[Planning Code -	Construction of	Accessory D	welling Units]
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after adoption pursuant to state law requirements.

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

NOTE: Unchanged Code text and uncodified text are in plain Arial font.

Additions to Codes are in single-underline italics Times New Roman font.

Deletions to Codes are in strikethrough italics Times New Roman font.

Board amendment additions are in double-underlined Arial font.

Board amendment deletions are in strikethrough Arial font.

Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. General Findings.

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

- (b) On February 23, 2017, the Planning Commission, in Resolution No. 19859, 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 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 170125, and is incorporated herein by reference.
 - (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that these Planning Code amendments will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 19859 and incorporates such reasons herein by reference.

Section 2. Specific Findings.

- (a) In 1982, the Legislature originally enacted the state's second unit law in response to a serious statewide housing shortage. In California Government Code Section 65852.150, the Legislature found and declared that "second units are a valuable form of housing in California" and Section 65852.2 encouraged local governments to enact legislation that allowed and regulated second units within the jurisdiction. The California second unit law has been amended several times since 1982, each time imposing additional limitations on the local regulation of second units.
- (b) On January 1, 2017, new amendments to California's second unit law (in which second units were renamed accessory dwelling units) went into effect. California Government Code Section 65852.150 was amended to declare that California's housing crisis is now severe. The amendments mandate local governments, including those with a charter, to approve ministerially one accessory dwelling unit in an existing single-family home located in a single-family zoning district, or in a detached structure on the same lot, if the accessory dwelling unit meets the standards enacted by the Legislature.

- (c) A local government may adopt less restrictive requirements for accessory dwelling units than the mandated state standards. However, a local ordinance that does not include all the provisions required by state law, or that does not otherwise fully comply with the new requirements, is unenforceable unless and until it is amended to comply.
 - (d) This ordinance amends San Francisco's requirements and procedures for the review and approval of accessory dwelling units in order to bring them into full compliance with the recent state mandates.

Section 3. The Planning Code is hereby amended by revising Section 207, to read as follows:

SEC. 207. DWELLING UNIT DENSITY LIMITS.

(a) **Applicability.** The density of <u>dD</u>welling <u>wU</u>nits permitted in the various Districts shall be as set forth in the Zoning Control Table for the district in which the lot is located. The term "Dwelling Unit" is defined in Section 102 of this Code. In districts where no density limit is specified, density shall not be limited by lot area but rather by the applicable requirements and limitations set forth elsewhere in this Code. Such requirements and limitations include, but are not limited to, height, bulk, setbacks, open space, exposure and unit mix as well as applicable design guidelines, elements and area plans of the General Plan and design review by the Planning Department.

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

23 * * * *

1	(4) Accessory Dwelling Units in Zoning Districts Other Than Single-
2	Family Zoning Districts RH-1(D); Accessory Dwelling Units in Single-Family Zoning Districts That
3	Do Not Strictly Meet the Requirements in Subsection (c)(6).
4	(A) Definition. An "Accessory Dwelling Unit" (ADU) is defined in
5	Section 102.
6	(B) Applicability. Except for lots zoned RH-1(D), which are regulated by
7	subsection (c)(5) below, the exceptions permitted by $t\underline{T}$ his subsection 207 (c)(4) shall apply to $t\underline{the}$
8	construction of Accessory Dwelling Units on all lots located within the City and County of San
9	Francisco in areas that allow residential use; except that construction of an Accessory Dwelling
10	Unit is regulated by subsection $(c)(6)$, and not this subsection $(c)(4)$, if all of the following
11	circumstances exist:
12	(i) only one ADU will be constructed;
13	(ii) the ADU will be located on a lot in a single-family zoning district;
14	(iii) the ADU will be constructed entirely within the "living area" (as
15	defined in subsection $(c)(6)(C)(i)$ of an existing single-family home or within the built envelope of an
16	existing and authorized auxiliary structure on the same lot;
17	(iv) the ADU will strictly meet the requirements set forth in subsection
18	(c)(6) without requiring a waiver of Code requirements pursuant to subsection $(c)(4)(G)$; and
19	(v) the permit application does not include seismic upgrade work
20	pursuant to subsection $(c)(4)(F)$;
21	provided, however, that the Department shall not approve an application for construction of
22	an Accessory Dwelling Unit in any building $\underline{regulated\ by\ this\ subsection\ (c)(4)}$ where a tenant has
23	been evicted pursuant to Administrative Code Section \underline{s} 37.9(a)(9) through 37.9(a)(14) under a
24	notice of eviction served within 10 years prior to filing the application for a building permit to
25	construct the ADU or where a tenant has been evicted pursuant to Administrative Code

1	Section 37.9(a)(8) under a notice of eviction served within five years prior to filing the
2	application for a building permit to construct the ADU.
3	* * * *
4	(F) Buildings Undergoing Seismic Retrofitting. For Accessory
5	Dwelling Units on lots with a building undergoing mandatory seismic retrofitting in compliance
6	with <u>Chapter 4D</u> <u>Section</u> <u>34B</u> of the <u>Existing</u> Building Code or voluntary seismic retrofitting in
7	compliance with the Department of Building Inspection's Administrative Bulletin 094, the
8	following additional provision applies: If allowed by the Building Code, a building in which an
9	Accessory Dwelling Unit is constructed may be raised up to three feet to create ground floor
10	ceiling heights suitable for residential use. Such a raise in height
11	(i) shall be exempt from the notification requirements of Sections
12	311 and 312 of this Code; and
13	(ii) may expand a noncomplying structure, as defined in Section
14	180(a)(2) of this Code and further regulated in Sections 172, 180, and 188, without obtaining
15	a variance for increasing the discrepancy between existing conditions on the lot and the
16	required standards of this Code.
17	(iii) on lots where an ADU is added in coordination with a building
18	undergoing mandatory seismic retrofitting in compliance with Chapter 4D Section 34 of the
19	Existing Building Code or voluntary seismic retrofitting in compliance with the Department of
20	Building Inspection's Administrative Bulletin 094, the building and the new ADU shall maintain
21	any eligibility to enter the condo-conversion lottery and may only be subdivided if the entire
22	property is selected on the condo-conversion lottery.
23	* * * *
24	$(\underline{6}\ 5)$ Accessory Dwelling Units in $\underline{RH-1(D)}\ \underline{Single-Family}\ \mathtt{Zoning}\ \mathtt{Districts}$
25	(RH-1, RH-1(D), and RH-1(S)).

1	(A) Definition. An "Accessory Dwelling Unit" (ADU) is defined in Section 102.
2	Applicability. This subsection (c)(6) shall apply to the construction of Accessory Dwelling Units (as
3	defined in Section 102) in single-family zoning districts that meet the requirements of this subsection.
4	An ADU constructed pursuant to this subsection is considered a residential use that is consistent with
5	the General Plan and the zoning designation for the lot. Adding one ADU to an existing single-family
6	home shall not exceed the allowable density for the lot. If construction of the ADU will not meet the
7	requirements of this subsection and the ADU cannot be constructed without a waiver of Code
8	requirements pursuant to subsection $(c)(4)(G)$, the ADU is regulated pursuant to subsection $(c)(4)$ and
9	not this subsection (c)(6).
10	(B) $\underline{RH-1(D)}$; Controls on Construction. An Accessory Dwelling Unit
11	in an RH-1(D) zoning district shall be allowed only as mandated by Section 65852.2 of the
12	California Government Code and only in strict compliance with the requirements of that
13	subsection (b) of Section 65852.2, as that state law it is amended from time to time.
14	(C) RH-1 and RH-1(S); Controls on Construction. An Accessory Dwelling
15	Unit located in an RH-1 or RH-1(S) zoning district and constructed pursuant to this subsection (c)(6)
16	shall meet all of the following:
17	(i) The ADU will strictly meet the requirements set forth in this
18	subsection $(c)(6)(C)$ without requiring a waiver of Code requirements pursuant to subsection $(c)(4)(G)$
19	(ii) The permit application does not include seismic upgrade work
20	pursuant to subsection $(c)(4)(F)$.
21	(iii) Only one ADU will be constructed that is entirely within the
22	"living area" of an existing single-family home, or within the built envelope of an existing and
23	authorized auxiliary structure on the same lot. "Living area" means (as defined in Section
24	65852.2(i)(1) of the California Government Code) "the interior habitable area of a dwelling unit
25	including basements and attics, but does not include a garage or any accessory structure."

1	(iv) If construction of the ADU will, in the opinion of the Department,
2	have adverse impacts on a property listed in the California Register of Historic Places, the Department
3	may require modification of the proposed project to the extent necessary to prevent or mitigate such
4	<u>impacts.</u>
5	(v) The Department may apply any Residential Design Guideline that
6	is generally applicable in San Francisco to the proposed construction of an ADU.
7	(vi) No setback is required for an existing garage that is converted to
8	<u>an ADU.</u>
9	(vii) All applicable requirements of San Francisco's health and safety
10	codes shall apply, including but not limited to the Building and Fire Codes.
11	(viii) No parking is required for the ADU. If existing parking is
12	demolished in order to construct the ADU, only the parking space required by this Code for the existing
13	single-family home must be replaced. If replacement parking is required, it may be located in any
14	configuration on the lot including but not limited to covered, uncovered, or tandem space or by the use
15	of mechanical automobile parking lifts.
16	(D) Permit Application Review and Approval. Except as authorized by
17	subsections $(c)(6)(C)(iv)$ and (v) , the Department shall approve an application for a permit to construct
18	an Accessory Dwelling Unit within 120 days from receipt of the application, without modification or
19	disapproval, if the proposed construction fully complies with the requirements set forth in subsection
20	(c)(6)(C).
21	(E) Prohibition of Short-Term Rentals. An Accessory Dwelling Unit
22	authorized under this subsection (c)(6) shall not be used for Short-Term Residential Rentals under
23	Chapter 41A of the Administrative Code. This restriction shall be recorded as a Notice of Special
24	Restriction on the subject lot.
25	(F) Rental; Restrictions on Subdivisions.

1	(i) An ADU constructed pursuant to this subsection (c)(6) may be
2	rented and is subject to all the provisions of the Residential Rent Stabilization and Arbitration
3	Ordinance (Chapter 37 of the Administrative Code) that would otherwise be applicable.
4	(ii) Notwithstanding the provisions of Article 9 of the Subdivision
5	Code, a lot with an Accessory Dwelling Unit authorized under this subsection (c)(6) shall not be
6	subdivided in a manner that would allow for the ADU to be sold or separately financed pursuant to any
7	condominium plan, housing cooperative, or similar form of separate ownership; provided, however,
8	that this prohibition on separate sale or finance of the ADU shall not apply to a building that within
9	three years prior to July 11, 2016, was an existing condominium with no Rental Unit as defined in
10	Section 37.2(r) of the Administrative Code, and also within 10 years prior to July 11, 2016 had no
11	evictions pursuant to Sections 37.9(a) through 37.9(a)(14) of the Administrative Code.
12	(\underline{G} \underline{C}) Department Report. In the report required by subsection (c)(4)(I)(iii), the
13	Department shall include a description and evaluation of the number and types of units being
14	developed pursuant to this subsection (c)($\underline{65}$), their affordability rates, and such other
15	information as the Director or the Board of Supervisors determines would inform decision
16	makers and the public.
17	
18	Section 4. Effective Date. This ordinance shall become effective 30 days after
19	enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
20	ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
21	of Supervisors overrides the Mayor's veto of the ordinance.
22	
23	Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
24	intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
25	numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

1	Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
2	additions, and Board amendment deletions in accordance with the "Note" that appears under
3	the official title of the ordinance.
4	
5	Section 6. Directions to Clerk. The Clerk of the Board of Supervisors is hereby directed
6	to submit a copy of this ordinance to the California Department of Housing and Community
7	Development within 60 days after adoption pursuant to Section 65852.2(h) of the California
8	Government Code.
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10	APPROVED AS TO FORM:
11	DENNIS J. HERRERA, City Attorney
12	By: JUDITH A. BOYAJIAN
13	Deputy City Attorney
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