

1 [Planning Code - Construction of Accessory Dwelling Units]

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3 Ordinance amending the Planning Code to ~~bring~~ modify the requirements and
4 procedures for authorizing the construction of Accessory Dwelling Units (ADUs) to
5 include ADUs in RH-1(D) zoning districts in the Citywide program, apply the cap on
6 number of ADUs to lots rather than buildings and remove the cap on buildings
7 undergoing seismic retrofitting, allow the construction of ADUs expanding into the
8 buildable or habitable area under certain conditions, modify the definition of existing
9 “built envelope” to include space that was added under permit as “rooms down,” allow
10 conversion of vacant commercial space under specified circumstances, make an
11 exception to the prohibition against constructing an ADU where there has been a no-
12 fault eviction in those cases where the tenant has been temporarily evicted in order for
13 the owner to perform capital improvements, rehabilitation work, or lead remediation or
14 abatement work, require modification of the project if construction of the ADU would
15 have adverse impacts on any known historic resource, and require the Planning
16 Department to apply all enacted design guidelines to ensure architectural compatibility
17 of the ADU with existing buildings on the subject lot in single-family homes into
18 conformity with the new mandates of state law; affirming the Planning Department’s
19 determination under the California Environmental Quality Act; making findings of
20 consistency with the General Plan and the eight priority policies of Planning Code
21 Section 101.1 and findings of public convenience, necessity, and welfare under
22 Planning Code Section 302; and directing the Clerk to send a copy of this ordinance to
23 the California Department of Housing and Community Development after adoption
24 pursuant to state law requirements.

25

1 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
2 **Additions to Codes** are in *single-underline italics Times New Roman font*.
3 **Deletions to Codes** are in ~~*single-underline italics Times New Roman font*~~.
4 **Board amendment additions** are in double-underlined Arial font.
5 **Board amendment deletions** are in ~~Arial font~~.
6 **Asterisks (* * * *)** indicate the omission of unchanged Code
7 subsections or parts of tables.

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

9

10 Section 1. General Findings.

11 (a) The Planning Department has determined that the actions contemplated in this
12 ordinance comply with the California Environmental Quality Act (California Public Resources
13 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
14 Supervisors in File No. 170125 and is incorporated herein by reference. The Board affirms
15 this determination.

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

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

25

26 Section 2. Specific Findings.

27 (a) In 1982, the Legislature originally enacted the state's second unit law in
28 response to a serious statewide housing shortage. In California Government Code Section

1 65852.150, the Legislature found and declared that “second units are a valuable form of
2 housing in California” and Section 65852.2 encouraged local governments to enact legislation
3 that allowed and regulated second units within the jurisdiction. The California second unit law
4 has been amended several times since 1982, each time imposing additional limitations on the
5 local regulation of second units.

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

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

17 (d) On May 12, 2017, Ordinance 95-17 was enacted to bring ~~This ordinance~~
18 ~~amends~~ San Francisco’s requirements and procedures for the review and approval of
19 accessory dwelling units ~~in order to bring them~~ into full compliance with the recent state
20 mandates. Ordinance 95-17 became effective on June 11, 2017. This ordinance enacts
21 additional policy changes.

22
23 Section 3. The Planning Code is hereby amended by revising Sections ~~102 and~~ 207,
24 to read as follows:

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

2 * * * *

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

5 * * * *

6 (4) **Accessory Dwelling Units in Multifamily Buildings; Accessory**
7 **Dwelling Units in Single-Family Homes That Do Not Strictly Meet the Requirements in**
8 **Subsection (c)(6).**

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

11 (B) **Applicability.** This subsection (c)(4) shall apply to the construction
12 of Accessory Dwelling Units on all lots located within the City and County of San Francisco in
13 areas that allow residential use, except that construction of an Accessory Dwelling Unit is
14 regulated by subsection (c)(6), and not this subsection (c)(4), if all of the following
15 circumstances exist:

16 (i) only one ADU will be constructed;

17 (ii) the ADU will be located on a lot that is zoned for single-
18 family or multifamily use and contains an existing single-family dwelling;

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

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

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

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

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

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

1 ADU. For purposes of this provision, the "built envelope" shall include all spaces included in
2 ~~Zoning Administrator Bulletin 4, as amended from time to time, as well as any infilling~~
3 ~~underneath rear extensions the open area under a cantilevered room or room built on~~
4 ~~columns; decks, except for decks that encroach into the required rear yard, or decks that are~~
5 ~~supported by columns or walls other than the building wall to which it is attached and are~~
6 ~~multi-level or more than 10 feet above grade; and lightwell infills provided that the infill will be~~
7 ~~against a blank neighboring wall at the property line and not visible from any off-site location;~~
8 ~~as these spaces exist as of July 11, 2016 and except for any of these spaces that encroach~~
9 ~~on the required rear yard. In the event that an ADU is built in any of these additional spaces,~~
10 ~~such construction shall require notice pursuant to Planning Code Section 311 or 312. the~~
11 ~~open area under a cantilevered room or room built on columns; decks, except for decks that~~
12 ~~encroach into the required rear yard, or decks that are supported by columns or walls other~~
13 ~~than the building wall to which it is attached and are multi-level or more than 10 feet above~~
14 ~~grade; and lightwell infills provided that the infill will be against a blank neighboring wall at the~~
15 ~~property line and not visible from any off-site location; as these spaces exist as of July 11,~~
16 ~~2016 and except for any of these spaces that encroach on the required rear yard.~~

17 (iii) An Accessory Dwelling Unit shall not be constructed using
18 space from an existing Dwelling Unit except that an ADU may (a) expand into the buildable
19 area on the ground floor or (b) expand into habitable space on the ground or basement floors
20 provided that it does not exceed 25% of the gross square footage of such space. The Zoning
21 Administrator may waive this 25% limitation if (a) the resulting space would not be usable or
22 would be impractical to use for other reasonable uses included but not limited to storage or
23 bicycle parking or (b) waiving the limitation would help relieve any negative layout issues for
24 the proposed ADU. the allowable area may include any residential space added under permit
25 as "rooms down."

* * * *

(vi) 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 it would eliminate or reduce a ground-story retail or commercial space. ~~However, in Neighborhood Commercial Districts, conversion of vacant commercial space to an ADU is permitted so long as that commercial space is not street-facing or does not constitute more than a 25% reduction of the total commercial space on that lot.~~

(F) Buildings Undergoing Seismic Retrofitting. For Accessory Dwelling Units on lots with a building undergoing mandatory seismic retrofitting in compliance with Chapter 4D of the Existing Building Code or voluntary seismic retrofitting in compliance with the Department of Building Inspection's Administrative Bulletin 094, the following additional provision applies: If 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. Such a raise in height

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

(ii) 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) on lots where an ADU is added in coordination with a building undergoing mandatory seismic retrofitting in compliance with Chapter 4D of the Existing Building Code or voluntary seismic retrofitting in compliance with the Department of Building Inspection's Administrative Bulletin 094, the building and the new ADU shall maintain

1 any eligibility to enter the condo-conversion lottery and may only be subdivided if the entire
2 property is selected on the condo-conversion lottery.

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

5 * * * *

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

10 (6) **Accessory Dwelling Units in Existing Single-Family Homes.**

11 (A) **Applicability.** This subsection (c)(6) shall apply to the construction
12 of Accessory Dwelling Units (as defined in Section 102) in existing single-family homes that
13 meet the requirements of this subsection. An ADU constructed pursuant to this subsection is
14 considered a residential use that is consistent with the General Plan and the zoning
15 designation for the lot. Adding one ADU to an existing single-family home shall not exceed the
16 allowable density for the lot. If construction of the ADU will not meet the requirements of this
17 subsection and the ADU cannot be constructed without a waiver of Code requirements
18 pursuant to subsection (c)(4)(G), the ADU is regulated pursuant to subsection (c)(4) and not
19 this subsection (c)(6).

20 ~~(B) RH-1(D); Controls on Construction.~~ An Accessory Dwelling Unit
21 in an RH-1(D) zoning district shall be allowed only as mandated by Section 65852.2 of the
22 California Government Code and only in strict compliance with the requirements of that
23 section as it is amended from time to time.

24 ~~(B) (C)~~ **Lots Zoned for Single-Family or Multifamily Use and**
25 **Containing an Existing Single-Family Home; Controls on Construction.** An Accessory

1 Dwelling Unit located in a residential zoning district ~~other than RH-1(D)~~ and constructed
2 pursuant to this subsection (c)(6) shall meet all of the following:

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

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

8 (iii) Only one ADU will be constructed that is entirely within
9 either the “living area” or the buildable area of an existing single-family home, or within the
10 built envelope of an existing and authorized auxiliary structure on the same lot, except that an
11 ADU may (a) expand into the buildable area on the ground floor or (b) expand into habitable
12 space on the ground or basement floors provided that it does not exceed 25% of the gross
13 square footage of such space, and the Zoning Administrator may waive this 25% limitation if
14 (a) the resulting space would not be usable or would be impractical to use for other
15 reasonable uses included but not limited to storage or bicycle parking or (b) waiving the
16 limitation would help relieve any negative layout issues for the proposed ADU. ; ~~the allowable~~
17 ~~area shall include any residential space added under permit as “rooms down.”~~ Living area”
18 means (as defined in Section 65852.2(i)(1) of the California Government Code) “the interior
19 habitable area of a dwelling unit including basements and attics, but does not include a
20 garage or any accessory structure.”

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

24 (v) If construction of the ADU will, ~~in the opinion of the~~
25 ~~Department,~~ have adverse impacts on a property listed in the California Register of Historic

1 Places or any other known historical resource, the Department ~~shall~~ may require modification
2 of the proposed project to the extent necessary to prevent or mitigate such impacts.

3 (vi) The Department ~~shall~~ may apply any Residential ~~D~~Design
4 Guidelines in the Code to the proposed project and review the design of the proposed
5 project to ensure architectural compatibility with existing buildings on the subject lot that is
6 generally applicable in San Francisco to the proposed construction of an ADU.

7 (vii) No setback is required for an existing garage that is
8 converted to an ADU.

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

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

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

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

25 (~~E~~ F) **Rental; Restrictions on Subdivisions.**

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

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

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

18
19 Section 4. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor's veto of the ordinance.

23
24 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
25 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the “Note” that appears under
4 the official title of the ordinance.

5

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

10

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

13 By: _____
14 JUDITH A. BOYAJIAN
Deputy City Attorney

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