

File No. 170125

Committee Item No. 3

Board Item No. 11

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date April 17, 2017

Board of Supervisors Meeting

Date April 25, 2017

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Memorandum of Understanding (MOU) |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>CEQA Determination</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Planning Commission Resolution No. 19859</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>ADU Memorandum, dtd December 2014</u> |
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Completed by: Alisa Somera Date April 13, 2017

Completed by: Alisa Somera 1531 Date April 20, 2017

1 [Planning Code - Construction of Accessory Dwelling Units]

2
3 **Ordinance amending the Planning Code to bring the requirements and procedures for**
4 **authorizing the construction of Accessory Dwelling Units (ADUs) in single-family**
5 **homes into conformity with the new mandates of state law; affirming the Planning**
6 **Department's determination under the California Environmental Quality Act; making**
7 **findings of consistency with the General Plan, and the eight priority policies of**
8 **Planning Code, Section 101.1, and findings of public convenience, necessity, and**
9 **welfare under Planning Code, Section 302; and directing the Clerk to send a copy of**
10 **this Ordinance to the California Department of Housing and Community Development**
11 **after adoption pursuant to state law requirements.**

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

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

21 Section 1. General Findings.

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

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

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

10
11 Section 2. Specific Findings.

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

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

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

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

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

11 **SEC. 102. Definitions.**

12 * * * *

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

18 * * * *

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

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

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

3 * * * *

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

6 * * * *

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

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

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

18 (i) only one ADU will be constructed;

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

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

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

1 the Existing Building Code or voluntary seismic retrofitting in compliance with the Department
2 of Building Inspection's Administrative Bulletin 094, the building and the new ADU shall
3 maintain any eligibility to enter the condo-conversion lottery and may only be subdivided if the
4 entire property is selected on the condo-conversion lottery.

5 * * * *

6 (6.5) **Accessory Dwelling Units in ~~RH-1(D)~~ Existing Single-Family Homes**
7 **Zoning Districts (RH-1, RH-1(D), and RH-1(S)).**

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

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

21 (C) **Lots Zoned for Single-Family or Multifamily Use and**
22 **Containing an Existing Single-Family Home RH-1 and RH-1(S); Controls on Construction.**
23 An Accessory Dwelling Unit located in an RH-1 or RH-1(S) a residential zoning district other than
24 RH-1(D) and constructed pursuant to this subsection (c)(6) shall meet all of the following:
25

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

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

5 (iii) Only one ADU will be constructed that is entirely within either
6 the "living area" or the buildable area of an existing single-family home, or within the built envelope
7 of an existing and authorized auxiliary structure on the same lot. "Living area" means (as defined in
8 Section 65852.2(i)(1) of the California Government Code) "the interior habitable area of a dwelling
9 unit including basements and attics, but does not include a garage or any accessory structure."

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

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

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

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

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

23 (ix) No parking is required for the ADU. If existing parking is
24 demolished in order to construct the ADU, only the parking space required by this Code for the existing
25 single-family home must be replaced. If replacement parking is required, it may be located in any

1 configuration on the lot including but not limited to covered, uncovered, or tandem space or by the use
2 of mechanical automobile parking lifts.

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

8 (E) Prohibition of Short-Term Rentals. An Accessory Dwelling Unit
9 authorized under this subsection (c)(6) shall not be used for Short-Term Residential Rentals under
10 Chapter 41A of the Administrative Code. This restriction shall be recorded as a Notice of Special
11 Restriction on the subject lot.

12 (F) Rental; Restrictions on Subdivisions.

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

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

24 (G) Department Report. In the report required by subsection (c)(4)(l)(iii), the
25 Department shall include a description and evaluation of the number and types of units being

1 developed pursuant to this subsection (c)(65), their affordability rates, and such other
2 information as the Director or the Board of Supervisors determines would inform decision
3 makers and the public.
4

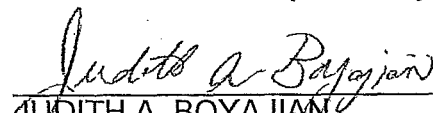
5 Section 4. Effective Date. This ordinance shall become effective 30 days after
6 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
7 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
8 of Supervisors overrides the Mayor's veto of the ordinance.
9

10 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
11 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
12 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
13 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
14 additions, and Board amendment deletions in accordance with the "Note" that appears under
15 the official title of the ordinance.
16

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

21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By:


24 JUDITH A. BOYAJIAN
Deputy City Attorney

25 n:\egana\as2017\1700389\01186528.docx

REVISED LEGISLATIVE DIGEST

(4/17/2017, Amended in Committee)

[Planning Code - Construction of Accessory Dwelling Units]

Ordinance amending the Planning Code to bring the requirements and procedures for authorizing the construction of Accessory Dwelling Units (ADUs) in single-family homes into conformity with the new mandates of state law; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1 and findings of public convenience, necessity, and welfare under Planning Code Section 302; and directing the Clerk to send a copy of this ordinance to the California Department of Housing and Community Development after adoption pursuant to state law requirements.

Existing Law

Planning Code Section 207(c)(4) regulates the construction of Accessory Dwelling Units (ADUs) in San Francisco. It allows ADUs to be constructed on any lot in the City where residential use is allowed. One ADU may be constructed in buildings that have four existing units or fewer and there is no numerical limit on the number that may be constructed in buildings with more than four existing units. With the exception of properties in RH-1(D) zoning districts, which are regulated by Section 207(c)(5) and allowed only as mandated by California's second unit law (Government Code Section 65852.2), the same controls on construction apply to all ADUs.

Amendments to Current Law

This ordinance groups all single-family homes together in a new Planning Code Section 207(c)(6). There are no changes to the requirements for the construction of an ADU in an RH-1(D) zoning district, which is still regulated entirely by the provisions of Government Code Section 65852.2. Single-family homes in other single-family zoning districts or in multifamily zoning districts that (1) fully meet the requirements of subsection (c)(6), (2) do not need any waivers of Planning Code requirements by the Zoning Administrator, and (3) are not also performing seismic upgrade work may receive a ministerially-approved permit. A single-family home that cannot meet these requirements continues to be regulated by Section 207(c)(4).

Background Information

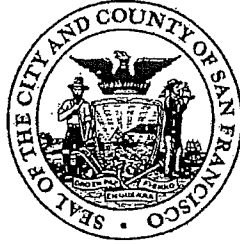
On January 1, 2017, SB 1069 and AB 2299, both amending California's law on second units (now called "accessory dwelling units") went into effect. An existing local ordinance must fully comply with the new requirements or is considered by the state to be null and void. Planning Code Section 207(c)(4) is being amended to bring San Francisco's ADU requirements into conformity with the new state law mandates.

Pursuant to Government Code Section 65852.2, a local jurisdiction must ministerially approve one ADU if it (1) is contained within the existing space of a single-family residence or accessory structure that is in a single-family or multifamily residential zone, (2) has independent exterior access from the existing residence, and (3) has side and rear setbacks sufficient for fire safety. The state imposes limits on other local requirements including parking, fire sprinklers, and utility connections. A local jurisdiction may enact less restrictive requirements but may not enact more restrictive standards than the maximum standards of Government Code Section 65852.2.

The legislation has been amended to: (1) conform the definition in Section 102 to the new requirements and (2) include in Section 207(c)(6) ADUs in single-family homes that are in multifamily zoning districts. For ADUs in single-family homes, the amended legislation (1) allows an ADU to be constructed within the buildable area of the existing home, (2) requires the ADU to have independent exterior access from the home or accessory structure, and (3) requires side and rear setbacks sufficient for fire safety.

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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

February 6, 2017

File No. 170125

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

Dear Ms. Gibson:

On January 31, 2017, Supervisor Peskin introduced the following proposed legislation:

File No. 170125

Ordinance amending the Planning Code to bring the requirements and procedures for authorizing the construction of Accessory Dwelling Units (ADUs) in single-family homes into conformity with the new mandates of state law; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public convenience, necessity, and welfare under Planning Code, Section 302; and directing the Clerk to send a copy of this Ordinance to the California Department of Housing and Community Development after adoption pursuant to state law requirements.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

For By: *Rishi New*
Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

Attachment

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

Statutorily Exempt under CEQA Guidelines Section 15282 (h) the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

Joy Navarrete
Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, ou=Planning,
ou=Environmental Planning,
email=joy.navarrete@sf.gov.org, c=US
Date: 2017.02.16 11:43:49 -0800



SAN FRANCISCO PLANNING DEPARTMENT

March 23, 2017

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

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Re: Transmittal of Planning Department Case Number 2017.001170PCA:
Amendments to Accessory Dwelling Units Requirements in Compliance with
State Law
Board File No. 170125
Planning Commission Recommendation: Approval with Modifications

Dear Ms. Calvillo and Supervisor Peskin,

On January 24, the San Francisco Planning Commission (hereinafter: Commission) conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed amendments introduced by Supervisor Aaron Peskin to bring Accessory Dwelling Unit program into compliance with State Law. At the hearing, the Planning Commission recommended approval with modifications for the Ordinance.

The proposed Ordinance is statutory exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 152825(h).

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

Please find attached document 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 Starr", written over a horizontal line.

Aaron Starr
Manager of Legislative Affairs



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 19859 Planning Code Text Change HEARING DATE: FEBRUARY 23, 2017

Project Name: Amendments to Accessory Dwelling Units Requirements in Compliance with State Law
Case Number: 2017-001170PCA, [Board File No. 170125]
Initiated by: Supervisor Peskin / Introduced January 24, 2017
Staff Contact: Kimia Haddadan, Legislative Affairs
Kimia.haddadan@sfgov.org, 415-575-9068
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE AMENDING THE PLANNING CODE TO BRING THE REQUIREMENTS AND PROCEDURES FOR AUTHORIZING THE CONSTRUCTION OF ACCESSORY DWELLING UNITS (ADUS) IN SINGLE-FAMILY HOMES INTO CONFORMITY WITH THE NEW MANDATES OF STATE LAW; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1, AND FINDINGS OF PUBLIC CONVENIENCE, NECESSITY, AND WELFARE UNDER PLANNING CODE, SECTION 302; AND DIRECTING THE CLERK TO SEND A COPY OF THIS ORDINANCE TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AFTER ADOPTION PURSUANT TO STATE LAW REQUIREMENTS.

WHEREAS, on January 24, 2017, Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 170125, which would amend the Planning Code to bring the local Accessory Dwelling Unit program into compliance with State Law; and,

WHEREAS, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinances on February 23, 2017; and,

WHEREAS, the proposed ordinance is statutory exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 152825(h); 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 1650 Mission Street, Suite 400, San Francisco; and

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

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors approve with modifications the proposed ordinance.

1. Apply the new controls for ADUs in single-family homes in RH-1 and RH-1(S) districts, where no waiver from the Planning Code is required (Section 207.4 (c)(6)(C)) to similar ADUs in RH-1(D) districts and remove Section 207.4 (c)(6)(B) from the Planning Code.
2. Clarify in Section 207.4 (c)(6)(C)(iii) that existing garages within a single-family home can also be used to convert to ADUs.
3. In Section 207.4 (c)(6)(C)(viii) make a reference to the applicable sections in the Code that allows replacement of parking with bicycle parking.
4. Clarify in Section 207.4 (c)(6)(D) that the RDG and applicable preservation review period must be completed within the 120 day period required.
5. Clarify in Section 207.4 (c)(6)(C)(iv) that the Department's preservation review would apply to any known historic resources.
6. Amend Section 207.4 (c)(6) to apply the new controls for ADUs in single-family homes in single-family districts to single-family homes in multi-family zoning districts.

The following is the basis for each of the Department's recommended modifications:

1. Apply the new controls for ADUs in single-family homes in RH-1 and RH-1(S) districts, where no waiver from the Planning Code is required (Section 207.4 (c)(6)(C)) to similar ADUs in RH-1(D) districts and remove Section 207.4 (c)(6)(B) from the Planning Code- The recommendation would include in the Code detailed State Law compliant provisions for ADUs in RH-1(D) districts consistent with the ones within RH-1 and RH-1(S) districts. Without this recommendation the Department would need to issue a Zoning Administrator Bulletin to implement the State Law for ADUs in RH-1(D) districts. To develop this Bulletin the Department would duplicate the work of this Ordinance in interpreting the same State Law that informed the new controls proposed in this Ordinance.
2. Clarify in Section 207.4 (c)(6)(C)(iii) that existing garages within a single-family home can also be used to convert to ADUs. As written the Code language inadvertently excludes garage space within the existing built envelope of a single-family home buildings as an eligible space to be converted to an ADU. This recommendation would align the Code language with the intention of the Ordinance to allow garages within the existing built envelope to be used for ADUs. This intention is apparent from the rest of the Ordinance.
3. In Section 207.4 (c)(6)(C)(viii) make a reference to the applicable sections in the Code that allows replacement of parking with bicycle parking. The Planning Code already allows replacing existing required parking with bicycle parking. Including a reference to this already existing provision would clarify that required replacement parking can be satisfied with bicycle parking.
4. Clarify in Section 207.4 (c)(6)(D) that the RDG and applicable preservation review period must be completed within the 120 day period required. The proposed revision would ensure that Department's review, including reviewing based on RDGs and applicable preservation review,

would be completed within 120 days and would not exceed that time period as required by State Law.

5. Clarify in Section 207.4 (c)(6)(C)(iv) that the Department's preservation review would apply to any known historic resources. The proposed recommendation would ensure that the Department can continue their applicable preservation review to any known historic resources. As written the proposed Ordinance would only allow preservation review to properties listed in the California Register of Historic Places.
6. Amend Section 207.4 (c)(6) to apply the new controls for ADUs in single-family homes in single-family districts to single-family homes in multi-family zoning districts. The proposed Ordinance would allow ministerial approval for ADUs in single-family homes in RH-1 and RH-1(S) districts so long as they are within the existing built envelope and they don't require waivers from Planning Code requirements. This recommendation would allow ministerial approval process for the same type of ADUs proposed in single-family homes in multi-family zoned districts. Absent of this recommendation, our review practice may seem unfair: when adding a unit to a single-family home where density limits already allow another unit, no ministerial approval option would be available; however, adding a unit in a single-family home that currently is at maximum density (ex. RH-1 or RH-1(D)) could be approved ministerially. This recommendation would help provide consistent and equal options for single-family homeowners regardless of the zoning district.

FINDINGS

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

1. Government Code Section 65852.2 (a.k.a. the Second-unit Law) was enacted in 1982 and has been amended five times (1986,1990, 1994, 2002, and 2017) to encourage the creation of ADUs while maintaining local flexibility for unique circumstances and conditions. The most recent changes that became effective January 1, 2017, require all jurisdictions to either pass an Ordinance to allow ADUs, or in absence of such Ordinance approve ADUs ministerially within 120 days and according to the standards outlined in State Law. State Law only regulates ADUs in single-family homes and requires allowing one ADU per lot.
2. The proposed Ordinance will bring our local Ordinance in compliance with State Law that was effective January 1, 2017. Per State Law if our local Ordinance is not compliant, it will be deemed null and void. Approving this Ordinance will help the City in advancing the already successful local ADU program.
3. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the Objectives and Policies of the General Plan:

OBJECTIVE 1

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

POLICY 1.5

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

The proposed Ordinance would bring our local ADU Ordinance into compliance with State Law provisions for ADUs in Single-family homes.

1. **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 impact on neighborhood serving retail uses and will not impact 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. The new units would be built within the existing building and therefore would impose minimal impact on the existing housing and 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 and aims to create units affordable to moderate and middle income households.

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 impact 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 a negative impact on the City's Landmarks and historic buildings as the new units would be added under the guidance of local law and policy protecting historic resources, when appropriate.

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 impact on the City's parks and open space and their access to sunlight and vistas.

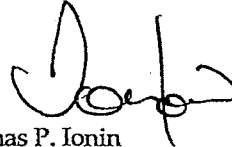
2. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

Resolution No. 19859
February 23, 2017

CASE NO. 2017-001170PCA
Amendments to Accessory Dwelling Units Requirements
in Compliance with State Law

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance with modifications as described in this Resolution.

I hereby certify that the foregoing Resolution was ADOPTED by the Commission at its meeting on February 23, 2017.



Jonas P. Ionin
Commission Secretary

AYES: Hillis, Richards, Fong, Johnson, Koppel, Melgar

NOES: Moore

ABSENT: None

ADOPTED: February 23, 2017

Transmittal Materials

CASE NO. 2017.00117PCA

**Amendments to Accessory Dwelling Units Requirements
in Compliance with State Law**

cc:

Lee Hepner, Supervisor Aaron Peskin's Legislative Aide

Jon Givner, City Attorney

Judy Boyajian, City Attorney

Attachments (two hard copies of the following):

Planning Commission Resolution

Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: FEBRUARY 23, 2017
90 DAY DEADLINE: MAY 8, 2016

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
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415.558.6409

Planning
Information:
415.558.6377

Date: February 16, 2017
Project Name: Amendments to Accessory Dwelling Units Requirements in Compliance with State Law
Case Number: 2017-001170PCA, [Board File No. 170125]
Initiated by: Supervisor Peskin / Introduced January 24, 2017
Staff Contact: Kimia Haddadan, Legislative Affairs
Kimia.haddadan@sfgov.org, 415-575-9068
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: Recommend Approval

PLANNING & ADMINISTRATIVE CODE AMENDMENTS

The proposed Ordinance would amend the Planning Code to bring the requirements and procedures for authorizing the construction of Accessory Dwelling Units (ADUs) in single-family homes into conformity with the new mandates of state law; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public convenience, necessity, and welfare under Planning Code, Section 302; and directing the Clerk to send a copy of this Ordinance to the California Department of Housing and Community Development after adoption pursuant to state law requirements.

The Way It Is Now:

Applicability of ADU program

1. The existing local ADU program allows construction of one or more ADUs in all zoning districts where residential use is allowed, except for RH-1(D) districts.
2. In RH-1(D) districts, the Planning Code refers to State Law provisions for ADUs.

Controls

3. The local ADU program does not allow using space from an existing unit when constructing an ADU.
4. Planning Code requirements including density, rear yard, and open space can be waived by the Zoning Administrator. Exposure requirements also apply, but can be partially waived by the Zoning Administrator.

5. Parking requirements for the main unit can be waived if the required parking is being converted into an ADU.
6. If the existing building contains a Rental Unit per Section 27.2(r) of the Administrative Code, the ADU is subject to the Residential Rent Stabilization and Arbitration Ordinance.

Prohibitions

7. ADUs cannot be added to buildings where a tenant has been evicted within 5 years prior to the filing of application for the ADU per owner-move in evictions, or within 10 years of all other no-fault eviction causes.
8. ADUs cannot be used as Short-term Rentals.
9. ADUs cannot be subdivided and sold separately, except if the building has become a condominium at least three years and had no history of no-fault evictions within 10 years prior to July 11, 2016; and except if the building is undergoing mandatory seismic retrofitting.

Review Process

10. ADUs permits are typically reviewed and approved by the Department with a 3-4 months turnaround including reviewing the waivers from the Planning Code, revisions to the applications required Rental Agreements and Notice of Special Restrictions. These ADUs are subject to discretionary review.
11. ADUs are subject to review by the Zoning Administrator and are subject to discretionary review. ADUs are also reviewed based on the Residential Design Guidelines and applicable historic preservation reviews.

The Way It Would Be:

Applicability of ADU Program

1. ADU controls in all zoning districts except RH-1 and RH-1(S) would remain the same. In RH-1 and RH-1(S) zoning districts, the existing controls would only remain the same for ADUs added to single-family homes where a waiver is needed from Planning Code requirements; however, for ADUs added to single-family homes within RH-1, RH-1(S) zoning districts where no waiver is required from the Planning Code new controls would be added. The new controls are listed below under "Controls."
2. In RH-1(D) districts, the Planning Code would still refer to State Law provisions for ADUs.

Controls

For ADUs added to single-family homes within RH-1, RH-1(S) zoning districts where no waiver is needed from the Planning Code the following new controls apply:

3. ADUs could now take space from an existing unit.

4. Rear yard, open space and exposure requirements could not be waived by the Zoning Administrator; however, the ADU would not count toward density and therefore does not need a density waiver, and no setback is required for an existing garage that is converted to an ADU.
5. If required parking is demolished in order to construct the ADU, replacement parking is required but can be in any configuration including: covered, uncovered, tandem, or by use of mechanical lifts.
6. These ADUs will be subject to the applicable portions of the Residential Rent Stabilization and Arbitration Ordinance.

Prohibitions

7. Eviction history prohibitions would not apply to ADUs in single-family homes in RH-1 and RH-1(S) Districts where no waiver is required.
8. All ADUs would still be prohibited from being used as a Short-term Rentals
9. The existing prohibitions on subdivision and sales would still apply to all ADUs.

Review process

10. ADUs in single-family homes in RH-1 and RH-1(S) zoning districts where no waiver is required would have to be approved ministerially within 120 days from receipt of Code complying application. These ADUs would not be subject to discretionary review.
11. ADUs have to be reviewed ministerially. The ministerial approval can still include application of Residential Design Guidelines as well as Department review of impacts on a property listed in the California Register of Historic Places.

BACKGROUND

Recent Changes to State Law

Government Code Section 65852.2 (a.k.a. the Second-unit Law) was enacted in 1982 and has been amended five times (1986,1990, 1994, 2002, and 2017) to encourage the creation of ADUs while maintaining local flexibility for unique circumstances and conditions. The most recent changes that became effective January 1, 2017, require all jurisdictions to either pass an Ordinance to allow ADUs, or in absence of such Ordinance approve ADUs ministerially within 120 days and according to the standards outlined in State Law. State Law only regulates ADUs in single-family homes and requires allowing one ADU per lot.

The most recent changes were enacted by two separate bills: Senate Bill 1069, and Assembly Bill 2299. The Senate Bill 1060 prohibits local governments from adopting an ordinance that precludes ADUs. It also provides some flexibility to parking requirements, and establishes a set of minimum standards under which an ADU permit should be approved ministerially. (See Exhibit B- page 3-4). The Assembly Bill 2299 provided a set of requirements that a local government can use to ministerially approve ADUs. These requirements represent the minimum standard and jurisdictions can choose to be more permissive in reviewing ADUs. AB 2299 also established that

if a local Ordinance does not meet those minimum requirements, the local Ordinance will be deemed null and void. (See Exhibit B- page 4-5)

San Francisco's ADU Program

San Francisco first established its ADU program in 2014 and the program has been expanded since then. Below is a history of the San Francisco's ADU Ordinance:

- **April 2014:** Ordinance 0049-14 was sponsored by Supervisor Scott Weiner (District 8) and allowed ADUs as a pilot program in the Castro NCD and within a quarter-mile buffer. This Ordinance was adapted in parallel with another ordinance, sponsored by Supervisor Chu that allowed legalizing existing unauthorized units even if the units exceeded the lot's density limits. These two ordinances represented a significant turning point in the City's long-standing approach on ADUs and illegal units. Previously ADUs were prohibited on all but an insignificant number of lots in the City and illegal units were required to be removed unless they complied with the zoning district's density limits, and other Code provisions.
- **April 2015:** Ordinance 030-15 was also sponsored by Supervisor Wiener, and allowed new ADUs in buildings that are undergoing mandatory or voluntary seismic retrofitting across the city, within all zoning districts except for RH-1 & RH-1(D).
- **October 2015:** Supervisor Wiener then sponsored Ordinance 0161-15, which further expanded the ADU program to apply within his entire supervisorial district (District 8), replacing the Castro pilot program. At the same time, Ordinance 0162- 15, sponsored by Supervisor Christensen (District 3) allowed ADUs in Supervisorial District 3.
- **September 2016:** Ordinance 0162-16, sponsored by Supervisors Peskin, Farrell, and Wiener, further expanded the program citywide to all zoning districts, except for RH-1(D) districts.

ISSUES AND CONCERNS

ADUs in RH-1(D) Districts

The proposed Ordinance includes new controls that only apply to ADUs added to single-family homes in RH-1 and RH-1(S) districts. These new controls are intended to bring our local controls into compliance with State Law. State Law requirements apply to ADUs in all single-family zones. The proposed Ordinance would add new controls in compliance with State Law for ADUs only in RH-1 and RH-1(S) districts while it would not subject ADUs in RH-1(D) districts to these controls. Instead, it keeps the existing reference in the Code that indicates ADUs in RH-1(D) districts are subject to State Law without clarifying what those controls are. As proposed, the Zoning Administrator would need to interpret the State Law and how it would apply to RH-1(D) districts.

ADUs in Existing Living Area

The existing local ADU program does not allow space in an existing unit to be converted to an ADU. In order to bring our local Ordinance into compliance with State Law, the proposed

Ordinance (Section 207(c)(6)(C)(iii)) would allow using space from an existing "Living Area" in single-family homes within RH-1, RH-1(S) zoning districts where no waiver is needed. Using State Law's definition the Ordinance defines Living Area in as "interior habitable area of a dwelling unit including basements and attics, but not garage and accessory structure". This Section also lists existing authorized auxiliary structures as eligible space to be converted to an ADU. Throughout the rest of the Ordinance, it appears that the intention is to allow using garage space within the existing built envelope of a single-family home as an eligible space to be converted to an ADU; however, as written the language seems to have inadvertently missed including existing garages within the existing built envelope of a single-family home as space that can be used for an ADU.

Parking Controls

Per our existing local ADU law, if required parking is being converted into an ADU, this required parking can be waived. The proposed Ordinance¹ discusses similar situations where a required parking space is being removed. Unlike our local ADU law that allows a waiver of such parking, the proposed Ordinance requires the required parking to be replaced. This is because ADUs covered in this Ordinance, in single-family homes within RH-1 and RH-1(S) districts, would not be eligible for waivers from the Planning Code. At the same time, not specific to ADUs, the Planning Code has provisions that allow existing required parking to be removed and replaced by bicycle parking. Not allowing the same for this new class of ADUs is inconsistent with the City's current policies and overall policy direction as it relates to required parking.

Residential Design Guidelines

The Planning Code requires all projects in Residential District to comply with the Residential Design Guidelines (RDGs). RDGs include a set of design principles that focus on whether a building's design contributes to the architectural and visual qualities of the neighborhood. ADUs under the existing local program can only be built within the existing built envelope. For these ADUs, RDGs are applied, in concert with applicable preservation review, only when reviewing new doors and windows to determine the appropriate style and material. In cases of garage removal, RDGs are also used to determine the material used for the replacement wall.

The proposed Ordinance clarifies that for ADUs in single-family homes in RH-1 or RH-1(S) districts where no waiver from the Planning Code is needed, RDGs would still remain applicable within the ministerial approval process. Section 207.4 (c)(6)(D) clarifies that the Department can request modifications based on RDGs and applicable preservation review. State Law requires jurisdictions to approve ADUs compliant with the State provisions ministerially within 120 days. As written, this subsection of the proposed Ordinance may imply that the Department's review based on RDGs and applicable preservation review may exceed 120 days.

¹ Section 207.4 (c)(6)(C)(iii)

Residential Rent Stabilization and Arbitration Ordinance

The existing local ADU program requires that if ADUs are provided waivers from the Planning Code, and if they are located within a building that has a Rental Unit, the ADU would be subject to the Rent Ordinance. The Planning Code then requires a Rental Agreement to be signed. While single-family homes are subject to the Rent Ordinance, only in certain circumstances does the rent control portion of the Rent Ordinance apply to them. This means that per the current local ADU program, ADUs in single-family homes will be reviewed on a case base basis to determine whether or not they would be subject to rent control. For ADUs addressed in the proposed Ordinance, in single-family homes within RH-1 and RH-1(S) Districts where no waiver from the Planning Code is needed, the ADUs would be subject to applicable portions of the Rent Ordinance, but not necessarily to rent control. This again would have to be determined on a case by case basis.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Apply the new controls for ADUs in single-family homes in RH-1 and RH-1(S) districts, where no waiver from the Planning Code is required (Section 207.4 (c)(6)(C)) to similar ADUs in RH-1(D) districts and remove Section 207.4 (c)(6)(B) from the Planning Code.
2. Clarify in Section 207.4 (c)(6)(C)(iii) that existing garages within a single-family home can also be used to convert to ADUs.
3. In Section 207.4 (c)(6)(C)(viii) make a reference to the applicable sections in the Code that allows replacement of parking with bicycle parking.
4. Clarify in Section 207.4 (c)(6)(D) that the RDG and applicable preservation review period must be completed within the 120 day period required.
5. Clarify in Section 207.4 (c)(6)(C)(iv) that the Department's preservation review would apply to any known historic resources.
6. Amend Section 207.4 (c)(6) to apply the new controls for ADUs in single-family homes in single-family districts to single-family homes in multi-family zoning districts.

BASIS FOR RECOMMENDATION

The Department strongly supports the proposed Ordinance as it will bring our local Ordinance in compliance with State Law that was effective January 1, 2017. Per State Law if our local Ordinance is not compliant, it will be deemed null and void. Approving this Ordinance will help the City in advancing the already successful local ADU program. The recommended modifications 1 through 5 intend to improve the clarity of Code language and implementation of the law. The recommended modification number 6 is a policy recommendation and would not affect compliance with State Law.

1. Apply the new controls for ADUs in single-family homes in RH-1 and RH-1(S) districts, where no waiver from the Planning Code is required (Section 207.4 (c)(6)(C)) to similar ADUs in RH-1(D) districts and remove Section 207.4 (c)(6)(B) from the Planning Code- The recommendation would include in the Code detailed State Law compliant provisions for ADUs in RH-1(D) districts consistent with the ones within RH-1 and RH-1(S) districts. Without this recommendation the Department would need to issue a Zoning Administrator Bulletin to implement the State Law for ADUs in RH-1(D) districts. To develop this Bulletin the Department would duplicate the work of this Ordinance in interpreting the same State Law that informed the new controls proposed in this Ordinance.
2. Clarify in Section 207.4 (c)(6)(C)(iii) that existing garages within a single-family home can also be used to convert to ADUs. As written the Code language inadvertently excludes garage space within the existing built envelope of a single-family home buildings as an eligible space to be converted to an ADU. This recommendation would align the Code language with the intention of the Ordinance to allow garages within the existing built envelope to be used for ADUs. This intention is apparent from the rest of the Ordinance.
3. In Section 207.4 (c)(6)(C)(viii) make a reference to the applicable sections in the Code that allows replacement of parking with bicycle parking. The Planning Code already allows replacing existing required parking with bicycle parking. Including a reference to this already existing provision would clarify that required replacement parking can be satisfied with bicycle parking.
4. Clarify in Section 207.4 (c)(6)(D) that the RDG and applicable preservation review period must be completed within the 120 day period required. The proposed revision would ensure that Department's review, including reviewing based on RDGs and applicable preservation review, would be completed within 120 days and would not exceed that time period as required by State Law.
5. Clarify in Section 207.4 (c)(6)(C)(iv) that the Department's preservation review would apply to any known historic resources. The proposed recommendation would ensure that the Department can continue their applicable preservation review to any known historic resources. As written the proposed Ordinance would only allow preservation review to properties listed in the California Register of Historic Places.
6. Amend Section 207.4 (c)(6) to apply the new controls for ADUs in single-family homes in single-family districts to single-family homes in multi-family zoning districts. The proposed Ordinance would allow ministerial approval for ADUs in single-family homes in RH-1 and RH-1(S) districts so long as they are within the existing built envelope and they don't require waivers from Planning Code requirements. This recommendation would allow ministerial approval process for the same type of ADUs proposed in single-family homes in multi-family zoned districts. Absent of this recommendation, our review practice may seem unfair: when adding a unit to a single-family home where density limits already allow another unit, no ministerial approval option would be available; however, adding a unit in a single-family home that currently is at maximum density (ex. RH-1 or RH-1(D)) could be

approved ministerially. This recommendation would help provide consistent and equal options for single-family homeowners regardless of the zoning district.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

IMPLEMENTATION

The Department determined that this ordinance will impact our current implementation procedures in the following ways:

- The proposed Ordinance would create a new set of controls for certain ADUs. This would mean that the Department would need to create additional training materials and update the existing ADU fact sheets.
- As proposed the Department would need to create a Zoning Administrator Bulletin for RH-1(D) and interpret the State Law requirements. If recommendation 1 were to be taken, this impact would not occur.
- The Department believes that approving these ADUs within 120 days is feasible and would not affect staff's time. These ADUs would not require reviewing for waivers from the Planning Code, or Rental Agreements and therefore can be reviewed in a shorter timeframe than the ADUs per the current local program.

ENVIRONMENTAL REVIEW

The proposed Ordinance is statutory exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 152825(h).

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any comments about this Ordinance.

RECOMMENDATION: Recommendation of Approval with Modification

Attachments:

Executive Summary
Hearing Date: February 23, 2017

CASE NO. 2017-001170PCA
Amendments to Accessory Dwelling Units Requirements
in Compliance with State Law

- Exhibit A: Draft Planning Commission Resolution for BF No. 170125
- Exhibit B: Accessory Dwelling Unit Memorandum from HCD
- Exhibit C: Draft Ordinance



California Department of Housing and Community Development
Where Foundations Begin

Accessory Dwelling Unit Memorandum

December 2016

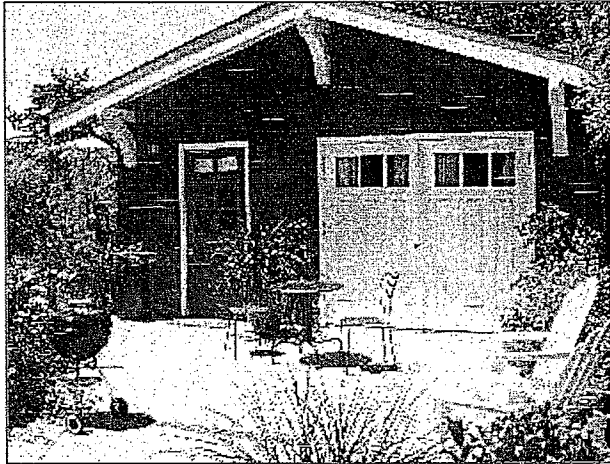


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Understanding Accessory Dwelling Units and Their Importance



Courtesy of Karen Chapple, UC Berkeley

California's housing production is not keeping pace with demand. In the last decade less than half of the needed housing was built. This lack of housing is impacting affordability with average housing costs in California exceeding the rest of the nation. As affordability becomes more problematic, people drive longer distances between a home that is affordable and where they work, or double up to share space, both of which reduces quality of life and produces negative environmental impacts.

Beyond traditional market-rate construction and government subsidized production and preservation there are alternative housing models and emerging trends that can contribute to addressing home supply and affordability in California.

One such example gaining popularity are Accessory Dwelling Units (ADUs) (also referred to as second units, in-law units, or granny flats).

What is an ADU

An ADU is a secondary dwelling unit with complete independent living facilities for one or more persons and generally takes three forms:

- *Detached*: The unit is separated from the primary structure
- *Attached*: The unit is attached to the primary structure
- *Repurposed Existing Space*: Space (e.g., master bedroom) within the primary residence is converted into an independent living unit
- *Junior Accessory Dwelling Units*: Similar to repurposed space with various streamlining measures

ADUs offer benefits that address common development barriers such as affordability and environmental quality. ADUs are an affordable type of home to construct in California because they do not require paying for land, major new infrastructure, structured parking, or elevators. ADUs are built with cost-effective one- or two-story wood frame construction, which is significantly less costly than homes in new multifamily infill buildings. ADUs can provide as much living space as the new apartments and condominiums being built in new infill buildings and serve very well for couples, small families, friends, young people, and seniors.

ADUs are a different form of housing that can help California meet its diverse housing needs. Young professionals and students desire to live in areas close to jobs, amenities, and schools. The problem with high-opportunity areas is that space is limited. There is a shortage of affordable units and the units that are available can be out of reach for many people. To address the needs of individuals or small families seeking living quarters in high opportunity areas, homeowners can construct an ADU on their lot or convert an underutilized part of their home like a garage

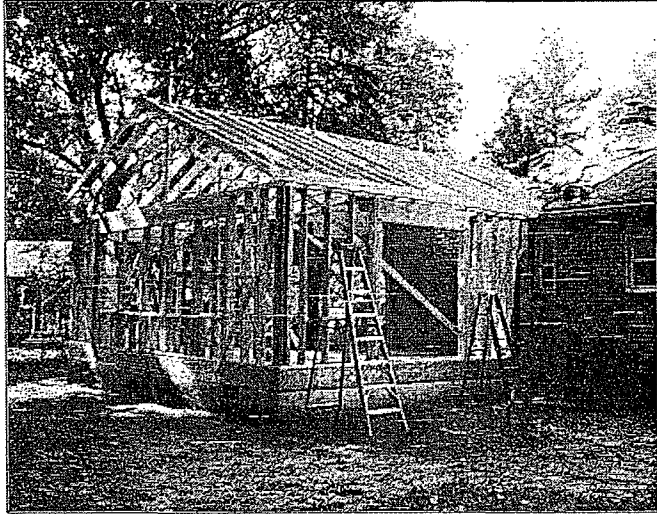
into a junior ADU. This flexibility benefits not just people renting the space, but the homeowner as well, who can receive an extra monthly rent income.

ADUs give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care and helping extended families to be near one another while maintaining privacy.

Relaxed regulations and the cost to build an ADU make it a very feasible affordable housing option. A UC Berkeley study noted that one unit of affordable housing in the Bay Area costs about \$500,000 to develop whereas an ADU can range anywhere up to \$200,000 on the expensive end in high housing cost areas.

ADUs are a critical form of infill-development that can be affordable and offer important housing choices within existing neighborhoods. ADUs are a powerful type of housing unit because they allow for different uses, and serve different populations ranging from students and young professionals to young families, people with disabilities and senior citizens. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education and services for many Californians.

Summary of Recent Changes to ADU Laws



Courtesy of Karen Chapple, UC Berkeley

The California legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in single family and multifamily zones provides additional rental housing and are an essential component in addressing housing needs in California. Over the years, ADU law has been revised to improve its effectiveness such as recent changes in 2003 to require ministerial approval. In 2017, changes to ADU laws will further reduce barriers, better streamline approval and expand capacity to accommodate the development of ADUs.

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, friends, students, the elderly, in-home health care providers, the disabled, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the Department has prepared this guidance to assist local governments in encouraging the development of ADUs. Please see Attachment 1 for the complete statutory changes. The following is a brief summary of the changes for each bill.

SB 1069 (Wieckowski)

S.B. 1069 (Chapter 720, Statutes of 2016) made several changes to address barriers to the development of ADUs and expanded capacity for their development. The following is a brief summary of provisions that go into effect January 1, 2017.

Parking

SB 1069 reduces parking requirements to one space per bedroom or unit. The legislation authorizes off street parking to be tandem or in setback areas unless specific findings such as fire and life safety conditions are made. SB 1069 also prohibits parking requirements if the ADU meets any of the following:

- Is within a half mile from public transit.
- Is within an architecturally and historically significant historic district.
- Is part of an existing primary residence or an existing accessory structure.
- Is in an area where on-street parking permits are required, but not offered to the occupant of the ADU.
- Is located within one block of a car share area.

Fees

SB 1069 provides that ADUs shall not be considered new residential uses for the purpose of calculating utility connection fees or capacity charges, including water and sewer service. The bill prohibits a local agency from requiring an ADU applicant to install a new or separate utility connection or impose a related connection fee or capacity charge for ADUs that are contained within an existing residence or accessory structure. For attached and detached ADUs, this fee or charge must be proportionate to the burden of the unit on the water or sewer system and may not exceed the reasonable cost of providing the service.

Fire Requirements

SB 1069 provides that fire sprinklers shall not be required in an accessory unit if they are not required in the primary residence.

ADUs within Existing Space

Local governments must ministerially approve an application to create within a single family residential zone one ADU per single family lot if the unit is:

- contained within an existing residence or accessory structure.
- has independent exterior access from the existing residence.
- has side and rear setbacks that are sufficient for fire safety.

These provisions apply within all single family residential zones and ADUs within existing space must be allowed in all of these zones. No additional parking or other development standards can be applied except for building code requirements.

No Total Prohibition

SB 1069 prohibits a local government from adopting an ordinance that precludes ADUs.

AB 2299 (Bloom)

Generally, AB 2299 (Chapter 735, Statutes of 2016) requires a local government (beginning January 1, 2017) to ministerially approve ADUs if the unit complies with certain parking requirements, the maximum allowable size of an attached ADU, and setback requirements, as follows:

- The unit is not intended for sale separate from the primary residence and may be rented.
- The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.
- The unit is either attached to an existing dwelling or located within the living area of the existing dwelling or detached and on the same lot.
- The increased floor area of the unit does not exceed 50% of the existing living area, with a maximum increase in floor area of 1,200 square feet.
- The total area of floorspace for a detached accessory dwelling unit does not exceed 1,200 square feet.
- No passageway can be required.
- No setback can be required from an existing garage that is converted to an ADU.

- Compliance with local building code requirements.
- Approval by the local health officer where private sewage disposal system is being used.

Impact on Existing Accessory Dwelling Unit Ordinances

AB 2299 provides that any existing ADU ordinance that does not meet the bill's requirements is null and void upon the date the bill becomes effective. In such cases, a jurisdiction must approve accessory dwelling units based on Government Code Section 65852.2 until the jurisdiction adopts a compliant ordinance.

AB 2406 (Thurmond)

AB 2406 (Chapter 755, Statutes of 2016) creates more flexibility for housing options by authorizing local governments to permit junior accessory dwelling units (JADU) through an ordinance. The bill defines JADUs to be a unit that cannot exceed 500 square feet and must be completely contained within the space of an existing residential structure. In addition, the bill requires specified components for a local JADU ordinance. Adoption of a JADU ordinance is optional.

Required Components

The ordinance authorized by AB 2406 must include the following requirements:

- Limit to one JADU per residential lot zoned for single-family residences with a single-family residence already built on the lot.
- The single-family residence in which the JADU is created or JADU must be occupied by the owner of the residence.
- The owner must record a deed restriction stating that the JADU cannot be sold separately from the single-family residence and restricting the JADU to the size limitations and other requirements of the JADU ordinance.
- The JADU must be located entirely within the existing structure of the single-family residence and JADU have its own separate entrance.
- The JADU must include an efficiency kitchen which includes a sink, cooking appliance, counter surface, and storage cabinets that meet minimum building code standards. No gas or 220V circuits are allowed.
- The JADU may share a bath with the primary residence or have its own bath.

Prohibited Components

This bill prohibits a local JADU ordinance from requiring:

- Additional parking as a condition to grant a permit.
- Applying additional water, sewer and power connection fees. No connections are needed as these utilities have already been accounted for in the original permit for the home.

Fire Safety Requirements

AB 2406 clarifies that a JADU is to be considered part of the single-family residence for the purposes of fire and life protections ordinances and regulations, such as sprinklers and smoke detectors. The bill also requires life and protection ordinances that affect single-family residences to be applied uniformly to all single-family residences, regardless of the presence of a JADU.

JADUs and the RHNA

As part of the housing element portion of their general plan, local governments are required to identify sites with appropriate zoning that will accommodate projected housing needs in their regional housing need allocation (RHNA) and report on their progress pursuant to Government Code Section 65400. To credit a JADU toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit which is fairly flexible. Local government count units as part of reporting to DOF. JADUs meet these definitions and this bill would allow cities and counties to earn credit toward meeting their RHNA allocations by permitting residents to create less costly accessory units. See additional discussion under JADU frequently asked questions.

Frequently Asked Questions: Accessory Dwelling Units

Should an Ordinance Encourage the Development of ADUs?

Yes, ADU law and recent changes intend to address barriers, streamline approval and expand potential capacity for ADUs recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment and implementation of local ADU ordinances must be carried out consistent with Government Code Section 65852.150:

(a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

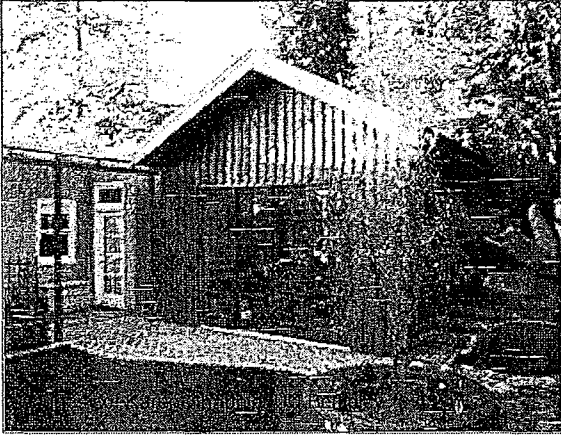
(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

Are Existing Ordinances Null and Void?



Yes, any local ordinance adopted prior to January 1, 2017 that is not in compliance with the changes to ADU law will be null and void. Until an ordinance is adopted, local governments must apply "state standards" (See Attachment 4 for State Standards checklist). In the absence of a local ordinance complying with ADU law, local review must be limited to "state standards" and cannot include additional requirements such as those in an existing ordinance.

Are Local Governments Required to Adopt an Ordinance?

No, a local government is **not required** to adopt an ordinance. ADUs built within a jurisdiction that lacks a local ordinance must comply with state standards (See Attachment 4). Adopting an ordinance can occur through different forms such as a new ordinance, amendment to an existing ordinance, separate section or special regulations within the zoning code or integrated into the zoning code by district. However, the ordinance should be established legislatively through a public process and meeting and not through internal administrative actions such as memos or zoning interpretations.

Can a Local Government Preclude ADUs?

No local government cannot preclude ADUs.

Can a Local Government Apply Development Standards and Designate Areas?

Yes, local governments may apply development standards and may designate where ADUs are permitted (GC Sections 65852.2(a)(1)(A) and (B)). However, ADUs within existing structures must be allowed in all single family residential zones.

For ADUs that require an addition or a new accessory structure, development standards such as parking, height, lot coverage, lot size and maximum unit size can be established with certain limitations. ADUs can be avoided or allowed through an ancillary and separate discretionary process in areas with health and safety risks such as high fire hazard areas. However, standards and allowable areas must not be designed or applied in a manner that burdens the development of ADUs and should maximize the potential for ADU development. Designating areas where ADUs are allowed should be approached primarily on health and safety issues including water, sewer, traffic flow and public safety. Utilizing approaches such as restrictive overlays, limiting ADUs to larger lot sizes, burdensome lot coverage and setbacks and particularly concentration or distance requirements (e.g., no less than 500 feet between ADUs) may unreasonably restrict the ability of the homeowners to create ADUs, contrary to the intent of the Legislature.

Requiring large minimum lot sizes and not allowing smaller lot sizes for ADUs can severely restrict their potential development. For example, large minimum lot sizes for ADUs may constrict capacity throughout most of the community. Minimum lot sizes cannot be applied to ADUs within existing structures and could be considered relative to health and safety concerns such as areas on septic systems. While larger lot sizes might be targeted for various reasons such as ease of compatibility, many tools are available (e.g., maximum unit size, maximum lot coverage, minimum setbacks, architectural and landscape requirements) that allows ADUs to fit well within the built environment.

Can a Local Government Adopt Less Restrictive Requirements?

Yes, ADU law is a minimum requirement and its purpose is to encourage the development of ADUs. Local governments can take a variety of actions beyond the statute that promote ADUs such as reductions in fees, less restrictive parking or unit sizes or amending general plan policies.

Santa Cruz has confronted a shortage of housing for many years, considering its growth in population from incoming students at UC Santa Cruz and its proximity to Silicon Valley. The city promoted the development of ADUs as critical infill-housing opportunity through various strategies such as creating a manual to promote ADUs. The manual showcases prototypes of ADUs and outlines city zoning laws and requirements to make it more convenient for homeowners to get information. The City found that homeowners will take time to develop an ADU only if information is easy to find, the process is simple, and there is sufficient guidance on what options they have in regards to design and planning.

The city set the minimum lot size requirement at 4,500 sq. ft. to develop an ADU in order to encourage more homes to build an ADU. This allowed for a majority of single-family homes in Santa Cruz to develop an ADU. For more information, see <http://www.cityofsantacruz.com/departments/planning-and-community-development/programs/accessory-dwelling-unit-development-program>.

Can Local Governments Establish Minimum and Maximum Unit Sizes?

Yes, a local government may establish minimum and maximum unit sizes (GC Section 65852.2(c)). However, like all development standards (e.g., height, lot coverage, lot size), unit sizes should not burden the development of ADUs. For example, setting a minimum unit size that substantially increases costs or a maximum unit size that unreasonably restricts opportunities would be inconsistent with the intent of the statute. Typical maximum unit sizes range from 800 square feet to 1,200 square feet. Minimum unit size must at least allow for an efficiency unit as defined in Health and Safety Code Section 17958.1.

ADU law requires local government approval if meeting various requirements (GC Section 65852.2(a)(1)(D)), including unit size requirements. Specifically, attached ADUs shall not exceed 50 percent of the existing living area or 1,200 square feet and detached ADUs shall not exceed 1,200 square feet. A local government may choose a maximum unit size less than 1,200 square feet as long as the requirement is not burdensome on the creation of ADUs.

Can ADUs Exceed General Plan and Zoning Densities?

An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Minimum lot sizes must not be doubled (e.g., 15,000 square feet) to account for an ADU. Further, local governments could elect to allow more than one ADU on a lot.

New developments can increase the total number of affordable units in their project plans by integrating ADUs. Aside from increasing the total number of affordable units, integrating ADUs also promotes housing choices within a development. One such example is the Cannery project in Davis, CA. The Cannery project includes 547 residential units with up to 60 integrated ADUs. ADUs within the Cannery blend in with surrounding architecture, maintaining compatibility with neighborhoods and enhancing community character. ADUs are constructed at the same time as the primary single-family unit to ensure the affordable rental unit is available in the housing supply concurrent with the availability of market rate housing.

How Are Fees Charged to ADUs?

All impact fees, including water, sewer, park and traffic fees must be charged in accordance with the Fee Mitigation Act, which requires fees to be proportional to the actual impact (e.g., significantly less than a single family home).

Fees on ADUs, must proportionately account for impact on services based on the size of the ADU or number of plumbing fixtures. For example, a 700 square foot new ADU with one bathroom that results in less landscaping should be charged much less than a 2,000 square foot home with three bathrooms and an entirely new landscaped parcel which must be irrigated. Fees for ADUs should be significantly less and should account for a lesser impact such as lower sewer or traffic impacts.

What Utility Fee Requirements Apply to ADUs?

Cities and counties cannot consider ADUs as new residential uses when calculating connection fees and capacity charges.

Where ADUs are being created within an existing structure (primary or accessory), the city or county cannot require a new or separate utility connections for the ADU and cannot charge any connection fee or capacity charge.

For other ADUs, a local agency may require separate utility connections between the primary dwelling and the ADU, but any connection fee or capacity charge must be proportionate to the impact of the ADU based on either its size or the number of plumbing fixtures.

What Utility Fee Requirements Apply to Non-City and County Service Districts?

All local agencies must charge impact fees in accordance with the Mitigation Fee Act (commencing with Government Code Section 66000), including in particular Section 66013, which requires the connection fees and capacity charges to be proportionate to the burden posed by the ADU. Special districts and non-city and county service districts must account for the lesser impact related to an ADU and should base fees on unit size or number of plumbing fixtures. Providers should consider a proportionate or sliding scale fee structures that address the smaller size and lesser impact of ADUs (e.g., fees per square foot or fees per fixture). Fee waivers or deferrals could be considered to better promote the development of ADUs.

Do Utility Fee Requirements Apply to ADUs within Existing Space?

No, where ADUs are being created within an existing structure (primary or accessory), new or separate utility connections and fees (connection and capacity) must not be required.

Does "Public Transit" Include within One-half Mile of a Bus Stop and Train Station?

Yes, "public transit" may include a bus stop, train station and paratransit if appropriate for the applicant. "Public transit" includes areas where transit is available and can be considered regardless of tighter headways (e.g., 15 minute intervals). Local governments could consider a broader definition of "public transit" such as distance to a bus route.

Can Parking Be Required Where a Car Share Is Available?

No, ADU law does not allow parking to be required when there is a car share located within a block of the ADU. A car share location includes a designated pick up and drop off location. Local governments can measure a block from a pick up and drop off location and can decide to adopt broader distance requirements such as two to three blocks.

Is Off Street Parking Permitted in Setback Areas or through Tandem Parking?

Yes, ADU law deliberately reduces parking requirements. Local governments may make specific findings that tandem parking and parking in setbacks are infeasible based on specific site, regional topographical or fire and life safety conditions or that tandem parking or parking in setbacks is not permitted anywhere else in the jurisdiction. However, these determinations should be applied in a manner that does not unnecessarily restrict the creation of ADUs.

Local governments must provide reasonable accommodation to persons with disabilities to promote equal access housing and comply with fair housing laws and housing element law. The reasonable accommodation procedure must provide exception to zoning and land use regulations which includes an ADU ordinance. Potential exceptions are not limited and may include development standards such as setbacks and parking requirements and permitted uses that further the housing opportunities of individuals with disabilities.

Is Covered Parking Required?

No, off street parking must be permitted through tandem parking on an existing driveway, unless specific findings are made.

Is Replacement Parking Required When the Parking Area for the Primary Structure Is Used for an ADU?

Yes, but only if the local government requires off-street parking to be replaced in which case flexible arrangements such as tandem, including existing driveways and uncovered parking are allowed. Local governments have an opportunity to be flexible and promote ADUs that are being created on existing parking space and can consider not requiring replacement parking.

Are Setbacks Required When an Existing Garage Is Converted to an ADU?

No, setbacks must not be required when a garage is converted or when existing space (e.g., game room or office) above a garage is converted. Rear and side yard setbacks of no more than five feet are required when new space is added above a garage for an ADU. In this case, the setbacks only apply to the added space above the garage, not the existing garage and the ADU can be constructed wholly or partly above the garage, including extending beyond the garage walls.

Also, when a garage, carport or covered parking structure is demolished or where the parking area ceases to exist so an ADU can be created, the replacement parking must be allowed in any "configuration" on the lot, "...including,

but not limited to, covered spaces, uncovered spaces, or tandem spaces, or..." Configuration can be applied in a flexible manner to not burden the creation of ADUs. For example, spatial configurations like tandem on existing driveways in setback areas or not requiring excessive distances from the street would be appropriate.

Are ADUs Permitted in Existing Residence or Accessory Space?

Yes, ADUs located in single family residential zones and existing space of a single family residence or accessory structure must be approved regardless of zoning standards (Section 65852.2(a)(1)(B)) for ADUs, including locational requirements (Section 65852.2(a)(1)(A)), subject to usual non-appealable ministerial building permit requirements. For example, ADUs in existing space does not necessitate a zoning clearance and must not be limited to certain zones or areas or subject to height, lot size, lot coverage, unit size, architectural review, landscaped or parking requirements. Simply, where a single family residence or accessory structure exists in any single family residential zone, so can an ADU. The purpose is to streamline and expand potential for ADUs where impact is minimal and the existing footprint is not being increased.

Zoning requirements are not a basis for denying a ministerial building permit for an ADU, including non-conforming lots or structures. The phrase, "...within the existing space" includes areas within a primary home or within an attached or detached accessory structure such as a garage, a carriage house, a pool house, a rear yard studio and similar enclosed structures.

Are Owner Occupants Required?

No, however, a local government can require an applicant to be an owner occupant. The owner may reside in the primary or accessory structure. Local governments can also require the ADU to not be used for short term rentals (terms lesser than 30 days). Both owner occupant use and prohibition on short term rentals can be required on the same property. Local agencies which impose this requirement should require recordation of a deed restriction regarding owner occupancy to comply with GC Section 27281.5

Are Fire Sprinklers Required for ADUs?

Depends, ADUs shall not be required to provide fire sprinklers if they are not or were not required of the primary residence. However, sprinklers can be required for an ADU if required in the primary structure. For example, if the primary residence has sprinklers as a result of an existing ordinance, then sprinklers could be required in the ADU. Alternative methods for fire protection could be provided.

If the ADU is detached from the main structure or new space above a detached garage, applicants can be encouraged to contact the local fire jurisdiction for information regarding fire sprinklers. Since ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, students, the elderly, in-home health care providers, the disabled, and others, the fire departments want to ensure the safety of these populations as well as the safety of those living in the primary structure. Fire Departments can help educate property owners on the benefits of sprinklers, potential resources and how they can be installed cost effectively. For example, insurance rates are typically 5 to 10 percent lower where the unit is sprinklered. Finally, other methods exist to provide additional fire protection. Some options may include additional exits, emergency escape and rescue openings, 1 hour or greater fire-rated assemblies, roofing materials and setbacks from property lines or other structures.

Is Manufactured Housing Permitted as an ADU?

Yes, an ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes an efficiency unit (Health and Safety Code Section 17958.1) and a manufactured home (Health and Safety Code Section 18007).

Health and Safety Code Section 18007(a) **“Manufactured home,”** for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

Can an Efficiency Unit Be Smaller than 220 Square Feet?

Yes, an efficiency unit for occupancy by no more than two persons, by statute (Health and Safety Code Section 17958.1), can have a minimum floor area of 150 square feet and can also have partial kitchen or bathroom facilities, as specified by ordinance or can have the same meaning specified in the Uniform Building Code, referenced in the Title 24 of the California Code of Regulations.

The 2015 International Residential Code adopted by reference into the 2016 California Residential Code (CRC) allows residential dwelling units to be built considerably smaller than an Efficiency Dwelling Unit (EDU). Prior to this code change an EDU was required to have a minimum floor area not less than 220 sq. ft unless modified by local ordinance in accordance with the California Health and Safety Code which could allow an EDU to be built no less than 150 sq. ft. For more information, see HCD's Information Bulletin at <http://www.hcd.ca.gov/codes/manufactured-housing/docs/ib2016-06.pdf>.

Does ADU Law Apply to Charter Cities and Counties?

Yes. ADU law explicitly applies to “local agencies” which are defined as a city, county, or city and county whether general law or chartered (Section 65852.2(i)(2)).

Do ADUs Count toward the Regional Housing Need Allocation?

Yes, local governments may report ADUs as progress toward Regional Housing Need Allocation pursuant to Government Code Section 65400 based on the actual or anticipated affordability. See below frequently asked questions for JADUs for additional discussion.

Must ADU Ordinances Be Submitted to the Department of Housing and Community Development?

Yes, ADU ordinances must be submitted to the State Department of Housing and Community Development within 60 days after adoption, including amendments to existing ordinances. However, upon submittal, the ordinance is not subject to a Department review and findings process similar to housing element law (GC Section 65585)

Frequently Asked Questions: Junior Accessory Dwelling Units

Is There a Difference between ADU and JADU?



Courtesy of Lilypad Homes and Photo Credit to Jocelyn Knight

Yes, AB 2406 added Government Code Section 65852.22, providing a unique option for Junior ADUs. The bill allows local governments to adopt ordinances for JADUs, which are no more than 500 square feet and are typically bedrooms in a single-family home that have an entrance into the unit from the main home and an entrance to the outside from the JADU. The JADU must have cooking facilities, including a sink, but is not required to have a private bathroom. Current law does not prohibit local governments from adopting an ordinance for a JADU, and this bill explicitly allows, not requires, a local agency to do so. If the ordinance requires a permit, the local agency shall not require additional parking or charge a fee for a water or sewer connection as a condition of granting a permit for a JADU. For more information, see below.

ADUs and JADUs

REQUIREMENTS	ADU	JADU
Maximum Unit Size	Yes, generally up to 1,200 Square Feet or 50% of living area	Yes, 500 Square Foot Maximum
Kitchen	Yes	Yes
Bathroom	Yes	No, Common Sanitation is Allowed
Separate Entrance	Depends	Yes
Parking	Depends, Parking May Be Eliminated and Cannot Be Required Under Specified Conditions	No, Parking Cannot Be Required
Owner Occupancy	Depends, Owner Occupancy <i>May</i> Be Required	Yes, Owner Occupancy Is Required
Ministerial Approval Process	Yes	Yes
Prohibition on Sale of ADU	Yes	Yes

Why Adopt a JADU Ordinance?

JADUs offer the simplest and most affordable housing option. They bridge the gap between a roommate and a tenant by offering an interior connection between the unit and main living area. The doors between the two spaces can be secured from both sides, allowing them to be easily privatized or incorporated back into the main living area. These units share central systems, require no fire separation, and have a basic kitchen, utilizing small plug in appliances, reducing development costs. This provides flexibility and an insurance policy in homes in case additional income or housing is needed. They present no additional stress on utility services or infrastructure because they simply repurpose spare bedrooms that do not expand the homes planned occupancy. No additional address is required on the property because an interior connection remains. By adopting a JADU ordinance, local governments can offer homeowners additional options to take advantage of underutilized space and better address its housing needs.

Can JADUs Count towards the RHNA?

Yes, as part of the housing element portion of their general plan, local governments are required to identify sites with appropriate zoning that will accommodate projected housing needs in their regional housing need allocation (RHNA) and report on their progress pursuant to Government Code Section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, a JADU, including with shared sanitation facilities, that meets the census definition and is reported to the Department of Finance as part of the DOF annual City and County Housing Unit Change Survey can be credited toward the RHNA based on the appropriate income level. Local governments can track actual or anticipated affordability to assure the JADU is counted to the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit application.

A housing unit is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room that is occupied, or, if vacant, is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

Can the JADU Be Sold Independent of the Primary Dwelling?

No, the JADU cannot be sold separate from the primary dwelling.

Are JADUs Subject to Connection and Capacity Fees?

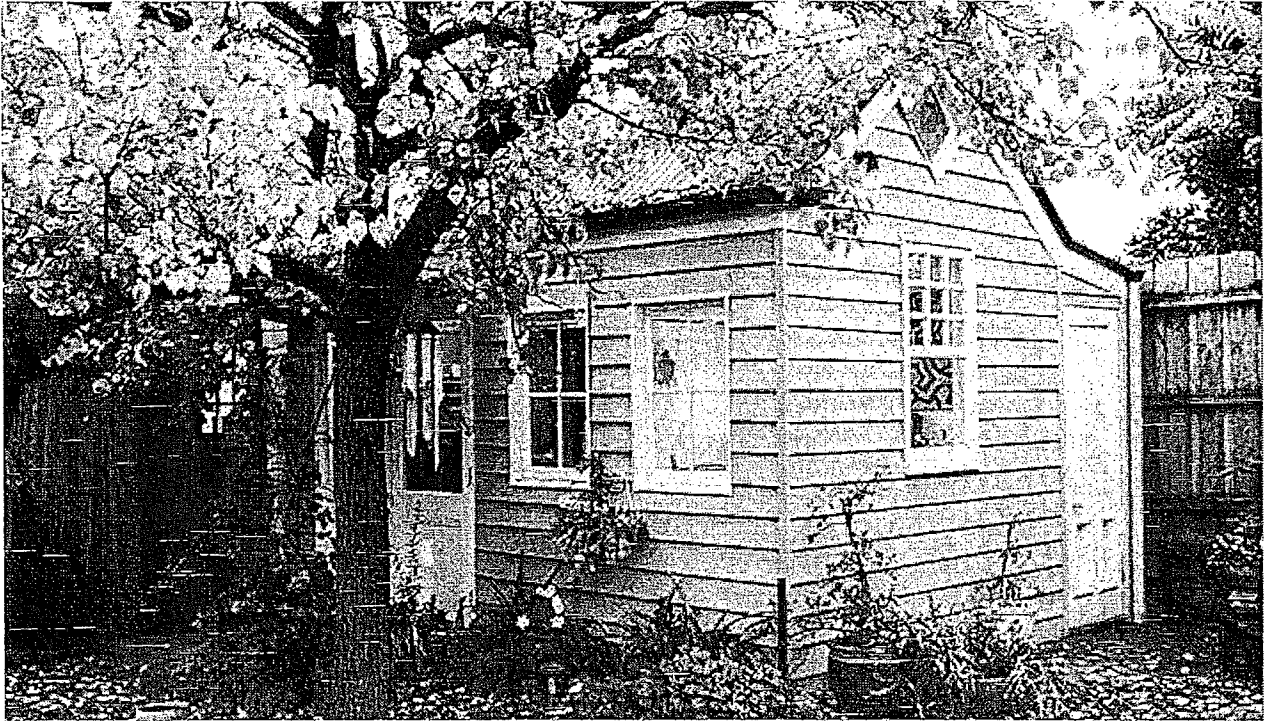
No, JADUs shall not be considered a separate or new dwelling unit for the purposes of fees and as a result should not be charged a fee for providing water, sewer or power, including a connection fee. These requirements apply to all providers of water, sewer and power, including non-municipal providers.

Local governments may adopt requirements for fees related to parking, other service or connection for water, sewer or power, however, these requirements must be uniform for all single family residences and JADUs are not considered a new or separate unit.

Are There Requirements for Fire Separation and Fire Sprinklers?

Yes, a local government may adopt requirements related to fire and life protection requirements. However, a JADU shall not be considered a new or separate unit. In other words, if the primary unit is not subject to fire or life protection requirements, then the JADU must be treated the same.

Resources



Courtesy of Karen Chapple, UC Berkeley

Attachment 1: Statutory Changes (Strikeout/Underline)

Government Code Section 65852.2

(a) (1) Any A local agency may, by ordinance, provide for the creation of ~~second~~-accessory dwelling units in single-family and multifamily residential zones. The ordinance may ~~shall~~ do any all of the following:

(A) Designate areas within the jurisdiction of the local agency where ~~second~~-accessory dwelling units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of ~~second~~-accessory dwelling units on traffic ~~flow~~. flow and public safety.

(B) (i) Impose standards on ~~second~~-accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that ~~second~~-accessory dwelling units do not exceed the allowable density for the lot upon which the ~~second~~-accessory dwelling unit is located, and that ~~second~~-accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. ~~Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of ADUs.~~ permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of ADUs. an accessory dwelling unit.

~~(b) (4) (1) An~~ When existing ordinance governing the creation of an accessory dwelling unit by a local agency which has not adopted an ordinance governing ADUs in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use permit for the creation of a ADU if the ADU complies with all of the following: that complies with this section.

~~(A) The unit is not intended for sale and may be rented.~~

~~(B) The lot is zoned for single family or multifamily use.~~

~~(C) The lot contains an existing single family dwelling.~~

~~(D) The ADU is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.~~

~~(E) The increased floor area of an attached ADU shall not exceed 30 percent of the existing living area.~~

~~(F) The total area of floorspace for a detached ADU shall not exceed 1,200 square feet.~~

~~(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.~~

~~(H) Local building code requirements which apply to detached dwellings, as appropriate.~~

~~(I) Approval by the local health officer where a private sewage disposal system is being used, if required.~~

~~(2) (5)~~ No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

~~(3) (6)~~ This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed ADUs on lots a proposed accessory dwelling unit on a lot zoned for residential use which contain that contains an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision ~~(a), subdivision~~, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant. owner-occupant or that the property be used for rentals of terms longer than 30 days.

~~(4) (7)~~ No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of ADUs an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

~~(5) (8)~~ A ADU which conforms to the requirements of An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which that is consistent with the existing general plan and zoning designations for the lot. The ADUs accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

~~(c) (b)~~ No When a local agency shall adopt an ordinance which totally precludes ADUs within single family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing ADUs within single family and multifamily zoned areas justify adopting the ordinance. that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

~~(d) (c)~~ A local agency may establish minimum and maximum unit size requirements for both attached and detached ~~second~~ accessory dwelling units. No minimum or maximum size for a ~~second~~ an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings which that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Parking requirements for ADUs shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the

use of the ADU and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction. Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(f) (1) Fees charged for the construction of second-accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000), 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs: an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinances ordinance adopted pursuant to subdivision (a) or (e) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area," area means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "~~Second~~-Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. ~~A second~~-An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for ~~second~~ accessory dwelling units.

Government Code Section 65852.22.

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence already built on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the existing walls of the structure, and require the inclusion of an existing bedroom.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A sink with a maximum waste line diameter of 1.5 inches.

(B) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas.

(C) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine whether the junior accessory dwelling unit is in compliance with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. A permit shall be issued within 120 days of submission of an application for a

permit pursuant to this section. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For the purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For the purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Attachment 2: Sample ADU Ordinance

Section XXX1XXX: Purpose

This Chapter provides for accessory dwelling units on lots developed or proposed to be developed with single-family dwellings. Such accessory dwellings contribute needed housing to the community's housing stock. Thus, accessory dwelling units are a residential use which is consistent with the General Plan objectives and zoning regulations and which enhances housing opportunities, including near transit on single family lots.

Section XXX2XXX: Applicability

The provisions of this Chapter apply to all lots that are occupied with a single family dwelling unit and zoned residential. Accessory dwelling units do exceed the allowable density for the lot upon which the accessory dwelling unit is located, and are a residential use that is consistent with the existing general plan and zoning designation for the lot.

Section XXX3XXX: Development Standards

Accessory Structures within Existing Space

An accessory dwelling unit within an existing space including the primary structure, attached or detached garage or other accessory structure shall be permitted ministerially with a building permit regardless of all other standards within the Chapter if complying with:

1. Building and safety codes
2. Independent exterior access from the existing residence
3. Sufficient side and rear setbacks for fire safety.

Accessory Structures (Attached and Detached)

General:

1. The unit is not intended for sale separate from the primary residence and may be rented.
2. The lot is zoned for residential and contains an existing, single-family dwelling.
3. The accessory dwelling unit is either attached to the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.
4. The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.
5. The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet.
6. Local building code requirements that apply to detached dwellings, as appropriate.
7. No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
8. No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.
9. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence and may employ alternative methods for fire protection.

Parking:

1. Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking, including on an existing driveway or in setback areas, excluding the non-driveway front yard setback.
2. Parking is not required in the following instances:
 - The accessory dwelling unit is located within one-half mile of public transit, including transit stations and bus stations.

- The accessory dwelling unit is located in the WWWW Downtown, XXX Area, YYY Corridor and ZZZ Opportunity Area.
 - The accessory dwelling unit is located within an architecturally and historically significant historic district.
 - When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - When there is a car share vehicle located within one block of the accessory dwelling unit.
3. Replacement Parking: When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an accessory dwelling unit, replacement parking shall not be required and may be located in any configuration on the same lot as the accessory dwelling unit.

Section XXX4XXX: Permit Requirements

ADUs shall be permitted ministerially, in compliance with this Chapter within 120 days of application. The Community Development Director shall issue a building permit or zoning certificate to establish an accessory dwelling unit in compliance with this Chapter if all applicable requirements are met in Section XXX3XXXX, as appropriate. The Community Development Director may approve an accessory dwelling unit that is not in compliance with Section XXX3XXXX as set forth in Section XXX5XXXX. The XXXX Health Officer shall approve an application in conformance with XXXXXX where a private sewage disposal system is being used.

Section XXX5XXX: Review Process for Accessory Structure Not Complying with Development Standards

An accessory dwelling unit that does not comply with standards in Section XXX3XX may permitted with a zoning certificate or an administrative use permit at the discretion of the Community Development Director subject to findings in Section XXX6XX

Section XXX6XXX: Findings

- A. In order to deny an administrative use permit under Section XXX5XXX, the Community Development Director shall find that the Accessory Dwelling Unit would be detrimental to the public health and safety or would introduce unreasonable privacy impacts to the immediate neighbors.
- B. In order to approve an administrative use permit under Section XXX5XXX to waive required accessory dwelling unit parking, the Community Development Director shall find that additional or new on-site parking would be detrimental, and that granting the waiver will meet the purposes of this Chapter.

Section XXX7XXX: Definitions

- (1) "Living area means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.
- (2) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:
- (A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.
- (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
- (3) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(4) (1) "Existing Structure" for the purposes of defining an allowable space that can be converted to an ADU means within the four walls and roofline of any structure existing on or after January 1, 2017 that can be made safely habitable under local building codes at the determination of the building official regardless of any non-compliance with zoning standards.

Attachment 3: Sample JADU Ordinance

(Lilypad Homes at <http://lilypadhomes.org/>)

Draft Junior Accessory Dwelling Units (JADU) – Flexible Housing

Findings:

1. Causation: Critical need for housing for lower income families and individuals given the high cost of living and low supply of affordable homes for rent or purchase, and the difficulty, given the current social and economic environment, in building more affordable housing
2. Mitigation: Create a simple and inexpensive permitting track for the development of junior accessory dwelling units that allows spare bedrooms in homes to serve as a flexible form of infill housing
3. Endangerment: Provisions currently required under agency ordinances are so arbitrary, excessive, or burdensome as to restrict the ability of homeowners to legally develop these units therefore encouraging homeowners to bypass safety standards and procedures that make the creation of these units a benefit to the whole of the community
4. Co-Benefits: Homeowners (particularly retired seniors and young families, groups that tend to have the lowest incomes) – generating extra revenue, allowing people facing unexpected financial obstacles to remain in their homes, housing parents, children or caregivers; Homebuyers - providing rental income which aids in mortgage qualification under new government guidelines; Renters – creating more low-cost housing options in the community where they work, go to school or have family, also reducing commute time and expenses; Municipalities – helping to meet RHNA goals, increasing property and sales tax revenue, insuring safety standard code compliance, providing an abundant source of affordable housing with no additional infrastructure needed; Community - housing vital workers, decreasing traffic, creating economic growth both in the remodeling sector and new customers for local businesses; Planet - reducing carbon emissions, using resources more efficiently;
5. Benefits of Junior ADUs: offer a more affordable housing option to both homeowners and renters, creating economically healthy, diverse, multi-generational communities;

Therefore the following ordinance is hereby enacted:

This Section provides standards for the establishment of junior accessory dwelling units, an alternative to the standard accessory dwelling unit, permitted as set forth under State Law AB 1866 (Chapter 1062, Statutes of 2002) Sections 65852.150 and 65852.2 and subject to different provisions under fire safety codes based on the fact that junior accessory dwelling units do not qualify as “complete independent living facilities” given that the interior connection from the junior accessory dwelling unit to the main living area remains, therefore not redefining the single-family home status of the dwelling unit.

A) *Development Standards.* Junior accessory dwelling units shall comply with the following standards, including the standards in Table below:

- 1) *Number of Units Allowed.* Only one accessory dwelling unit or, junior accessory dwelling unit, may be located on any residentially zoned lot that permits a single-family dwelling except as otherwise regulated or restricted by an adopted Master Plan or Precise Development Plan. A junior accessory dwelling unit may only be located on a lot which already contains one legal single-family dwelling.
- 2) *Owner Occupancy:* The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a principal residence either the primary dwelling or the accessory dwelling, except when the home is held by an agency such as a land trust or housing organization in an effort to create affordable housing.
- 3) *Sale Prohibited:* A junior accessory dwelling unit shall not be sold independently of the primary dwelling on the parcel.

- 4) *Deed Restriction:* A deed restriction shall be completed and recorded, in compliance with Section B below.
- 5) *Location of Junior Accessory Dwelling Unit:* A junior accessory dwelling unit must be created within the existing walls of an existing primary dwelling, and must include conversion of an existing bedroom.
- 6) *Separate Entry Required:* A separate exterior entry shall be provided to serve a junior accessory dwelling unit.
- 7) *Interior Entry Remains:* The interior connection to the main living area must be maintained, but a second door may be added for sound attenuation.
- 8) *Kitchen Requirements:* The junior accessory dwelling unit shall include an efficiency kitchen, requiring and limited to the following components:
 - a) A sink with a maximum waste line diameter of one-and-a-half (1.5) inches,
 - b) A cooking facility with appliance which do not require electrical service greater than one-hundred-and-twenty (120) volts or natural or propane gas, and
 - c) A food preparation counter and storage cabinets that are reasonable to size of the unit.
- 9) *Parking:* No additional parking is required beyond that required when the existing primary dwelling was constructed.

Development Standards for Junior Accessory Dwelling Units

SITE OR DESIGN FEATURE	SITE AND DESIGN STANDARDS
Maximum unit size	500 square feet
Setbacks	As required for the primary dwelling unit
Parking	No additional parking required

- B) *Deed Restriction:* Prior to obtaining a building permit for a junior accessory dwelling unit, a deed restriction, approved by the City Attorney, shall be recorded with the County Recorder's office, which shall include the pertinent restrictions and limitations of a junior accessory dwelling unit identified in this Section. Said deed restriction shall run with the land, and shall be binding upon any future owners, heirs, or assigns. A copy of the recorded deed restriction shall be filed with the Department stating that:
 - 1) The junior accessory dwelling unit shall not be sold separately from the primary dwelling unit;
 - 2) The junior accessory dwelling unit is restricted to the maximum size allowed per the development standards;
 - 3) The junior accessory dwelling unit shall be considered legal only so long as either the primary residence, or the accessory dwelling unit, is occupied by the owner of record of the property, except when the home is owned by an agency such as a land trust or housing organization in an effort to create affordable housing;
 - 4) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance with this provision may result in legal action against the property owner, including revocation of any right to maintain a junior accessory dwelling unit on the property.
- C) *No Water Connection Fees:* No agency should require a water connection fee for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard may be assessed.
- D) *No Sewer Connection Fees:* No agency should require a sewer connection fee for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard

may be assessed.

- E) *No Fire Sprinklers and Fire Attenuation*: No agency should require fire sprinkler or fire attenuation specifications for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard may be assessed.

Definitions of Specialized Terms and Phrases.

"Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

- (1) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.
- (2) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

"Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

Attachment 4: State Standards Checklist (As of January 1, 2017)

YES/NO	STATE STANDARD	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.	65852.2(a)(1)(D)(ii)
	Accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.	65852.2(a)(1)(D)(iv)
	Total area of floor space for a detached accessory dwelling unit does not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not required for an existing garage that is converted to an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines are not required for an accessory dwelling unit that is constructed above a garage.	65852.2(a)(1)(D)(vii)
	(Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)

* Other requirements may apply. See Government Code Section 65852.2

Attachment 5: Bibliography

Reports

ACCESSORY DWELLING UNITS: CASE STUDY (26 pp.)

By United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities, and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

THE MACRO VIEW ON MICRO UNITS (46 pp.)

By Bill Whitlow, et al. — Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

RESPONDING TO CHANGING HOUSEHOLDS: Regulatory Challenges for Micro-units and Accessory Dwelling Units (76 pp.)

By Vicki Been, Benjamin Gross, and John Infranca (2014)
New York University: Furman Center for Real Estate & Urban Policy
Library Call # D55 3 I47 2014

This White Paper fills two gaps in the discussion regarding compact units. First, we provide a detailed analysis of the regulatory and other challenges to developing both ADUs and micro-units, focusing on five cities: New York; Washington, DC; Austin; Denver; and Seattle. That analysis will be helpful not only to the specific jurisdictions we study, but also can serve as a model for those who want to catalogue regulations that might get in the way of the development of compact units in their own jurisdictions. Second, as more local governments permit or encourage compact units, researchers will need to evaluate how well the units built serve the goals proponents claim they will.

SCALING UP SECONDARY UNIT PRODUCTION IN THE EAST BAY: Impacts and Policy Implications (25 pp.)

By Jake Webmann, Alison Nemirow, and Karen Chapple (2012)
UC Berkeley: Institute of Urban and Regional Development (IURD)
Library Call # H44 1.1 S33 2012

This paper begins by analyzing how many secondary units of one particular type, detached backyard cottages, might be built in the East Bay, focusing on the Flatlands portions of Berkeley, El Cerrito, and Oakland. We then investigate the potential impacts of scaling up the strategy with regard to housing affordability, smart growth, alternative transportation, the economy, and city budgets. A final section details policy recommendations, focusing on regulatory reforms and other actions cities can take to encourage secondary unit construction, such as promoting carsharing programs, educating residents, and providing access to finance.

SECONDARY UNITS AND URBAN INFILL: A literature Review (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

YES, BUT WILL THEY LET US BUILD? The Feasibility of Secondary Units in the East Bay (17 pp.)

By Alison Nemirow and Karen Chapple (2012)
UC Berkeley: IURD
Library Call # H44.5 1.1 Y47 2012

This paper begins with a discussion of how to determine the development potential for secondary units, and then provides an overview of how many secondary units can be built in the East Bay of San Francisco Bay Area under current regulations. The next two sections examine key regulatory barriers in detail for the five cities in the study (Albany, Berkeley, El Cerrito, Oakland, and Richmond), looking at lot size, setbacks, parking requirements, and procedural barriers. A sensitivity analysis then determines how many units could be built were the regulations to be relaxed.

YES IN MY BACKYARD: Mobilizing the Market for Secondary Units (20 pp.)

By Karen Chapple, J. Weigmann, A. Nemirow, and C. Dentel-Post (2011)
UC Berkeley: Center for Community Innovation.
Library Call # B92 1.1 Y47 2011

This study examines two puzzles that must be solved in order to scale up a secondary unit strategy: first, how can city regulations best enable their construction? And second, what is the market for secondary units? Because parking is such an important issue, we also examine the potential for secondary unit residents to rely on alternative transportation modes, particular car share programs. The study looks at five adjacent cities in the East Bay of the San Francisco Bay Area (Figure 1) – Oakland, Berkeley, Albany, El Cerrito, and Richmond – focusing on the areas within ½ mile of five Bay Area Rapid Transit (BART) stations.

Journal Articles and Working Papers:

BACKYARD HOMES LA (17 pp.)

By Dana Cuff, Tim Higgins, and Per-Johan Dahl, Eds. (2010)
Regents of the University of California, Los Angeles.
City Lab Project Book.

DEVELOPING PRIVATE ACCESSORY DWELLINGS (6 pp.)

By William P. Macht. Urbanland online. (June 26, 2015)
Library Location: Urbanland 74 (3/4) March/April 2015, pp. 154-161.

GRANNY FLATS GAINING GROUND (2 pp.)

By Brian Barth. Planning Magazine: pp. 16-17. (April 2016)
Library Location: Serials

"HIDDEN" DENSITY: THE POTENTIAL OF SMALL-SCALE INFILL DEVELOPMENT (2 pp.)

By Karen Chapple (2011)
UC Berkeley: IURD Policy Brief.
Library Call # D44 1.2 H53 2011

California's implementation of SB 375, the Sustainable Communities and Climate Protection Act of 2008, is putting new pressure on communities to support infill development. As metropolitan planning organizations struggle to communicate the need for density, they should take note of strategies that make increasing density an attractive choice for neighborhoods and regions.

HIDDEN DENSITY IN SINGLE-FAMILY NEIGHBORHOODS: Backyard cottages as an equitable smart growth strategy (22 pp.)

By Jake Wegmann and Karen Chapple. Journal of Urbanism 7(3): pp. 307-329. (2014)

Abstract (not available in full text): Secondary units, or separate small dwellings embedded within single-family residential properties, constitute a frequently overlooked strategy for urban infill in high-cost metropolitan areas in the United States. This study, which is situated within California's San Francisco Bay Area, draws upon data collected from a homeowners' survey and a Rental Market Analysis to provide evidence that a scaled-up strategy emphasizing one type of secondary unit – the backyard cottage – could yield substantial infill growth with minimal public subsidy. In addition, it is found that this strategy compares favorably in terms of affordability with infill of the sort traditionally favored in the 'smart growth' literature, i.e. the construction of dense multifamily housing developments.

RETHINKING PRIVATE ACCESSORY DWELLINGS (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

ADUS AND LOS ANGELES' BROKEN PLANNING SYSTEM (4 pp.)

By CARLYLE W. Hall. The Planning Report. (April 26, 2016).
Land-use attorney Carlyle W. Hall comments on building permits for accessory dwelling units.

News:

HOW ONE COLORADO CITY INSTANTLY CREATED AFFORDABLE HOUSING

By Anthony Flint. The Atlantic-CityLab. (May 17, 2016).

In Durango, Colorado, zoning rules were changed to allow, for instance, non-family members as residents in already-existing accessory dwelling units.

NEW HAMPSHIRE WINS PROTECTIONS FOR ACCESSORY DWELLING UNITS (1 p.)

NLIHC (March 28, 2016)

Affordable housing advocates in New Hampshire celebrated a significant victory this month when Governor Maggie Hassan (D) signed Senate Bill 146, legislation that allows single-family homeowners to add an accessory

dwelling unit as a matter of right through a conditional use permit or by special exception as determined by their municipalities. The bill removes a significant regulatory barrier to increasing rental homes at no cost to taxpayers.

NEW IN-LAW SUITE RULES BOOST AFFORDABLE HOUSING IN SAN FRANCISCO. (3 pp.)

By Rob Poole. Shareable. (June 10, 2014).

The San Francisco Board of Supervisors recently approved two significant pieces of legislation that support accessory dwelling units (ADUs), also known as "in-law" or secondary units, in the city...

USING ACCESSORY DWELLING UNITS TO BOLSTER AFFORDABLE HOUSING (3 pp.)

By Michael Ryan. Smart Growth America. (December 12, 2014).



SPUR

San Francisco | San Jose | Oakland

Received via Email
4/17/2017 @ 11:37am
A

April 16, 2017

Land Use & Transportation Committee
San Francisco Board of Supervisors
1 Dr. Carlton B Goodlett Place
San Francisco, CA 94102

RE: **Construction of Accessory Dwelling Units**
File No. 170125

Dear Supervisors Farrell, Peskin and Tang:

Thank you for the opportunity to weigh in on the accessory dwelling unit legislation now proposed by Supervisors Peskin to bring San Francisco's Planning Code into alignment with 2016 state legislation. SPUR has been a long-time supporter of making in-law units easier to create, and we are happy to see our partner jurisdictions quickly updating their codes, since any ordinances not in compliance with the new state law are unenforceable until updated.

As we have written before, in SPUR's 2006 *Secondary Units* report, as well as follow-up blog posts and letters, ADUs provide many benefits: they serve many different kinds of households, they typically rent for less than other market-rate units, and they can easily add a little more density in all kinds of neighborhoods with limited physical impact.

SPUR supports the legislation with the Planning Commission's recommended modifications. The modifications add clarity to the ordinance and align the ordinance with existing provisions in the Planning Code.

Further, we urge you to consider the recommendations included in Supervisor Jeff Sheehy and Supervisor Mark Farrell's letter dated April 4. In particular:

- Temporary Evictions Should Be Eligible for the ADU Program. Last year, when the city took ADU legislation citywide, units where evictions had occurred were made ineligible for the ADU program. However, temporary evictions, which are sometimes needed to complete earthquake safety, lead mitigation or other construction work that benefits tenants, were not treated any differently from permanent and more harmful types of evictions. As long as residents can return immediately after the completion of the work, we believe that units with temporary evictions on the record should be eligible to participate in the ADU program.
- Remove the Unit Cap for Seismic Retrofits. Last June, we recommended removing the cap on the number of ADUs per building to create greater opportunities for new housing units. When changes were made to the city's ADU laws last year, some of the existing provisions from the successful seismic retrofit ADU program got lost. This is an important correction that would help enable more units to be created through a program that had a strong track record.

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654 Mission Street
San Francisco, CA 94105
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OAKLAND
1544 Broadway
Oakland, CA 94612
(510) 827-1900

spur.org

- Neighborhood Notification for ADUs should be consistent with neighborhood notification for similar types of projects and not be unnecessarily burdensome.

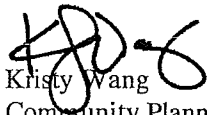
Future Considerations

There are several topics that we have suggested should be revisited in the future, including considering how ADUs might be able to use space outside the buildable envelope, treating ADUs similarly to the rest of the housing stock with regard to short-term rentals if/when short-term rental enforcement is improved, revisiting the rent control requirement if we see little ADU construction in single family homes, and exploring other ways to break down barriers to ADU construction, including more homeowner education, a simpler and truly ministerial process, additional financing options, and reducing city fees for ADUs.

We again suggest that if San Francisco is serious about getting large numbers of ADUs, the city should treat this as a learning process. Over time, we will find out whether or not the current and proposed regulations work to generate large numbers of new ADUs. In five years, the city should study whether it put the right set of incentives in place — and should be willing to change course based on what it learns.

Thank you for the opportunity to share our support for ADUs generally, for Supervisor Peskin's proposal and for the additional modifications proposed by both the Planning Commission and Supervisors Sheehy and Farrell. Please contact me if you have any questions.

Best,



Kristy Wang
Community Planning Policy Director

cc: Supervisor Mark Farrell
Supervisor Jeff Sheehy
SPUR Board of Directors

~~ANALYSIS OF PROPOSED ADU AMENDMENTS TO PLANNING CODE~~
To: ~~Planning Commissioners~~

From: Michael Murphy

Re: Proposed ordinance (file No. 170125) amending Planning Code to conform to the new mandates of state law with respect to Accessory Dwelling Units.

I. Section 102 of the San Francisco ordinance contains a succinct definition of an accessory dwelling unit, or ADU: “a Dwelling Unit constructed entirely within the existing built *envelope* of an existing building in areas that allow residential use or within the existing built envelope of an existing and authorized auxiliary structure on the same lot.” By defining an ADU as a dwelling unit within the “envelope” of an existing structure, the definition as a practical matter restricts the application of the ordinance to small dwelling units that can be created within or above a garage. In contrast, the definition of an ADU in the state law¹ contains no reference to the “built envelope” but instead places limits on the *size* of an accessory dwelling unit that will qualify for the advantageous treatment of state law. The relevant provisions in Government Code section 65852.2(a)(D)(iii) through (v) are set forth below in footnote 2.² The definition relating to dwelling unit size in the state law gives it a significantly more expansive application than is allowed by the more restrictive definition in the San Francisco ordinance relating to the built envelope. It permits the construction of comfortable dwelling units, with adequate light and ventilation, that do not displace existing space for parking, utilities, and storage.

The Peskin proposal leaves untouched the definition of an ADU in section 102 of the San Francisco ordinance. Since this definition limits the application of the San Francisco ordinance more narrowly than state law, it became a dead letter upon the effective date of

¹ Government Code section 65852.2(i)(4) provides: “Accessory dwelling unit” means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated.

² Government Code section 65852.2(a)(C)(iii) through (v) provides: “(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling (iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet. (v) The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet.”

the state law. The San Francisco ordinance must now be revised to be consistent with state law.

2. While the state law applies only to single-family dwellings, it is not limited to areas *zoned* for single-family dwellings. Rather, it authorizes local agencies to regulate ADUs in “single-family *and* multifamily residential zones.” (Gov Code § 65852.1(a)(1)) It requires only that the accessory dwelling unit must be built in “a lot zoned for single-family *or* multifamily use.” (Gov Code §65852.1(a)(1)(D)(ii)) The state law thus embraces any zone that allows a “single-family or multi-family use.”

The Peskin proposal departs from these provisions of state law by creating two distinct categories of ADUs differentiated according to the zone in which they are located. The category apparently intended to comply with state law is restricted to single-family zoning districts. (See subsection (a)(6)) Again, this distinction according to zone is legally void because it is more restrictive than state law.

3. The state law mandates that an ADU application “shall be considered ministerially without discretionary review or a hearing.” (Gov Code § 65852.2(a)(3)) Even more explicitly, Government Code section 65852.2(a)(4) provides that a local ordinance “shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary provisions or requirements for those units,…”

In an apparent effort to comply with this provision, the Peskin proposal calls for the speedy approval “without modification or disapproval” for a small fractional segment of ADU applications that meet a series of requirements. The most restrictive of these conditions is the following: “Only one ADU will be constructed that is entirely within the ‘living area’ of an existing single-family home or within the built envelop of an existing and authorized auxiliary structure on the same lot.” The term “living area” is drawn from the state law and has a presumably somewhat narrower meaning than built envelope. In Government Code 645852.2(a)(1)(D)(iii), quoted in full in footnote 2, it is used as the base point to measure the permissible expansion of an attached ADU beyond the existing structure. (“The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area.”) In the Peskin proposal, it instead demarcates the allowable space for an ADU – an egregious misuse of the statutory term. As restriction conflicting with state law, the reservation of expeditious review to a narrow category of applications would be “null and void” if incorporated into a San Francisco ordinance. (Gov. Code section 65852.1(a)(4))

Moreover, the Peskin proposal provides that ADU applications lying outside the narrow scope of the proposed subdivision (c)(6) remain subject to the discretionary waiver provisions of Planning Code section 207(c)(4)(G).] This provision again conflicts with state law because it retains the discretionary approval procedure for a broad category of ADU

applications. As a restriction conflicting with state law, it would again be null and void if incorporated into a San Francisco ordinance.

4. But does the speedy approval provision itself (subdivision (c)(6)(D)) comport with state law? Perhaps, but it fails to meet the test of practicality. Can it be seriously proposed that the Planning Department must process “without modification or disapproval” all applications that meet the few sketchy conditions of the ordinance? Such a provision would either open the door to abuse or compel zoning administrators to exercise discretion prohibited by state law. A workable system of ministerial approval must be based on an adequate set of guidelines.

In other contexts, the Planning Code authorizes the Planning Commission to create implementation documents guiding administrative actions. Planning Code section 415.1 relating to inclusionary zoning directs the Planning Department and MOH to periodically publish a Procedures Manual ... for implementation of this Program.” Similarly, Planning Code section 317 regulating demolition of housing units requires the Planning Commission to “develop a Code Implementation Document setting forth procedures and regulations for the implementation of this Section 317.” The Planning Department has issued an ADU Manual that could serve an implementation document with modest revisions; it needs only an updated text and refined prototypes that meet the standards of form-based coding.

5. These comments do not cover all the defects of the ordinance. The section on subdivisions (subdivision (c)(6)(F)) ignores the effect of Government Code § 65852.2(a)(D)(i). (“The unit is not intended for sale separate from the primary residence...”) The reference to prior landlord evictions (subdivision(c)(4)) does not take into account Government Code § 64852.2(a)(5). (No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or use permit under this subdivision.) The proposed ordinance fails to incorporate the provisions section 65852.2 relating to fire sprinklers and utility connections. (See § 65852.2(e), (f)(2), (f)(2)(A), and(f)(2)(B)). The consequence would be to force applicants to consult both state law and local ordinances to figure out applicable requirements. Finally, it makes no effort to harmonize the provisions mandated by state law applying to single-family dwellings with the existing provisions of the San Francisco ordinance applying to duplexes, triplexes, and small apartments, which outside the mandate of state law.

After surveying the provisions the Peskin ordinance conflicting with state law, there nothing of importance left. The ordinance fails completely to meet its objective of conforming to the new mandates of state law.

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

February 6, 2017

File No. 170125

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

Dear Ms. Gibson:

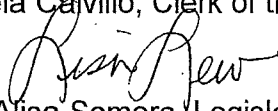
On January 31, 2017, Supervisor Peskin introduced the following proposed legislation:

File No. 170125

Ordinance amending the Planning Code to bring the requirements and procedures for authorizing the construction of Accessory Dwelling Units (ADUs) in single-family homes into conformity with the new mandates of state law; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public convenience, necessity, and welfare under Planning Code, Section 302; and directing the Clerk to send a copy of this Ordinance to the California Department of Housing and Community Development after adoption pursuant to state law requirements.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

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

Attachment

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

BOARD of SUPERVISORS



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San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

February 6, 2017

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On January 31, 2017, Supervisor Peskin introduced the following legislation:

File No. 170125

Ordinance amending the Planning Code to bring the requirements and procedures for authorizing the construction of Accessory Dwelling Units (ADUs) in single-family homes into conformity with the new mandates of state law; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public convenience, necessity, and welfare under Planning Code, Section 302; and directing the Clerk to send a copy of this Ordinance to the California Department of Housing and Community Development after adoption pursuant to state law requirements.

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

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

c: John Rahaim, Director of Planning
Aaron Starr, Acting Manager of Legislative Affairs
Scott Sanchez, Zoning Administrator
Lisa Gibson, Acting Environmental Review Officer

AnMarie Rodgers, Senior Policy Advisor
Jeanie Poling, Environmental Planning
Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS



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

MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection
Kevin Guy, Director, Office of Short-Term Rental Administration and Enforcement
Joanne Hayes-White, Chief, Fire Department
Olson Lee, Director, Mayor's Office of Housing and Community Development
Robert Collins, Executive Director, Rent Board

FROM: *ll*
ls Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee.

DATE: February 6, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on January 31, 2017:

File No. 170125

Ordinance amending the Planning Code to bring the requirements and procedures for authorizing the construction of Accessory Dwelling Units (ADUs) in single-family homes into conformity with the new mandates of state law; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public convenience, necessity, and welfare under Planning Code, Section 302; and directing the Clerk to send a copy of this Ordinance to the California Department of Housing and Community Development after adoption pursuant to state law requirements.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection
Kelly Alves, Fire Department
Eugene Flannery, Mayor's Office of Housing and Community Development
Kate Hartley, Mayor's Office of Housing and Community Development

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

2017 JAN 31 PM 4:38
 Time stamp
 or meeting date
 BY AK

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Peskin

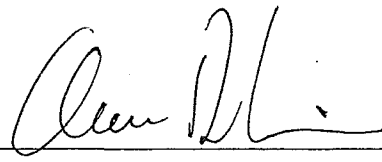
Subject:

[Planning Code, Administrative Code - Construction of Accessory Dwelling Units]

The text is listed below or attached:

Ordinance amending the Planning Code to bring the requirements and procedures for authorizing the construction of Accessory Dwelling Units (ADUs) in single-family homes into conformity with the new mandates of state law; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1 and findings of public convenience, necessity, and welfare under Planning Code Section 302; and directing the Clerk to send a copy of this ordinance to the California Department of Housing and Community Development after adoption pursuant to state law requirements.

Signature of Sponsoring Supervisor:



r Clerk's Use Only:

