

Monday, February 5, 2024

Chair Melgar and Members of the Land Use Committee
San Francisco Board of Supervisors
1 Dr Carlton B Goodlett Place
San Francisco, CA 94102

RE: Support File #230310, State-Mandated Accessory Dwelling Unit Controls

Dear Chair Melgar and Land Use Committee members:

SPUR respectfully urges you to pass Board File [230310](#) today without continuances or delay, and with the amendments being proposed by the author. On paper, this ordinance merely creates consistency between California state law and the section of San Francisco's Planning Code which governs accessory dwelling units.

However, there is more to this item than is immediately obvious:

San Francisco is seeking a Prohousing Designation from the state—with conforming ADU legislation as the remaining criterion—that would improve the chances for AHSC funding of four key projects. The deadline for this next funding cycle is March 19th. **Passing this cleanup legislation quickly is essential to securing up to \$200 million in desperately needed affordable housing and transportation funding from the state. If we do not pass this ordinance, we are likely to lose access and a competitive edge for a critical state funding source that will pay for affordable housing and transportation improvements.**

Specifically, the Affordable Housing & Sustainable Communities fund (AHSC) is a program administered by the state and funded by California cap & trade. AHSC is unique in that it is the only robust source of housing and transportation funding that is *not* subject to state budget cuts, making this an especially precious tool during deficit years. Every year, California totals up the revenue brought in during the cap and trade auction, and then separates out a percentage of that money to fund AHSC, which is then issued in competitive grants to fund projects that integrate affordable housing and bicycle, pedestrian, and public transportation improvements. This program also grants special weight to geographic areas that have been historically disadvantaged and lacking economic support and investment.

San Francisco has a long track record of performing well in this competitive program compared to other cities for many reasons: our sophisticated ecosystem of nonprofit community developers, local matching funds from the Housing Trust Fund, strong public transit infrastructure, and the ability to successfully build affordable housing that has no parking (which many cities don't, or can't). For example, in the last AHSC cycle, San Francisco was awarded nearly \$90 million dollars to fund the Balboa A and Transbay 2 developments.

In 2023, funding from AHSC made it possible to deliver the following investments in San Francisco across those two developments:

- 350 total affordable and supportive housing units
- Onsite childcare, social services, healthcare, and job development
- Muni improvements to the 29 Sunset
- Two new BART cars for the regional system
- Extensive safety and accessibility upgrades to bicycle and pedestrian infrastructure in the area surrounding the developments

However, because this state funding program is competitive, the California Department of Housing and Community Development (HCD) has created a "Prohousing Designation" which awards bonus points to applications located in cities with policies in basic compliance with state housing laws and that encourage housing production. San Francisco has applied for a Prohousing Designation, and HCD has indicated that the only outstanding criterion for qualification lives in fixing San Francisco's process and standards for approving ADUs that are a part of our "state program" in a manner that is consistent with state law. This means that a Prohousing Designation – and therefore our access to highly competitive funds for the upcoming March 19th funding deadline – depends on the quick passage of the legislation before you today.

A Prohousing Designation for San Francisco has immediate funding implications for affordable housing. Four affordable housing projects, totaling 472 units, are certain to apply for AHSC funding in March. **Passing this legislation today and earning our Prohousing Designation from the state maximizes San Francisco's chances to be awarded up to \$50 million per project, a potential funding grant to the City of up to \$200 million across the following projects:**

- 160 Freelon, 84 units, District 6;
- Sunnydale Block 9, 100 units, District 11;
- Potrero Yard Senior Housing, 103 units, District 9; and
- 1939 Market, 185 units, District 8.

RE: *Letter supporting File #230310, State-Mandated Accessory Dwelling Unit Controls*

Time is of the essence in passing this ADU legislation so the City may receive the Prohousing Designation and allow these projects to be competitive for state funding and proceed to construction. In addition, the Prohousing Designation would allow San Francisco to qualify for the Prohousing Incentive Pilot Program, due March 15, which would qualify San Francisco for \$1.5-2 million more in state funding for affordable housing.

SPUR understands that the ordinance before you today seems unrelated to funding subsidized affordable housing and transportation improvements. However: every grant of state funding is critical in the context of a constrained state budget and increasingly competitive affordable housing funding programs, and this ordinance passing could mean securing funding that, on a per year basis, is more significant than any of our local revenue bonds. As our organization continues to fight for increased affordable housing and transportation investment at the local, state, and federal levels, passing this ADU legislation will allow San Francisco the best chance possible to receive this funding and continue to build affordable, livable and sustainable communities for San Franciscans.

Respectfully,

A handwritten signature in cursive script, appearing to read "Annie Fryman".

Annie Fryman
Director of Special Projects
SPUR

From: [Christopher White](#)
To: [Carroll, John \(BOS\)](#)
Cc: [Melgar, Myrna \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Horrell, Nate \(BOS\)](#); [Heiken, Emma \(BOS\)](#); [Kilgore, Preston \(BOS\)](#)
Subject: Land Use Committee Item 2: Support for Ordinance #230310
Date: Friday, February 2, 2024 4:47:42 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board President Peskin and Supervisors Melgar and Preston,

On behalf of the San Francisco Bicycle Coalition and our thousands of members and constituents in San Francisco, I write to strongly urge the Land Use Committee to support Ordinance #230310 without continuance, with all amendments required by the California Department of Housing and Community Development and authored by the Mayor. Passage of this ordinance will put the city in compliance with state housing law and allow it to receive its Pro Housing designation.

The State's Pro Housing designation is a new requirement for the Affordable Housing, Sustainable Communities program, which supports sorely needed affordable housing and, crucially for people in SF who bike, ensures that new developments funded by the program address sustainable transportation needs. San Francisco should be proud that projects in the city have seen a great deal of success getting funded by this competitive program.

Without passage of this ordinance, up to \$60M of sorely needed money for sustainable transportation would be forfeited if SF were no longer eligible for the AHSC program in the coming round, in addition to as much as \$140M for affordable housing. This is an urgent need, because on March 19, 2024, proposals are due to the state agency. Without the passage of this ordinance, San Francisco projects will be ineligible.

Given the urgent need for more affordable housing in San Francisco and more funding for sustainable transportation, we urge the committee to support the Ordinance, with amendments required by HCD to receive the Pro Housing designation and comply with state law.

Respectfully,

--

Christopher White

Interim Executive Director

Phone or text: (415) 295-2355 | christopher@sfbike.org

Pronouns: he, him, his

[San Francisco Bicycle Coalition](#)

Promoting the Bicycle for Everyday Transportation

[1720 Market St.](#)

[San Francisco, CA 94102](#)



From: [Ryan Patterson](#)
To: [Carroll, John \(BOS\)](#); [MelgarStaff \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#)
Subject: Public Comment on Agenda Item 6 - SFBOS File No. 230310 - Planning, Business and Tax Regulations Codes - Accessory Dwelling Units in New Construction
Date: Monday, December 11, 2023 2:21:38 PM
Attachments: [Planning Ltr 112723.pdf](#)

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Dear Chair Melgar and Supervisors:

Our office represents Yes In My Back Yard (YIMBY Law) and Sonja Trauss, its executive director. We were disappointed to learn of the proposed ordinance's inconsistencies with state law – especially its imposition of new constraints on the creation of accessory dwelling units (ADUs).

As a preliminary matter, we object to the lack of notice of today's hearing on the Ordinance, despite having requested notice through the Board's Legistar legislative alerts system.

In particular, we object to the reduction of allowable square footage for state-law ADUs. There was no cap on the size of such ADUs on January 1, 2018. A limit of 1,200 square feet was subsequently imposed in Ordinance 116-19. Now, this proposed Ordinance would limit ADU size to 850 or 1,000 square feet. This would lessen the intensity of housing allowed in San Francisco in violation of state law.

SB 330 prohibits:

Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B). For purposes of this subparagraph, "less intensive use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing. (Gov. Code § 66300(b)(1)(A).)

Additionally, we object to the inconsistencies with state law identified in the Planning Department's letter of **November 27, 2023 (attached)**. As discussed in the letter, a number of inconsistencies are itemized (1-9) and admitted but not resolved.

Further, there is no prohibition in state ADU law against ADUs that are attached to existing detached accessory structures. The proposed ordinance seeks to prohibit such ADUs, which is unlawful.

We urge the Board of Supervisors to eliminate the proposed inconsistencies with state law.

Very truly yours,

PATTERSON & O'NEILL, PC

Ryan Patterson

Attorneys for YIMBY Law and Sonja Trauss

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November 27, 2023

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

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

Dear Assistant Deputy Director Zisser,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Rich Hillis
Director of Planning

CC (all electronic)

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

From: [Ryan Patterson](#)
To: [Carroll, John \(BOS\)](#); [MelgarStaff \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#)
Subject: Public Comment on Agenda Item 6 - SFBOS File No. 230310 - Planning, Business and Tax Regulations Codes - Accessory Dwelling Units in New Construction
Date: Monday, December 11, 2023 2:21:38 PM
Attachments: [Planning Ltr 112723.pdf](#)

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In particular, we object to the reduction of allowable square footage for state-law ADUs. There was no cap on the size of such ADUs on January 1, 2018. A limit of 1,200 square feet was subsequently imposed in Ordinance 116-19. Now, this proposed Ordinance would limit ADU size to 850 or 1,000 square feet. This would lessen the intensity of housing allowed in San Francisco in violation of state law.

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PATTERSON & O'NEILL, PC

Ryan Patterson

Attorneys for YIMBY Law and Sonja Trauss

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November 27, 2023

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

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

Dear Assistant Deputy Director Zisser,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Rich Hillis
Director of Planning

CC (all electronic)

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

From: [Ken Mandler](#)
To: [Major, Erica \(BOS\)](#)
Subject: Public Comment on Board File #210585
Date: Monday, October 25, 2021 9:23:03 AM
Attachments: [SF-BOS-LAND-USE-COMMITTEE-210585-102221.pdf](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Ms. Major:

Board File #210585 has been sent to the Land Use and Transportation Committee by the San Francisco Planning Commission for recommendation. It has not yet been calendared by your committee. I have attached my written "public comment" to the proposed legislation. I would like you to include it in the legislative file and distributed in the legislative packet when the legislation is set for hearing.

I understand that we treat "future hearing dates" as a more closely held secret than the nuclear codes the president needs to launch a nuclear war. Therefore, you are unable to provide me with an estimated date for the hearing in this matter. I, of course, would be interested in that information so that I, a citizen of San Francisco, can set aside, on my calendar, that time. That would all sound normal in a democratic society. However, I know where I live, but if you can spill any beans here, better to me, than to the FBI!

Thanks.

Kenneth Mandler
A Citizen of San Francisco

October 25, 2021

Supervisor Myrna Melgar, Land Use and Transportation Committee
Supervisor Dean Preston, Land Use and Transportation Committee
Supervisor Aaron Peskin, Land Use and Transportation Committee
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

**Re: File #210585 San Francisco ADU Ordinance Update:
This Proposed Legislation Restricts Housing Development
During a HOUSING CRISIS; Please VOTE NO**

The City and County of San Francisco has a long history of enacting “restrictions” on housing development. Our very first zoning law, known as the Cubic Air Ordinance, was enacted during a period of rampant real estate speculation in the 1870s. The Cubic Air Ordinance required boarding houses to offer a minimum amount of space per tenant—supposedly a social “good.” However, the law’s true purpose, accord to Hunter Oatman-Stanford in his 2018 article, “Demolishing the California Dream: How San Francisco Planned its Own Housing Crisis,” was to criminalize Chinese renters and landlords so their jobs and living space could be reclaimed for San Francisco’s white residents, thereby “setting an ominous precedent” that continues today, in your consideration of File #210585, the ADU Ordinance. File #210585 was recommended for passage by the San Francisco Planning Commission on 9/2/21 and is now before your committee for recommendation. The proposed legislation has not yet been set on your agenda.

Down through the years until the equally disastrous 1978 Downzoning that even Rai Okamoto, the SF Planning Director at the time, expressed reservations about, the restrictions on housing development in San Francisco continued to be tightened. The minutes of the 6/27/1978 SF Planning Commission meeting ended with this conclusion, ***“As a result, the cost of housing may increase, and that with increasing housing costs, some population groups may find it difficult to live in San Francisco. The proposed zoning will affect the low-and-moderate income households more than any other group.”***

In two recent articles in the San Francisco Chronicle, Rich Hillis, the SF Planning Director (aka SF Planner Oligarch-in-Chief) was quoted as favoring “upzoning.”

These articles by Heather Knight were entitled #1 (7/24/21) "Go big or go home; SF supervisor juices housing legislation to allow fourplexes on every single family lot," and #2 (8/27/21) "One housing project has turned into an epic San Francisco battle."

In the 7/24/21 article, Hillis noted that San Francisco's zoning has meant a lot of development on the east side and too little on the west side. He stated "we've gotten what we've zoned for. We need to make changes if we're going to meet our housing goals, and fourplexes are part of the answer."

In the 8/27/21 article Knight wrote "Even Rich Hillis, the city's planning director agreed with the assessment that the culprit here is the city's own rules, which vastly limit new housing in wide swaths of the city despite the need for more housing." Hillis was quoted by Knight as stating "There was a lot to like about this proposal, but our 1960s-era code doesn't allow us to approve it."

Basically, Rich Hills has good public relations and access to reporters who write for our oligarchs. A good quote is a good quote. Basically, Hillis says he cannot do anything!

Land Use & Transportation Committee's Consideration of File #210585

And here he is, along with his legislative representative, Veronica Flores, proposing to prohibit TRIPLEXES in San Francisco in File #210585. Remember, he was quoted above pushing FOURPLEXES in those articles. And now he brings legislation before you that will prohibit fully legal (under state law) TRIPLEXES.

Here is the background. The new state ADU laws enacted in 2019 allow single family homeowners, and there are over 128,000 in San Francisco, to build TWO ADUs on their lot, one in the house and one in the backyard. That creates a TRIPLEX. This has been the law of the land in San Francisco since 1/1/2020.

Now comes SF Planning's proposal in File #210585 to eliminate this option. How can they do that? It is state law. Well if you have good lobbyists, and the City and County of San Francisco has good lobbyists in Sacramento, you can insert an "exception." And, lo and behold, in the midst of an existential HOUSING CRISIS, the city did succeed in getting this exception and now is utilizing this "exception"

in state law to propose in File #210585, to eviscerate the state's ADU law allowing TRIPLEXES.

And let's be clear; they are not making this easy for you to figure out! The proposed law, as Flores and Hillis will assure you, will allow TWO ADUs on a single lot in San Francisco, theoretically! That is TRUE. However, the devil is in the details and if you have a MASSIVE backyard in San Francisco, you can probably meet the conditions. On my lot at 466 Country Club Drive (In District 7, Myrna Melgar's district), the law that you are prepared to approve would allow a 16 square foot ADU. My proposal, as submitted on 2/19/21 under the state ADU law was for a 454 square foot ADU. The 16 square feet provided for by the proposed law you are about to approve does not meet the standards for habitable space in San Francisco which is a minimum of 120 square feet. There you have it, yes, theoretically triplexes are allowed under File #210585—and Hillis and Flores will forcefully state this—but they know you will not have the time and inclination to figure out their scam!

The law in front of you, File #210585, is unnecessary. State ADU laws are currently applicable in San Francisco and there is no requirement that a local ADU law be implemented, particularly when it DISCOURAGES housing development during a HOUSING CRISIS.

Purportedly, File #210585 is being proposed to allow “less restrictive” provisions for the Local ADU program as allowed by the state ADU program. On page 6 of the Executive Summary as prepared by Veronica Flores, there is a paragraph about “Ability to be Less Restrictive.” Two minor “less restrictive” points (impact fees and measuring of height) are described, thereby, described by Ms. Flores. ***Nowhere in the Executive Summary does Ms. Flores clearly describe the “ABILITY TO BE MORE RESTRICTIVE THAN STATE LAW,” points that File #201585 includes.*** That is quite interesting, is it not? In fact, the File #210585 and File #210699 (unanimously approved by your committee on October 18, 2021) will virtually shut off ADU development in San Francisco. And it will be done the same way that San Francisco officials enacted the Cubic Air Ordinance in the 1870s to rid the city of Chinese residents—without a clear discussion about the ACTUAL impact of complex and confusing legislation! History repeats itself quite often, and on a regular basis, in San Francisco!

Why is this law then being proposed?

1)SF PLANNING COMMISSIONER SUE DIAMOND'S BACKYARD FOCUS

If you go back and watch the 9/2/21 SF Planning Commission hearing and the previously proposed File #201008 one on 11/5/20, you will see the SF Planning Staff Member Veronica Flores playing up to a specific Planning Commissioner, Sue Diamond. Ms. Diamond is the proud homeowner of a single-family San Francisco residence appraised at \$6 million on a 4800 square foot lot and she has personally reaped a \$5 million, "something from nothing," San Francisco oligarch windfall by owning this property since 1990 when she paid \$891,000 for it. She likes her backyard!

Does File #210585 prohibit backyard ADUs in San Francisco. The answer is "NO." Therefore, Ms. Diamond's quest to ban backyard ADUs is not satisfied by File #210585. However, for the SF Planning staff to curry favor with the Commissioner (which they do to get their jobs done; and sometimes to get their jobs; looking at you, Mr. Hillis); they have to "play" to the audience. They know what they are doing; but in the world of zoning/planning complexity, it is very difficult for civilians, such as you and myself, to figure out (hence the steady growth in the employment of permit expeditors, including SF Planning Director Rich Hillis' employment of the notorious, unregistered "permit expeditor" Jeremy Paul, to ensure final approval of a second unit in his own home!)

Here is what #210585 actually does. It bans backyard ADUs in San Francisco only in situations where there is also an ADU in the house. That's two ADUs on one Single Family lot. Does that happen often? The UC Berkeley Turner Center for Housing Innovation just released a study in April 2021 about recent ADU homeowners and the study indicated that 97% of ADU homeowners had only ONE ADU at their home! So why all the fuss and commotion?

How many San Francisco homeowners have actually proposed to build TWO ADUs on their Single Family Lot since state law allowed it on 1/1/2020? EXACTLY ONE. Me! On 2/19/21, I applied for a permit to build TWO ADUs on my Single-Family Lot at 466 Country Club Drive. On October 4, 2021, Natalia Kwiatkowska of SF Planning, forcibly stated that unless I withdrew one, no ADU permit would be issued to me. This was before File #210585 was enacted by you, the people's

representatives at the Board of Supervisors. Don't ask...it is how SF Planning operates; they make the rules first; ask for your approval later; all while restricting new housing in San Francisco during a HOUSING CRISIS. You really do not want to know how that happens!

On October 22, 2021, I filed a "withdrawal" of my permit application for the 2nd ADU on my single-family lot at 466 Country Club Drive per Ms. Kwiatkowska's intimidating request. I was hoping to satisfy her and get my project moving forward. We will see!

2) SAN FRANCISCO REAL ESTATE OLIGARCHS (SF PLANNING DIRECTOR RICH HILLIS INCLUDED) BENEFIT FROM REDUCED HOUSING SUPPLY

Who has an interest in restricting new housing in San Francisco? Well, you know. Our existing real estate oligarchs do! With less housing available, their wealth increases. Mr. Hillis, the SF Planning Director, is an example. His multi-million dollar wealth has been solely derived by skillful manipulation of the SF Planning/Permitting rules and a strategic hire of a permit expeditor in 2018, Jeremy Paul. Hillis made good "hay" at his properties, 4983 17th Street, 830 Stanyan Street, and 417 Lyon Street. And next door, associates of Mr. Paul, utilized complex planning procedures to turn a \$1.6 million home (413 Lyon Street; right next door to Mr. Hillis' home) bought in 2018 into a \$5.5 million condominium complex sale on 9/9/21. With renovation costs, the profit was a cool \$3 million in 3 years of work! Mostly paperwork "work." How did they figure out how to utilize a condominium conversion law that required long-term occupancy as a flipper, well, you might not have to look too far to understand where they got that advice (next door!). Mr. Jeremy Paul, a notorious "permit operator," and Mr. Hillis have a "relationship," a very profitable one.

VOTE NO ON FILE #210585

I ask that you not approve the proposed legislation, File #210585. No legislation is needed. The state ADU laws apply to San Francisco already and in actuality ENCOURAGE ADU development. The alternative is for your names to be associated with voting to DISCOURAGE housing development during an existential HOUSING CRISIS in San Francisco. That will be some legacy!

Please ask the following TOUGH questions:

1) Your proposed legislation allows detached backyard ADUs in all 128,000 single family lots in San Francisco, correct? (ANSWER: YES)

2) Then why are you so intent upon banning a backyard ADU in the very few situations where there is possible a second ADU in the house, as allowed by state law? The UC Berkeley study found that 97% of ADU homeowners only had one ADU. Is this not a very rare circumstance that we are addressing with this legislation?

3) Exactly how many single-family homes in San Francisco do you foresee having two ADUs? Do any have two ADUs now?

4) Can we wait and see if we have an ACTUAL problem? Why must we ban something that may theoretically happen or not happen? Our time is valuable. We have big issues here at the Board of Supervisors-Crime, Evictions, Housing. And you want us to focus our precious attention on what, in the end, is a theoretical issue.

5) Does the proposed legislation, in any way, decrease Sue Diamond's enjoyment of her backyard?

6) Does the legislation, due to its opaqueness and complexity, enhance the ability of an individual, with the help of a permit expediter, to extract unforeseen benefits from the various confusing and complex provisions of the proposed legislation? Remember, Mr. Hillis' neighbors were able to extract \$3 million in windfall profits from a very similar "2 unit condominium" law we enacted for "long-term owners." There must have been a little "unforeseen" loop-hole in that complex law, or maybe it was just too complex for the staff to properly administer and a skilled expeditor knew which buttons to push. Are we not creating a similarly complex law here in File #210585, unnecessarily?

7) Does this legislation restrict housing development in San Francisco? If so, does it make existing San Francisco homeowners, the "real estate oligarchs" more wealthy?

8) Are you familiar with Mr. Mandler's proposal and permit applications for 466 Country Club Drive? Will this legislation prohibit Mr. Mandler's second ADU that he is privately financing?

ONE LAST QUESTION. Mr. Mandler submitted his permit applications many months prior to your presentation of File #210585 to our committee, the legislation that would prohibit his TWO ADU development on a single family lot in San Francisco. At the time he submitted his permit applications, such a development was LEGAL in San Francisco. How does it happen that the San Francisco Planning Department, under the leadership of Director Rich Hillis decides to declare something illegal, and then, only later, to seek legislation to be approved, AFTER THE FACT. Mr. Mandler attended Lowell High School. He had a Civics class. In that Civics class, he learned that legislation was proposed, then considered by the legislative body, here the Board of Supervisors, passed, and then sent on to the executive, the Mayor in this case, to sign. Only then was a law effective. Was Mr. Mandler's Civics class at Lowell High providing him with "fake news?" Or does Mr. Hillis and the SF Planning department just make up and impose "laws as they go.....?"

FILE #210585 IS DESIGNED TO RESTRICT HOUSING DEVELOPMENT IN SAN FRANCISCO DURING A HOUSING CRISIS; PLEASE VOTE NO.

Sincerely,

Kenneth Mandler
466 Country Club Drive
San Francisco, CA 94132
kenmandler@gmail.com

Attachment: File #210585



EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: September 2, 2021

90-Day Deadline: September 9, 2021

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

Recommendation: Approval

Planning Code Amendment

The proposed Ordinance would amend the Planning Code to clarify the ministerial approval process for certain Accessory Dwelling Units (ADUs) meeting certain requirements in single-family and multi-family buildings. The changes in the proposed Ordinance are required to bring the Planning Code into compliance with State law.

Before comparing the changes between the Planning Code today and the proposed Ordinance, it is important to understand that there are now two different categories of ADUs under State law. The City is required to act on all these ADUs within 60 days of receipt of a complete application and shall be ministerial. These State-Mandated ADUs have no discretionary action, are not subject to review under the California Environmental Quality Act (CEQA), no subjective design review, and have a shortened appeal window. A brief description is included below to help clarify the comparisons in the following table. In efforts to clarify the different types of ADUs, the names have been simplified since the November 2020 Commission hearings as follows.

- **State Program** (known as Streamlined ADUs in the proposed Ordinance): These ADUs are the most permissive in that the City has no ability to require Code compliance for anything that is not listed in State law; however, State Program ADUs are only permitted on properties where there are no other ADUs. This program allows one ADU (conversion, attached, or detached) per lot.
- **Hybrid Program** (known as Ministerial ADUs in the proposed Ordinance): These ADUs need to comply with all Planning Code requirements (e.g. rear yard, exposure, etc.), except for density and cannot

require a waiver. Number of ADUs (conversion, detached, and/or junior) allowed per this program varies. This most closely resembles what is allowed today under the Section 207(c)(6) or previously known as “No Waiver ADUs”. Additionally, Hybrid Program ADUs include a new type of ADU for existing and proposed single-family dwellings called the Junior ADU (JADU), which is described below.

- o **Junior ADUs:** Junior ADUs would be allowed within existing or proposed single-family dwellings. General eligibility requirements include, but are not limited to, the following:
 - Converting no more than 500 square feet of the existing or proposed single-family dwelling;
 - Owner occupancy in either the primary unit or JADU;
 - An entrance that is separate from the main entrance of the primary unit;
 - Must include an efficiency kitchen; and
 - May or may not include shared sanitation facilities.

For further details, see the [ADU Programs Comparison Handout](#) available on the Planning Department website.

The Way It Is Now	The Way It Would Be
Review timeline: The Department is required to complete review of an ADU within 120 days from receipt of a complete application.	The City would be required to act on a permit for an ADU or JADU under State law within 60 days from receipt of a complete application.
Articles 10 and 11: ADUs proposed within Article 10 and 11 buildings and districts would be required to comply with architectural review standards as adopted by the Historic Preservation Commission. These projects are not subject to the Certificate of Appropriateness or Permit to Alter review processes.	Articles 10 and 11 would explicitly exempt State and Hybrid Program ADUs and JADUs proposed within landmark buildings and districts from Certificate of Appropriateness and Permit to Alter review processes.
Planning Code compliance: State-Mandated ADUs (also known as No Waiver ADUs) must comply with all Planning Code requirements except for density limitations.	Hybrid Program ADUs would still require Planning Code compliance except for density. However, State Program ADUs would not be required to comply with Planning Code requirements that are not listed in State law.
Impact fees: All ADUs are subject to impact fees, which are calculated based on standard thresholds such as adding a new unit or square footage.	State and Hybrid Program ADUs smaller than 750 square feet would be exempt from impact fees. State and Hybrid Program ADUs proposed on properties with three or fewer units would also be exempt from impact fees. State and Hybrid Program ADUs 750 square feet or larger would be subject to a reduced impact fee. The reduced impact fee would be based on the ADU’s proportion in relation to the primary unit for single-family dwellings, or the average of existing units for multi-family dwellings.
Noticing for single-family dwellings: All ADUs proposed within existing or new construction single-family dwellings require a 30-day notice posted at the	ADUs proposed within an existing or new construction single-family dwelling that have tenant(s) would be required to complete either a) the

The Way It Is Now	The Way It Would Be
<p>property, a mailed notice, and an online notice. The Planning Department issues such notices during the 120-day review timeframe.</p>	<p>Department of Building Inspection (DBI) Screening Form, if applicable or b) if the DBI Screening Form is not applicable, send a notice per the Planning Code requirements. Proof of this notice needs to be submitted with a complete application.</p>
<p>Density: One ADU is permitted in an existing or new construction single-family dwelling or existing authorized detached structure. Proposed ADUs may be located within non-habitable space and may take habitable space away from an existing dwelling.</p>	<p>One State Program ADU (conversion, attached, or detached) would be permitted for existing or proposed single- or multi-family dwellings so long as there are no other ADUs on the properties.</p> <p>Hybrid Program ADUs would be permitted as follows:</p> <p>Existing or new construction single-family dwellings or existing authorized detached structures would be permitted to add one ADU (conversion or detached) and/or one JADU.</p> <p>Existing multi-family dwellings would be permitted to add either 1) one conversion ADU or up to 25% of the existing number of legal dwelling units within the primary structure, whichever is greater, or 2) up to two detached ADUs.</p>
<p>Size restrictions: ADUs proposed within an existing or proposed single-family dwelling or within an existing authorized detached structure are limited to 1,200 square feet in size.</p>	<p>Hybrid Program detached ADUs would be permitted up to 800 square feet for properties with existing or proposed single-family dwellings. JADUs would be permitted up to 500 square feet within existing or proposed single-family dwellings.</p> <p>State Program detached ADUs would be permitted up to 850 square feet for studio and one-bedrooms and up to 1,000 square feet for two or more bedrooms for existing or proposed single- or multi-family dwellings. Additionally, if there is an existing dwelling, State Program attached ADUs have the following size restrictions: a) studios and 1-bedroom ADUs would be permitted up to 850 sf or 50% of existing primary dwelling, whichever is greater and b) ADUs with two or more bedrooms would be permitted up to 1,000 sf or 50% of existing primary dwelling, whichever is greater.</p>
<p>Expansions: Existing authorized detached structures may be expanded with dormers. If said structure is</p>	<p>The specific provisions related to expansions on existing authorized detached structures would be removed since detached ADUs would be permitted</p>

The Way It Is Now	The Way It Would Be
located on a corner lot, an additional story above the existing footprint is permitted.	per State law. However, Hybrid Program ADUs on properties with an existing or proposed single-family dwelling may expand an existing authorized detached structure by up to 150 square feet to accommodate ingress/egress.
Height: ADUs must comply with the height requirements	<p>State Program ADUs (attached and detached) would be limited to 16 feet in height.</p> <p>Hybrid Program detached ADUs would be limited to 16 feet in height.</p> <p>Further, detached ADUs located outside of the buildable area (only allowed under the State Program) would be measured from existing grade at any given point to either a) the highest point of a finished roof in the case of a flat roof or b) the average height of a pitched roof or stepped roof, or similarly sculptured roof form.</p>
Setbacks: ADUs must comply with all required setbacks.	<p>State Program ADUs (attached and detached) would require a setback of four feet from the side and rear property lines. No setback is required if the ADU is located within an existing living area or an existing accessory structure, or an ADU that replaces an existing structure, is in the same location, and constructed to the same dimensions as the structure being replaced.</p> <p>Hybrid Program detached ADUs would require a setback of four feet from the side and rear property lines and need to comply with all local Planning Code setback requirements.</p>
TECHNICAL CLARIFICATIONS FOR LOCAL PROGRAM	
Noticing for Waiver Program: Notice is required for new construction or expansions that are not exempt from noticing.	Notice would only be required for any proposed new construction building, not for any scopes of work related to the ADU itself.
Waivers: Waivers may be granted for ADUs added to existing buildings under the Waiver Program.	Waivers may only be granted for ADUs proposed within existing buildings. ADUs proposed within new construction buildings may only be granted the density waiver.

Background

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

San Francisco first adopted a local ADU program in 2014 and made several updates since the initial inception both in response to changes to the State law and to improve the City's local ADU program. The most recent ADU changes prior to this Ordinance occurred in 2019, which allowed ADUs in new construction. The proposed Ordinance will update San Francisco's ADU programs to comply with the latest amendments to the State law, per Section 3 of [Senate Bill 13](#), Section 2 of [Assembly Bill 68](#), and Section 1.5 of [Assembly Bill 881](#), all of which were effective beginning January 1, 2020. The proposed Ordinance also incorporates changes made to State law under [Assembly Bill 3182](#), which was effective beginning January 1, 2021. All these changes are required to bring our local code into compliance with State law. Additionally, the proposed Ordinance will clarify the ministerial approval process, restructure the Code to make it more legible to read, and provide technical clarifications.

This Ordinance is the continuation of [Board File 201008](#) which was filed on May 3, 2021. The only changes within this new Ordinance compared to the prior Ordinance includes clarifications or changes required by State law, as well as incorporating the recommended modification from both the Historic Preservation and Planning Commissions from the November 2020 hearings.

Issues and Considerations

Housing Stock

San Francisco and the Bay Area have a housing shortage. The Planning Department is working to meet these housing needs. In the City's Housing Element, Objective One specifically cites ADUs as an effective way to add to the housing stock. The ADU program helps create new dwelling units, mostly through infill efforts. The initial ADU pilot program in the Castro District in 2014 has now grown into the robust ADU programs of today. This is a testament to the success of the ADUs and why the ADU program continues to grow and evolve. The Ordinance will build on these efforts by allowing for more opportunities to build ADUs.

The Housing Element cites Accessory Dwelling Units as an effective and inexpensive way to realize greater housing potential and add to the housing stock.

Ministerial Overview

The latest State law amendments clarify the ministerial review for ADUs in single-family and multi-family dwellings. Ministerial review for such ADUs is defined as follows:

- No subjective design review except for standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places
- Not subject to review under the California Environmental Quality Act (CEQA)
- Not subject to Planning Code Section 311 neighborhood notification requirements
- No discretionary review opportunity

Additionally, the State-Mandated ADUs are also subject to a shortened appeal window requiring that the appeal be heard within 10-30 days from appeal filing.

Another important distinction is that ADUs approved under State law are not subject to the rent stabilization provisions of the San Francisco Rent Ordinance. ADUs added under the Local ADU Program are subject to Rent Control when a complete or partial waiver, or an administrative exception, is granted from the Planning Code requirements and when the lot contains a Rental Unit. State-Mandated ADUs do not receive waivers and thus there is no opportunity to impose Rent Control on such ADUs.

While these ministerial ADUs are subject to State law, we are still maximizing the number of ADUs we can subject to Rent Control. In some cases, the Local ADU Program offers more opportunities for ADUs, including potentially an unlimited number of ADUs in certain cases. If the property is eligible for more than one program, the property owner will be able to decide which program best suits their needs.

Ability to be Less Restrictive

The proposed Ordinance is implementing only what is required by State law, except for the following items:

- *Exempting impact fees for State and Hybrid Program ADUs proposed on properties with three or fewer units.* The proposed Ordinance exempts more ADUs from impact fees than required by State law in efforts to incentivize more ADUs.
- *The way height is measured for Hybrid Program detached ADUs.* The proposed Ordinance clarifies this height measurement as it is not currently defined under State law.

State law permits local jurisdictions to legislate changes that are less restrictive, so long as the minimum requirements under State law are still allowed. The Department recommends the Commission consider potential changes (if any) at a later date.

Junior ADUs

State law introduces a new type of ADU within single-family dwellings: a Junior ADU (JADU), which can convert up to 500 square feet of habitable space from the primary unit. The JADU requires their own entrance separate from the main entrance of the primary dwelling and an efficiency kitchen for the ADU.

This proposed change better accommodates multi-generational households, which has been a recurring concern for San Francisco residents. Intergenerational living has increased further under the current COVID-19 conditions and job uncertainties. However, JADUs are a stark contrast to the current “Zoning Administrator Bulletin: Rooms Down” policy, a set of standards that encourages additional habitable space on the ground floor of residential buildings without creating illegal units. The JADU option now allows for an efficiency kitchen in the additional habitable space on the ground floor, discounting the Rooms Down policy that currently prevents this. The Rooms Down Policy was reevaluated, partly due to the new State law changes, and has recently been repealed as described below.

Update on Zoning Administrator Interpretations

Pursuant to Planning Code Section 307(a), the Zoning Administrator issues rules, regulations, and interpretations they deem necessary to administer and enforce the provisions of the Code. Formal interpretations are listed within the Planning Code, as well as a series of topical bulletins (i.e. neighborhood notice, bicycle parking, affordable housing, etc.).

During the November 2020 hearings, the Zoning Administrator provided a brief preview of forthcoming interpretations. On March 22, 2021, the Zoning Administrator issued a sizeable set of amendments to existing interpretations and bulletins which are available in a [memo](#) on the Planning Department website. Many of these interpretations pertain to housing-related definitions and controls, including those related to ADUs. The need for these amendments and new interpretations stem from new local and state programs in recent years (i.e. ADUs, Unauthorized Dwelling Units, density bonus programs, etc.), new types of development proposals, and the evolving nature and impacts of the COVID-19 pandemic.

Most of these interpretations are technical and minor in nature, but some will have potentially greater impact. Specifically, the “Rooms Down” bulletin (Zoning Administrator Bulletin No. 1), which limits the development of ground floor spaces in existing Dwelling Units to help prevent the creation of Unauthorized Dwelling Units has been repealed. This transition serves to better respond to our evolving ADU programs and the Code requirement to legalize Unauthorized Dwelling Units. Additional interpretations relate to dwelling unit exposure, housing-related definitions (i.e. Dwelling Unit and Group Housing), and a variety of other issues.

Delegation Agreement and Historic Preservation

Since the November 2020 hearings, staff revised the Historic Preservation Delegation Agreement, including items related to review of ADUs. State law allows the local jurisdictions to implement objective architectural review standards. The Historic Preservation Commission adopted “Accessory Dwelling Units Architectural Review Standards” via [Resolution No. 1041](#) on April 3, 2019. Some of these objective standards now conflict with new State law requirements. During the November 4, 2020 State-Mandated ADUs hearing, the Historic Preservation and Planning Commissions expressed desire to retain reference to these objective review standards where appropriate. In response, the relevant objective review standards that are still compliant with State law have been incorporated into the Delegation Agreement. The revised Delegation Agreement appeared in front of the Historic Preservation Commission on August 4, 2021 and is now in effect.

Mid-Block Open Space

The proposed Ordinance permits Streamlined detached ADUs in the required rear yard so long as the ADU complies with the following requirements listed in the table below.

	State Detached ADUs
Number of ADUs permitted	1
Height	16 feet
Rear and side setbacks	4 feet
Square footage	850 for studio & 1-bedroom ADUs 1,000 for 2+ bedroom ADUs

These detached ADUs may encroach into the mid-block open space, pending on the proposed location of the ADU and the size of the lot. The required side and rear setbacks and height limitations per State law provide some relief between properties; however, some proposed ADUs may cause minor light or privacy issues that the Commission is typically concerned about. In the case where the proposed ADU complies with these requirements, the Commission would have no opportunity to weigh in on such concerns. If neighbors opposed the detached ADU within the mid-block open space, they would only be able to appeal directly to the Board of Appeals without the opportunity to make their case in front of Planning Commission like they can today. In the case of such an appeal, the Board of Appeals would not have discretion over the project and would be limited to verifying if the State law requirements were followed or not.

Hybrid Program detached ADUs still need to be located within the buildable area of the lot. In this case, the proposed location of the ADU(s) will likely still be in keeping with the general pattern of the neighborhood block.

Tenant Noticing

The Ordinance removes a noticing requirement for single-family dwellings that was added in 2019 and replaces it with new noticing requirements, which apply only if there is a tenant in a single-family home. No Waiver ADUs in single-family dwellings currently require a 30-day notice, even if there is no tenant. It is not logical to require sending a notice to the property owner if they are the only residents in the dwelling. If there is a tenant at the property, the Ordinance would require the property owner to submit one of the following with their permit application:

- A copy of a completed Department of Building Inspection [Screening Form](#), if applicable.
- Posting a 15-day notice at the property and mailing the notice to all tenants. If electing this option, the notices must comply with the Planning Code requirements.

This change ensures that tenants are notified in advance of a new ADU permit and removes the unnecessary notice for owners when there are no tenants impacted. Additionally, the proposed Ordinance requires that this outreach is completed before the ADU permit application is submitted. This earlier timeframe would also help the City ensure the new 60-day review timeframe is met and would provide an earlier opportunity for any impacted tenant(s) to engage with property owner.

Supervisor Mandelman introduced a separate piece of legislation under [Board File 210699](#), which is scheduled to appear before the Planning Commission on September 9, 2021. This Ordinance requires that all Local ADU Program applicants submit a declaration to the Rent Board with a written description of housing services that are located where the ADU(s) are proposed; whether ADU construction would result in severance, reduction, or removal of housing services; and the just cause for the aforementioned. Tenants would have the opportunity to contest the information provided in the declaration and petition the Rent Board for a written determination verifying the presence and defining characteristics of the housing service(s) in question. If no petition is filed, the Rent Board would have 30 days to transmit the declaration to Planning Department. If a petition is filed, the Rent Board would have 90 days to transmit the declaration and their written determination to the Planning Department. The Planning Department would not be able to approve an ADU under the Local Program if either 1) the Rent Board declaration is missing or 2) the Rent Board declaration indicates that the ADU construction would result in severance, reduction, or removal of housing services without just cause.

Timeline for Review

Since the launch of the initial ADU program, the Planning Department has improved efforts to more effectively and efficiently review ADU permits. To help facilitate review, the Planning Department has created a team of ADU specialists. Effective August 2018, Planning established an ADU counter with dedicated staff at the DBI permit center. Due to COVID-19 related impacts, this physical counter has transitioned into electronic format and dedicated ADU planners are available for virtual appointments or via email.

The Planning Department has also collaborated more with other City agencies involved in the review of ADUs and introduced parallel review efforts. One of the biggest time-savings has been the “Roundtable” review where different City agencies meet and review ADU permits together. This allows the City to discuss any conflicting policies and provide applicants with consolidated comments. Additionally, staff review and this “Roundtable” have shifted to an electronic format during the COVID-19 pandemic to ensure the review timeframes are still met.

Beginning November 2020, the Planning Department took on the role of accepting and issuing all new ADU permits to temporarily assist DBI during the COVID-19 pandemic. This effort has led to truly concurrent review and numerous process improvements.

The State law ([Senate Bill 1069](#)), effective January 1, 2017, required jurisdictions to complete approval of Code-complying ADUs in single-family homes within 120 days. The proposed Ordinance requires jurisdictions to act on these ministerial ADU permits within 60 days of receipt of a complete application. The Department is unable to estimate how many or what percentage of ADU permits would trigger this new timeline; however, there has been much public and applicant interest in this Ordinance. That said, the Department will continue to refine internal review processes and work with other City agencies to ensure the new 60-day review timeframe is met.

General Plan Compliance

The General Plan identifies ADUs as an effective and inexpensive way to increase the housing supply. The Ordinance retains existing housing units and prioritizes permanently affordable housing. Additionally, the proposed amendments would expand the ADU program providing more opportunities to add to the housing stock.

Racial and Social Equity Analysis

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

ADUs are permitted both within existing and new construction buildings. Naturally, adding ADUs within existing structures is much cheaper than new construction projects. However, households with lower incomes pursuing ADUs may experience disproportionate costs in general. The same permit and construction costs may require a much larger percentage of their income compared to moderate-income households. This may be a barrier for lower-income households to pursue ADUs, in which case they do not benefit from the ADU program or the proposed Ordinance. One consideration to help alleviate such financial burden may include a permit or fee waiver for low-income households. Supervisor Mar launched a pilot program in District 4 in September 2020 to provide professional services to 25 qualifying households interested in adding ADU(s) on their property using grant monies awarded by the State. The pilot program's goals include 1) providing services to lower-income households that otherwise would not be able to afford to hire an architect/developer and 2) to better understand what barriers lower-income households encounter when pursuing an ADU. If successful, the Department recommends the pilot program be modified and expanded to benefit the entire city, pending funding availability.

Implementation

The Department has determined that this Ordinance will impact our current implementation procedures in that State-Mandated ADUs will be subject to a 60-day review timeframe. This is half the time prescribed in Mayoral Directive No. 17-02 which required ADUs be acted upon within 120 days of receipt of a complete application. The Department already collaborates with other City agencies for ADU review. Below includes a list of changes and other measures the Department will take to help achieve the 60-day timeframe:

- This 60-day timeframe is more feasible for State Program ADUs, which requires less review time since staff would review the ADU based on the strict State law requirements, rather than for full Planning Code compliance.
- The City's fully concurrent electronic review allows all required Agencies to review ADU applications for completeness at the same time. This will help ensure the 60-day time clock only starts when we have all the required information.
- Today, staff issues the 30-day notice during the 120-day review timeframe for all single-family dwellings. For single-family dwellings with tenants, outreach and noticing would be required before submitting an application. This helps inform the tenant earlier, but also removes that noticing period from the 60-day clock.

Recommendation

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

Basis for Recommendation

The Department supports the proposed Ordinance because it supports the Housing Element's goals to ensure adequate housing for current and future San Franciscans. Specifically, the Ordinance increases the potential for Accessory Dwelling Units by bringing the Planning Code into compliance with State law. These changes are

significant and far reaching as is, and before more relaxed controls are considered staff recommends only adopting what State law requires and then refining later after we can assess the program.

Update on Forthcoming Amendments

The Department is working on future legislation that would serve two primary purposes:

1. **Reorganize the ADU Planning Code subsections.** The ADU code subsection is currently housed within Planning Code Section 207, Dwelling Unit Density Limits. The ADU Programs have evolved tremendously since the original pilot program in the Castro. The goal is to take the ADU Program language within Section 207 and move it to its own section, like other density bonus programs such as HOME-SF. This move will make the ADU Programs section easier to read, understand, and use.
2. **Incentivize the Local ADU Program.** Recent changes to State law have been difficult to apply to San Francisco, which has a unique urban fabric compared to the rest of the State. In some cases, the height and building envelope permitted under State law do not match the neighborhood context, but the City has no choice but to approve if compliant with State law. Additionally, there is the concern that ADUs proposed under the State and Hybrid ADU Programs will not result in a Rent Control unit for the City. The Department is crafting ways to make it easier to apply for and more appealing to pursue an ADU under the Local Program.

The Department will continue working on this legislation with a goal to have it ready to be Initiated at Planning Commission during the 2021-2022 fiscal year.

Required Commission Action

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

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

Public Comment

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

Attachments:

- Exhibit A: Draft Planning Commission Resolution
Exhibit B: Board of Supervisors File No. 210585

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PLANNING COMMISSION DRAFT RESOLUTION

HEARING DATE: September 2, 2021

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

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE TO CLARIFY THE MINISTERIAL APPROVAL PROCESS FOR CERTAIN ACCESSORY DWELLING UNITS MEETING CERTAIN REQUIREMENTS IN SINGLE-FAMILY AND MULTIFAMILY BUILDINGS; AFFIRMING THE PLANNING DEPARTMENT’S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; AND ADOPTING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

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

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 2, 2021; and,

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

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of

Department staff and other interested parties; and

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

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

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

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

Findings

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

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

General Plan Compliance

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

HOUSING ELEMENT

OBJECTIVE 1

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

Policy 1.5

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

OBJECTIVE 3

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

Policy 3.4

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

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

Planning Code Section 101 Findings

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

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

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

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

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

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

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

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

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

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

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

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

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

7. That the landmarks and historic buildings be preserved.

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

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

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

Planning Code Section 302 Findings.

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

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

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 2, 2021

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: September 2, 2021

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

2

3 **Ordinance amending the Planning Code to clarify the ministerial approval process for**
4 **certain Accessory Dwelling Units meeting certain requirements in single-family and**
5 **multifamily buildings; affirming the Planning Department’s determination under the**
6 **California Environmental Quality Act; making findings of consistency with the General**
7 **Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting**
8 **findings of public necessity, convenience, and welfare under Planning Code, Section**
9 **302.**

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

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

18

19 Section 1. Findings.

20 (a) The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
23 Supervisors in File No. 210585 and is incorporated herein by reference. The Board affirms
24 this determination.

25 (b) On _____, the Planning Commission, in Resolution No. _____,
adopted findings that the actions contemplated in this ordinance are consistent, on balance,
with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
2 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
4 ordinance will serve the public necessity, convenience, and welfare for the reasons stated in
5 Planning Commission Resolution No. _____.

6
7 Section 2. The Planning Code is hereby amended by revising Sections 102, 207,
8 1005, and 1110, to read as follows:

9
10 **SEC. 102. DEFINITIONS.**

11 * * * *

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

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

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

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

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

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

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

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

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

12 * * * *

13
14 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

15 * * * *

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

18 * * * *

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

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

24 **(B) Applicability.** This subsection (c)(4) shall apply to the construction
25 of ~~Accessory Dwelling Units~~ ADUs on all lots located within the City and County of San Francisco

1 in areas that allow residential use, except ~~that construction of an Accessory Dwelling Unit is ADUs~~
2 regulated by subsection (c)(6) below, ~~and not this subsection (e)(4), if all of the following~~
3 ~~circumstances exist:~~

4 (i) ~~only one ADU will be constructed;~~

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

7 (iii) ~~the ADU is either attached to or will be constructed entirely~~
8 ~~within the “living area” (as defined in subsection (e)(6)(B)(iii)) or the buildable area of an the~~
9 ~~proposed or existing primary dwelling single-family home, or constructed within the built envelope of~~
10 ~~an existing and authorized auxiliary structure on the same lot; provided, however, that (A) when a~~
11 ~~stand-alone garage, storage structure, or other auxiliary structure is being converted to an ADU, an~~
12 ~~expansion to the envelope is allowed to add dormers even if the stand-alone garage, storage structure,~~
13 ~~or other auxiliary structure is in the required rear yard and (B) on a corner lot, a legal stand-alone~~
14 ~~nonconforming garage, storage structure, or other auxiliary structure may be expanded within its~~
15 ~~existing footprint by up to one additional story in order to create a consistent street wall and improve~~
16 ~~the continuity of buildings on the block.~~

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

19 (v) ~~the permit application does not include seismic upgrade work~~
20 ~~pursuant to subsection (e)(4)(F).~~

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

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

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

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

18 (iii) Except as provided in subsections (i) ~~v~~ and (iv) below, an
19 ~~Accessory Dwelling Unit~~ADU shall be constructed a. entirely within the buildable area of an
20 existing lot, provided that the ADU does not exceed the existing height of ~~an existing the~~
21 building in which it is constructed, or b. within the built envelope of an existing and authorized
22 ~~stand-alone~~detached garage, storage structure, or other ~~auxiliary~~detached structure on the same
23 lot, ~~as the built envelope existed three years prior to the time the application was filed for a building~~
24 ~~permit to construct the ADU. For purposes of this subsection 207(c)(4), a "detached" structure or~~
25 ADU shall not share structural walls with either the primary structure or any other structure on the lot.

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

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

22 (iv) On a corner lot, a legal ~~stand-alone detached~~ nonconforming garage,
23 storage structure, or other auxiliary structure may be expanded within its existing footprint by
24 up to one additional story in order to create a consistent street wall and improve the continuity
25 of buildings on the block.

1 (vi) ADUs shall comply with any applicable controls in Planning Code Section
2 134(f).

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

10 (viii) An existing building undergoing seismic retrofitting may be eligible
11 for a height increase pursuant to subsection (c)(4)(F) below.

12 (~~xix~~) Notwithstanding any other provision of this Code, an *Accessory*
13 *Dwelling Unit* ADU authorized under this Section 207(c)(4) may not be merged with an original
14 unit(s).

15 (~~xviii~~) An *Accessory Dwelling Unit* ADU shall not be permitted in any
16 building in a Neighborhood Commercial District or in the Chinatown Community Business or
17 Visitor Retail Districts if it would eliminate or reduce a ground-story retail ~~or commercial~~ space.

18 (xi) *An application for a permit to construct an ADU in a proposed building*
19 *pursuant to this subsection 207(c)(4)(C) shall not be subject to the notification requirements of Section*
20 *311 of this Code. The application for a permit to construct the proposed building shall be subject to any*
21 *applicable notification requirements of Section 311 of this Code.*

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

25

1 (E) **Restrictions on Subdivisions.** Notwithstanding the provisions of Article
2 9 of the Subdivision Code, a lot with an *Accessory Dwelling Unit*ADU authorized under this
3 Section 207(c)(4) shall not be subdivided in a manner that would allow for the ADU to be sold
4 or separately financed pursuant to any condominium plan, housing cooperative, or similar
5 form of separate ownership; ~~provided, however, that~~ This prohibition on separate sale or
6 finance of the ADU shall not apply to an ADU in a building that (i) within three years prior to July
7 11, 2016 was an existing~~consisted entirely of~~ condominium with no Rental Unit as defined in Section
8 37.2(r) of the Administrative Code units as of July 11, 2013, and (ii) has had no evictions pursuant
9 to Sections 37.9(a) through 37.9(a)(12) and 37.9(a)(14) of the Administrative Code within 10
10 years prior to since July 11, 2011 1996. This prohibition on separate sale or finance of the ADU shall
11 not apply to an ADU that meets the requirements of California Government Code Section 65852.26.

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

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

21 (ii) May expand a noncomplying structure, as defined in Section
22 180(a)(2) of this Code and further regulated in Sections 172, 180, and 188, without obtaining
23 a variance for increasing the discrepancy between existing conditions on the lot and the
24 required standards of this Code.

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

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

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

11 Pursuant to the provisions of Section 307(l) of this Code, the Zoning Administrator may grant
12 ~~an Accessory Dwelling Unit~~ a complete or partial waiver of the density limits and bicycle
13 parking, rear yard, exposure, or open space standards of this Code for ADUs constructed within
14 an existing building, and may grant a waiver of the density limits of this Code for ADUs constructed
15 within a proposed building. If the Zoning Administrator grants a complete or partial waiver of the
16 requirements of this Code and the subject lot contains any Rental Units at the time an
17 application for a building permit is filed for construction of the ~~Accessory Dwelling Unit~~ADU(s),
18 the property owner(s) shall enter into a Regulatory Agreement with the City under subsection
19 (c)(4)(H) subjecting the ADU(s) to the San Francisco Residential Rent Stabilization and
20 Arbitration Ordinance (Chapter 37 of the Administrative Code) as a condition of approval of
21 the ADU(s). For purposes of this requirement, Rental Units shall be as defined in Section
22 37.2(r) of the Administrative Code.

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

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

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

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

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

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

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

25 (l) **Monitoring Program.**

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

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

18 (iii) **Department Report.** ~~As part of the annual Housing Inventory, the~~
19 Department shall ~~publish a~~ report ~~annually until April 1, 2019, that describes and evaluates~~ the
20 types of units being developed ~~pursuant to this subsection 207(c)(4), and~~ their affordability rates,
21 ~~as well as~~ their use as Short-Term Residential Rentals, ~~and. The report shall contain~~ such
22 additional information as the Director or the Board of Supervisors determines would inform
23 decision makers and the public on the effectiveness and implementation of this subsection
24 207(c)(4), and shall include recommendations for any amendments to the requirements of this
25 Section 207(c)(4). ~~The Department shall transmit this report to the Board of Supervisors for its~~

1 ~~review and public input. In subsequent years, this information on Accessory Dwelling Units shall be~~
2 ~~reported annually in the Housing Inventory.~~

3 * * * *

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

7 (A) **Applicability.** This subsection 207(c)(6) shall apply to the construction of
8 ~~Accessory Dwelling Units~~ADUs and Junior Accessory Dwelling Units (“JADUs”) (as defined in
9 Section 102) in existing or proposed ~~single-family homes~~dwellings, or in a detached ~~auxiliary~~
10 structure on the same lot, if the ADU meets the applicable requirements of this
11 subsection 207(c)(6). An ADU constructed pursuant to this subsection is considered a
12 residential use that is consistent with the General Plan and the zoning designation for the lot.
13 ~~Adding one~~ an ADU or JADU in compliance with this subsection 207(c)(6) to an existing or proposed
14 ~~single-family home or in a detached auxiliary structure on the same lot~~ does not exceed the
15 allowable density for the lot. Unless otherwise specified, for purposes of this subsection 207(c)(6), a
16 “detached” structure or ADU shall not share structural walls with either the primary structure or any
17 other structure on the lot. If construction of the ADU will not meet the requirements of this
18 subsection ~~and the ADU cannot be constructed without a waiver of Code requirements pursuant to~~
19 ~~subsection (c)(4)(G)~~, the ADU is regulated pursuant to subsection 207(c)(4) and not this
20 subsection 207(c)(6).

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

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

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

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

12 (iiv) The ADU must have independent exterior access from the existing
13 or proposed primary dwelling or existing accessory structure, and side and rear setbacks
14 sufficient for fire safety.

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

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

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

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

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

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

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

16 (x) ~~When the ADU involves expansion of the built envelope of an existing~~
17 ~~primary dwelling, or an expansion of the built envelope of an existing and authorized stand-alone~~
18 ~~garage, storage structure, or other auxiliary structure on the same lot, or the construction of a new~~
19 ~~detached auxiliary structure on the same lot, the total floor area of the ADU shall not exceed 1,200~~
20 ~~square feet.~~

21 (C) ~~**Permit Application Review and Approval.** The Department shall approve an~~
22 ~~application for a permit to construct an Accessory Dwelling Unit within 120 days from receipt of the~~
23 ~~complete application, without modification or disapproval, if the proposed construction fully complies~~
24 ~~with the requirements set forth in subsection (c)(6)(B). No requests for discretionary review shall be~~
25 ~~accepted by the Planning Department for permit applications meeting the requirements of this~~

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

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

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

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

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

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

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

24 ~~(H) — **Notification.** Upon determination that an application is in compliance with the~~
25 ~~standards of subsection 207(e)(6) of the Planning Code, the Planning Department shall cause a notice~~

1 ~~to be posted on the site pursuant to rules established by the Zoning Administrator and shall cause a~~
2 ~~written notice describing the proposed project to be sent in the manner described below. This notice~~
3 ~~shall be in addition to any notices required by the Building Code and shall have a format and content~~
4 ~~determined by the Zoning Administrator. This notice shall include a description of the proposal~~
5 ~~compared to any existing improvements on the site with dimensions of the basic features, elevations~~
6 ~~and site plan of the proposed project including the position of any adjacent buildings, exterior~~
7 ~~dimensions and finishes, and a graphic reference scale, existing and proposed uses or commercial or~~
8 ~~institutional business name, if known. The notice shall describe the project review process and shall set~~
9 ~~forth the mailing date of the notice.~~

10 (i) ~~Written notice shall be mailed to the project sponsor and tenants of the~~
11 ~~subject property. Written notice shall also be mailed to tenants of the subject property in unauthorized~~
12 ~~residential units.~~

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

20 (iii) ~~The written notice shall describe whether the project is a demolition, new~~
21 ~~construction or alteration project. If the project is an alteration, the type of alteration shall be~~
22 ~~described: horizontal, vertical, or both horizontal and vertical additions, and where the alteration is~~
23 ~~located.~~

1 ~~the information set forth in subsection 207(c)(6)(h)(ii)-(v) in the languages spoken by a Substantial~~
2 ~~Number of Limited English Speaking Persons, as defined in Administrative Code Chapter 91.~~

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

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

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

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

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

1 Floor Area, 16 feet or less in height, and with four foot side and rear yard setbacks. ADUs under this
2 subsection 207(c)(6)(D) shall meet the following conditions:

3 (i) Only one ADU will be constructed.

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

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

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

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

19 (vi) The Gross Floor Area of a detached ADU that provides one bedroom
20 shall not exceed 850 square feet. The Gross Floor Area of a detached ADU that provides more than
21 one bedroom shall not exceed 1,000 square feet.

22 (vii) **Setbacks.** No setback is required for an ADU located within an existing
23 living area or an existing accessory structure, or an ADU that replaces an existing structure and is
24 located in the same location and constructed to the same dimensions as the structure being replaced. A
25 setback of no more than four feet from the side and rear lot lines shall be required for an ADU that is

1 not converted from either an existing structure or a new structure constructed in the same location and
2 to the same dimensions as an existing structure.

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

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

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

13 (i) Comply with the requirements of the Building Code and applicable
14 Department of Building Inspection screening forms, and submit a copy of any applicable Department of
15 Building Inspection Screening forms to the Planning Department as part of the application to construct
16 an ADU or JADU; or

17 (ii) Cause a notice describing the proposed project to be posted on the
18 subject property for at least 15 days, cause a written notice describing the proposed project to be
19 mailed to the tenants of the subject property, and submit proof of these notices to the Planning
20 Department as part of the application to construct an ADU or JADU. These notices shall have a
21 format and content determined by the Zoning Administrator, and shall generally describe the project,
22 including the number and location of the proposed ADU and JADU. These notices shall describe how
23 to obtain additional information regarding the project and provide contact information for the
24 Planning Department that complies with the requirements of the Language Access Ordinance, Chapter
25 91 of the Administrative Code, to provide vital information about the Planning Department's services

1 or programs in the languages spoken by a Substantial Number of Limited English Speaking Persons, as
2 defined in Chapter 91.

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

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

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

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

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

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

7 (iii) The size and attributes of a JADU constructed pursuant to this subsection
8 207(c)(6) shall comply with the requirements of this subsection 207(c)(6) and Government Code
9 65852.22.

10 (J) **Department Report.** In addition to the information required by subsection
11 207(c)(4)(I)(iii), the annual Housing Inventory shall include a description and evaluation of the
12 number and types of units being developed pursuant to this subsection (c)(6), their affordability rates,
13 and such other information as the Director or the Board of Supervisors determines would inform
14 decision makers and the public.

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

20 * * * *

23 **SEC. 1005. CONFORMITY AND PERMITS.**

24 * * * *

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

13 * * * *

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

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

20 * * * *

21
22 **SEC. 1110. CONSTRUCTION, ALTERATION OR DEMOLITION OF SIGNIFICANT**
23 **OR CONTRIBUTORY BUILDINGS OR BUILDINGS IN CONSERVATION DISTRICTS.**

24 * * * *

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

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

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

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

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

18
19 Section 3. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor's veto of the ordinance.

23
24 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
25 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

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

5

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

10

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

13

14

15 By: /s/ Peter R. Miljanich
16 PETER R. MILJANICH
17 Deputy City Attorney

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