory Dwelling Units citywide, San Francisco will continue to be a major provider of affordable housing opportunities in the region.

Section 2. The Planning Code is hereby amended by revising Section 207, to read as follows:

SEC. 207. DWELLING UNIT DENSITY LIMITS.

* * * *

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

* * * *

(4) **Accessory Dwelling Units in Zoning Districts Other Than RH-1(D).**

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

(B) **Applicability.** Except for lots zoned RH-1(D), which are regulated by subsection (c)(5) below, the exceptions permitted by this subsection 207(c)(4) shall apply only to all lots located within the City and County of San Francisco in areas that allow residential use; provided, however, that the Department shall not approve an application for construction of an Accessory Dwelling Unit in any building where a tenant has been evicted pursuant to Administrative

Code Sections 37.9(a)(9) through 37.9(a)(14) under a notice of eviction served within 10 years prior to filing the application for a building permit to construct the ADU or where a tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) under a notice of eviction served within five years prior to filing the application for a building permit to construct the ADU.

~~(i) — lots within the boundaries of Board of Supervisors District 8 extant on July 1, 2015;~~

~~(ii) — lots within the boundaries of Board of Supervisors District 3 extant on July 1, 2015; and~~

~~(iii) — lots with a building undergoing mandatory seismic retrofitting in compliance with Section 34B of the Building Code or voluntary seismic retrofitting in compliance with the San Francisco Department of Building Inspection's Administrative Bulletin 094.~~

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

(i) For existing buildings that have four existing Dwelling Units or fewer, one ADU is permitted; for existing buildings that have more than four existing Dwelling Units, there is no limit on the number of ADUs permitted. In new construction, one ADU is permitted to be added to a building with five or fewer Dwelling Units; the smallest Unit in the building shall be designated as the ADU.

(ii) Except as authorized in subsection(C)(iii) below, an Accessory Dwelling Unit shall be constructed entirely within the built envelope of an existing building or within the built envelope of an existing and authorized auxiliary structure on the same lot. For purposes of this provision, the “built envelope” shall include all spaces included in Zoning Administrator Bulletin 4, as amended from time to time, as well as any infilling underneath rear extensions.

(iii) On the ground floor of the building only, an ADU may be constructed within the allowable buildable envelope.

~~(i)~~ (iv) An Accessory Dwelling Unit shall not be constructed using space from an existing Dwelling Unit.

(v) A building undergoing seismic retrofitting may be eligible for a height increase pursuant to Subsection (c)(4)(E) below.

(vi) The merger of an Accessory Dwelling Unit authorized under this Section 207(c)(4) with another unit or units is subject to the process set forth in Section 317 of this Code for the merger of an Unauthorized Unit.

(vii) An Accessory Dwelling Unit shall not be permitted in any building in a Neighborhood Commercial District or in the Chinatown Community Business or Visitor Retail Districts if accommodating the Accessory Dwelling Unit would either eliminate a ground-story retail or commercial space or reduce a ground-story retail or commercial space by more than 25%.

~~(ii) The Accessory Dwelling Unit is subject to the provisions of the San Francisco Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code) if the existing building or any existing Dwelling Unit within the building is subject to the Rent Stabilization and Arbitration Ordinance.~~

(iii) **(D) Prohibition of Short-Term Rentals.** The Department shall require the applicant to disclose on any application for construction of an Accessory Dwelling Unit whether the applicant intends to use, or authorize the use of, the An Accessory Dwelling Unit shall not be used for Short-Term Residential Rentals under Chapter 41A of the Administrative Code, which restriction shall be recorded as a Notice of Special Restriction on the subject lot. The Department shall not approve an application for construction of an Accessory Dwelling Unit unless the applicant has provided the information required by this subsection.

~~(iv) **Board of Supervisors District 8.** For Accessory Dwelling Units on lots covered by Subsection 207(c)(4)(B)(i):~~

~~a. — An Accessory Dwelling Unit shall not be permitted in any RH-1(D) zoning district.~~

~~b. — An Accessory Dwelling Unit shall be constructed entirely within the existing building envelope or auxiliary structure, as it existed three (3) years prior to the time of the application for a building permit.~~

~~c. — For buildings that have no more than 10 existing Dwelling Units, one Accessory Dwelling Unit is permitted; for buildings that have more than 10 existing Dwelling Units, two Accessory Dwelling Units are permitted.~~

~~(v) — **Board of Supervisors District 3.** For Accessory Dwelling Units on lots covered by Subsection 207(e)(4)(B)(ii):~~

~~a. — An Accessory Dwelling Unit shall not be permitted in any RH-1(D) zoning district.~~

~~b. — An Accessory Dwelling Unit shall be constructed entirely within the existing building envelope or auxiliary structure, as it existed three (3) years prior to the time of the application for a building permit.~~

~~c. — For buildings that have four existing Dwelling Units or fewer, one Accessory Dwelling Unit is permitted; for buildings that have more than four existing Dwelling Units, there is no limit on the number of Accessory Dwelling Units permitted by this Section 207(e)(4).~~

(E) (vi) **Buildings Undergoing Seismic Retrofitting.** For Accessory Dwelling Units on lots covered by Subsection 207(e)(4)(B)(iii): with a building undergoing mandatory seismic retrofitting in compliance with Chapter 34 of the Building Code or voluntary seismic retrofitting in compliance with the Department of Building Inspection's Administrative Bulletin 094, the following additional provision applies:

~~a. — An Accessory Dwelling Unit shall not be permitted in any RH-1 or RH-1(D) zoning district.~~

~~b. — An Accessory Dwelling Unit shall be constructed entirely within the existing building envelope or auxiliary structure, as it existed three (3) years prior to the time of the application for a building permit. If permitted allowed by the Building Code, a building in which an Accessory Dwelling Unit is constructed may be raised up to three feet to create ground floor ceiling heights suitable for residential use ~~on lower floors~~. Such a raise in height shall be:~~

~~(i1) shall be~~ exempt from the notification requirements of Sections 311 and 312 of this Code; and

~~(ii2) permitted to may~~ expand a noncomplying structure, as defined in Section 180(a)(2) of this Code and further regulated in Sections 172, 180, and 188, without obtaining a variance for increasing the discrepancy between existing conditions on the lot and the required standards of this Code.

~~(iii) may expand beyond the building envelope in order to add the additional height notwithstanding the provisions of subsection (c)(4)(C)(ii).~~

~~(F) (vii) Waiver of Code Requirements; Applicability of Rent Ordinance.~~

Pursuant to the provisions of Section 307(l) of this Code, the Zoning Administrator may grant an Accessory Dwelling Unit a complete or partial waiver of the density limits and parking, rear yard, exposure, or open space standards of this Code. ~~However, If the Zoning Administrator grants a complete or partial waiver of the requirements of this Code and the subject lot contains any Rental Units at the time an application for a building permit is filed for construction of the Accessory Dwelling Unit(s), the property owner(s) shall enter into a Regulatory Agreement with the City under subsection (c)(4)(G) subjecting the ADU(s) to the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code) as a condition of approval of the~~

ADU(s). For purposes of this requirement, Rental Units shall be as defined in Section 37.2(r) of the Administrative Code. existing building or any existing Dwelling Unit within the building is subject to the provisions of the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code), the property owner shall submit the following to the Department:

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

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

(ii) b. ~~if the Planning Director determines necessary, an Affidavit containing information about the a description of the complete or partial waiver of Code requirements granted by the Zoning Administrator or other~~ direct financial contribution or ~~other~~ form of assistance provided to the property owner; ~~and~~

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

The property owner and the Planning Director (or his designee), on behalf of the City, will execute the Agreement, which shall be reviewed and approved by the City Attorney's Office. The Agreement shall be ~~approved~~ executed prior to the City's issuance of the First Construction Document for the project, as defined in Section 107A.13.1 of the San Francisco Building Code. Following execution of the Regulatory Agreement by all parties and approval by the

City Attorney, the Regulatory Agreement or a memorandum thereof shall be recorded against the property and shall be binding on all future owners and successors in interest.

~~(D)~~ (H) **Monitoring Program.**

(i) **Monitoring and Enforcement of Unit Affordability.** The Department shall establish a system to monitor the affordability of the Accessory Dwelling Units authorized to be constructed by this ~~§~~ subsection 207(c)(4) and shall use such data to enforce the requirements of the Regulatory Agreements entered into pursuant to subsection (c)(4)(H). Property owners shall provide the Department with rent information as requested by the Department. The Board of Supervisors recognizes that property owners and tenants generally consider rental information sensitive and do not want it publicly disclosed. The intent of the Board is for the Department to obtain the information for purposes of monitoring and enforcement ~~so~~ but that its public disclosure can be used by the Department in aggregate form, not in a manner that would be linked to specific individuals or units. The Department shall ~~only request rental information from property owners if the notice includes the statement that the Department is acquiring it in confidence and will publicly disclose it only in aggregate form. The Department shall not ask property owners to provide rental information if it determines, after consulting with the City Attorney's Office,~~ with respect to the legal requirements to determine how best to achieve the intent of the Board that the information would be publicly disclosable under federal, state, or local law in nonaggregated form.

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

(iii) **Department Report.** The Department shall publish a report ~~annually until by~~ April 1, ~~2019 2016~~, that describes and evaluates the types of units being developed and their affordability rates as well as their use as Short-Term Residential Rentals. The report shall contain such additional information as the Director or the Board of Supervisors determines would inform decision makers and the public on the effectiveness and implementation of this ~~§~~subsection (c)(4) and ~~make~~ include recommendations for any amendments ~~to the requirements of this Section 207(c)(4) or expansion of areas where Accessory Dwelling Units should be constructed. The Department shall transmit this report to the Board of Supervisors for its review and public input.~~ In subsequent years, this information on Accessory Dwelling Units shall be ~~included~~ reported annually in the Housing Inventory.

(5) Accessory Dwelling Units in RH-1(D) Zoning Districts.

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

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

(C) Department Report. In the report required by subsection (c)(4)(H)(3), the Department shall include a description and evaluation of the number and types of units being developed pursuant to this subsection (c)(5), their affordability rates, and such other information as the Director or the Board of Supervisors determines would inform decision makers and the public.

Section 3. The Administrative Code is hereby amended by revising Section 37.2, to read as follows:

SEC. 37.2. DEFINITIONS.

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

* * * *

The term "rental units" shall not include:

* * * *

(4) Except as provided in ~~s~~subsections (A), (B) and (C), dwelling units whose rents are controlled or regulated by any government unit, agency or authority, excepting those unsubsidized and/or unassisted units which are insured by the United States Department of Housing and Urban Development; provided, however, that units in unreinforced masonry buildings which have undergone seismic strengthening in accordance with Building Code Chapters 16B and 16C shall remain subject to the Rent Ordinances to the extent that the ordinance is not in conflict with the seismic strengthening bond program or with the program's loan agreements or with any regulations promulgated thereunder.

* * * *

(D) The term "rental units" shall include Accessory Dwelling Units constructed pursuant to Section 207(c)(4) of the Planning Code and that have received a complete or partial waiver of the density limits and the parking, rear yard, exposure, or open space standards from the Zoning Administrator pursuant to Planning Code Section 307(I); *provided that the building containing the Accessory Dwelling Unit(s) or any unit within the building is already subject to this Chapter.*

* * * *

Section 4. Scope of Ordinance. In enacting this ordinance, the People of the City and County of San Francisco intend to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions or deletions, in accordance with the "Note" that appears under the official title of the ordinance.

Section 5. The Board of Supervisors may amend this initiative ordinance by a two-thirds vote.

Section 6. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application. To this end, the provisions of this ordinance shall be deemed severable.

* * *

SUBMITTED.

Mark G. Ju Date: 6/21/16

Member, Board of Supervisors

Meliz Cohen Date: 6/21/16

Member, Board of Supervisors

Scott Wiener Date: 6/21/16

Member, Board of Supervisors

Jordan Breed Date: 6-21-16

Member, Board of Supervisors

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