

1 [Planning Code - Construction of Accessory Dwelling Units]

2

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

12

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

17

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

19

20 Section 1. General Findings.

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

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

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

10
11 Section 2. Specific Findings.

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

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

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

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

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

11 **SEC. 102. Definitions.**

12 * * * *

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

18 * * * *

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

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

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

3 * * * *

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

6 * * * *

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

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

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

18 (i) only one ADU will be constructed;

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

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

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

1 (v) the permit application does not include seismic upgrade work
2 pursuant to subsection (c)(4)(F);

3 provided, however, that the Department shall not approve an application for construction of
4 an Accessory Dwelling Unit in any building regulated by this subsection (c)(4) where a tenant has
5 been evicted pursuant to Administrative Code Section 37.9(a)(9) through 37.9(a)(14) under a
6 notice of eviction served within 10 years prior to filing the application for a building permit to
7 construct the ADU or where a tenant has been evicted pursuant to Administrative Code
8 Section 37.9(a)(8) under a notice of eviction served within five years prior to filing the
9 application for a building permit to construct the ADU.

10 * * * *

11 (F) **Buildings Undergoing Seismic Retrofitting.** For Accessory
12 Dwelling Units on lots with a building undergoing mandatory seismic retrofitting in compliance
13 with Chapter 4D Section 34B of the Existing Building Code or voluntary seismic retrofitting in
14 compliance with the Department of Building Inspection's Administrative Bulletin 094, the
15 following additional provision applies: If allowed by the Building Code, a building in which an
16 Accessory Dwelling Unit is constructed may be raised up to three feet to create ground floor
17 ceiling heights suitable for residential use. Such a raise in height

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

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

24 (iii) on lots where an ADU is added in coordination with a
25 building undergoing mandatory seismic retrofitting in compliance with Chapter 4D Section 34 of

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

5 * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9
10 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
11 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
12 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
13 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
14 additions, and Board amendment deletions in accordance with the “Note” that appears under
15 the official title of the ordinance.

16
17 Section 6. Directions to Clerk. The Clerk of the Board of Supervisors is hereby directed
18 to submit a copy of this ordinance to the California Department of Housing and Community
19 Development within 60 days after adoption pursuant to Section 65852.2(h) of the California
20 Government Code.

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

23 By: _____
24 JUDITH A. BOYAJIAN
25 Deputy City Attorney
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