

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Julie Rosenberg, Executive Director, Board of Appeals

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: December 5, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Safai on November 27, 2018:

File No. 181156

Ordinance amending the Planning Code and Business and Tax Regulations Code to authorize the addition of an Accessory Dwelling Unit in the construction of a new single-family home or multi-family building; clarifying the ministerial approval process and creating an expedited Board of Appeals process for certain Accessory Dwelling Units in single-family homes meeting specific requirements; 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.

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

c: Gary Cantara, Board of Appeals

[Planning, Business and Tax Regulations Codes - Accessory Dwelling Units in New Construction]

Ordinance amending the Planning Code and Business and Tax Regulations Code to authorize the addition of an Accessory Dwelling Unit in the construction of a new single-family home or multi-family building; clarifying the ministerial approval process and creating an expedited Board of Appeals process for certain Accessory Dwelling Units in single-family homes meeting specific requirements; 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.

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 ~~*striketrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~striketrough 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. 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. _____ and is incorporated herein by reference. The Board affirms this determination.

1 (b) On _____, the Planning Commission, in Resolution No. _____,
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. _____, and is incorporated herein by reference.

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

9
10 Section 2. Article 1 of the Business and Tax Regulations Code is hereby amended by
11 revising Sections 8 and 26, to read as follows:

12
13 **SEC. 8. METHOD OF APPEAL TO THE BOARD OF APPEALS.**

14 (a) Except for variance decisions and permits issued by the Entertainment
15 Commission or its Director, and as otherwise specified in this Section 8, appeals to the Board
16 of Appeals shall be taken within 15 days from the making or entry of the order or decision
17 from which the appeal is taken. Appeals of variance decisions shall be taken within 10 days.

18 (b) Appeals to the Board of Appeals of permit decisions made pursuant to Planning
19 Code Section 343 shall be taken within 10 days of the permit decision. This subsection (b)
20 shall expire on the Sunset Date of Planning Code Section 343, as defined in that Section.
21 Upon the expiration of this subsection, the City Attorney shall cause this subsection to be
22 removed from the Business and Tax Regulations Code.

23 (c) Appeals to the Board of Appeals of permit decisions made pursuant to Planning Code
24 Section 207, subsection(c)(6), shall be taken within 10 days of the permit decision.

1 (~~ed~~) Appeals of actions taken by the Entertainment Commission or its Director on the
2 granting, denial, amendment, suspension, or revocation of a permit, or on denial of exceptions
3 from regulations for an Extended-Hours Premises Permit, shall be taken within 10 days from
4 the making of the decision. Nothing in this Section 8 is intended to require an appeal to the
5 Board of Appeals if any provision of Article 15, Article 15.1 (Entertainment Regulations Permit
6 and License Provisions), or Article 15.2 (Entertainment Regulations for Extended-Hours
7 Premises) of the Police Code governing these permits otherwise provides.

8 (~~de~~) Appeals shall be taken by filing a notice of appeal with the Board of Appeals and
9 paying to said Board at such time a filing fee as follows:

10 * * * *

11 (8) An exemption from paying the full fee specified in subsections (~~de~~)(1)
12 through (7) herein may be granted upon the filing under penalty of perjury of a declaration of
13 indigency on the form provided and approved by the Board. All agencies of the City and
14 County of San Francisco are exempted from these fees.

15 (9) **Additional Requirements.**

16 (A) Notice of appeal shall be in such form as may be provided by the
17 rules of the Board of Appeals.

18 (B) On the filing of any appeal, the Board of Appeals shall notify in writing
19 the department, board, commission, officer, or other person from whose action the appeal is
20 taken of such appeal. On the filing of any appeal concerning a structural addition to an
21 existing building, the Board of Appeals shall additionally notify in writing the property owners
22 of buildings immediately adjacent to the subject building.

23 (C) Except as otherwise specified in this subsection (~~de~~)(9)(C), the Board
24 of Appeals shall fix the time and place of hearing, which shall be not less than 10 nor more
25

1 than 45 days after the filing of said appeal, and shall act thereon not later than 60 days after
2 such filing or a reasonable time thereafter.

3 (i) In the case of a permit issued by the Entertainment
4 Commission or its Director, the Board of Appeals shall set the hearing not less than 15 days
5 after the filing of said appeal, shall act thereon not more than 30 days after such filing, and
6 shall not entertain a motion for rehearing.

7 (ii) In the case of a decision on a permit application made
8 pursuant to Planning Code Section 343, the Board of Appeals shall set the hearing not less
9 than 10 days after the filing of said appeal, shall act thereon not more than 30 days after such
10 filing, and shall not entertain a motion for rehearing. This subsection ~~(de)~~(9)(C)(ii) shall expire
11 on the Sunset Date of Planning Code Section 343, as defined in that Section. Upon the
12 expiration of this subsection, the City Attorney shall cause this subsection to be removed from
13 the Business and Tax Regulations Code.

14 (iii) In the case of a decision on a permit application made pursuant to
15 Planning Code Section 207, subsection (c)(6), the Board of Appeals shall set the hearing not less than
16 10 days after the filing of said appeal, shall act thereon not more than 30 days after such filing, and
17 shall not entertain a motion for rehearing.

18 * * * *

20 **SEC. 26. FACTS TO BE CONSIDERED BY DEPARTMENTS.**

21 (a) Subject to subsection (b), in the granting or denying of any permit, or the revoking
22 or the refusing to revoke any permit, the granting or revoking power may take into
23 consideration the effect of the proposed business or calling upon surrounding property and
24 upon its residents, and inhabitants thereof; and in granting or denying said permit, or revoking
25

1 or refusing to revoke a permit, may exercise its sound discretion as to whether said permit
2 should be granted, transferred, denied, or revoked.

3 * * * *

4 (e) Notwithstanding subsection (a), the provisions of Planning Code Section 343 shall
5 govern actions taken on the granting, denial, amendment, suspension, and revocation of
6 permits regulated under that Section 343, not the standards set forth in subsection (a) of this
7 Section 26. This subsection (e) shall become operative upon receipt of preliminary approval of
8 Planning Code Section 343 by the California Department of Housing and Community
9 Development under California Government Code Section 66202. This subsection shall expire
10 by the operation of law in accordance with the provisions of Planning Code Section 343(k).
11 Upon its expiration, the City Attorney shall cause this subsection to be removed from the
12 Business and Tax Regulations Code.

13 (f) Notwithstanding subsection (a), the provisions of Planning Code Section 207, subsection
14 (c)(6), shall govern actions taken on the granting, denial, amendment, suspension, and revocation of
15 permits regulated under that subsection (c)(6), not the standards set forth in subsection (a) of this
16 Section 26.

17
18 Section 3. The Planning Code is hereby amended by revising Sections 102, 207, and
19 311 to read as follows:

20
21 **SEC. 102. DEFINITIONS.**

22 * * * *

23 **Dwelling Unit, Accessory.** Also known as a Secondary Unit or In-Law Unit, is a Dwelling Unit
24 that is constructed either entirely within the existing built envelope, the "living area" as defined
25 in State law, or the buildable area of an existing or proposed building in areas that allow

1 residential use; or is constructed within the existing built envelope of an existing and
2 authorized auxiliary structure on the same lot.

3 * * * *

4
5 **SEC. 207. DWELLING UNIT DENSITY LIMITS.**

6 * * * *

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

9 * * * *

10 (4) **Local Accessory Dwelling Unit Program: Accessory Dwelling Units in**
11 **Multifamily Buildings; Accessory Dwelling Units in Single-Family Homes That Do Not**
12 **Strictly Meet the Requirements in Subsection (c)(6).**

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

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

- 20 (i) only one ADU will be constructed;
- 21 (ii) the ADU will be located on a lot that is zoned for single-
22 family or multifamily use and contains an existing or proposed single-family dwelling;
- 23 (iii) the ADU is either attached to or will be constructed entirely
24 within the "living area" (as defined in subsection (c)(6)(B)(iii)) or the buildable area of ~~an~~ the
25 proposed or existing primary dwelling single-family home, or constructed within the built envelope

1 of an existing and authorized auxiliary structure on the same lot; provided, however, that (A)
2 when a stand-alone garage, storage structure, or other auxiliary structure is being converted
3 to an ADU, an expansion to the envelope is allowed to add dormers even if the stand-alone
4 garage, storage structure, or other auxiliary structure is in the required rear yard and (B) on a
5 corner lot, a legal stand-alone nonconforming garage, storage structure, or other auxiliary
6 structure may be expanded within its existing footprint by up to one additional story in order to
7 create a consistent street wall and improve the continuity of buildings on the block.

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

11 (v) the permit application does not include seismic upgrade
12 work pursuant to subsection (c)(4)(F).

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

16 (i) For lots that have four existing Dwelling Units or fewer or where the
17 zoning would permit the construction of four or fewer Dwelling Units, one ADU is permitted; for lots
18 that have more than four existing Dwelling Units or are undergoing seismic retrofitting under
19 subsection (c)(4)(F) below, or where the zoning would permit the construction of more than four
20 Dwelling Units, there is no limit on the number of ADUs permitted; provided, however, that the
21 Department shall not approve an application for construction of an ADU Accessory Dwelling
22 Unit in any building regulated by this subsection (c)(4) where a tenant on the lot has been evicted
23 pursuant to Administrative Code Sections 37.9(a)(9) through (a)(12) and 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. This provision shall not apply if the
3 tenant was evicted under Section 37.9(a)(11) or 37.9(a)(14) and the applicant(s) either (A)
4 have certified that the original tenant reoccupied the unit after the temporary eviction or (B)
5 have submitted to the Department and to the Rent Board a declaration from the property
6 owner or the tenant certifying that the property owner notified the tenant of the tenant's right to
7 reoccupy the unit and the tenant chose not to reoccupy it.

8 (ii) Except as provided in subsections (iii) and (iv) below, an
9 Accessory Dwelling Unit shall be constructed entirely within the buildable area of an existing
10 lot, provided that the ADU does not exceed the existing height of ~~the~~ an existing building, or
11 within the built envelope of an existing and authorized stand-alone garage, storage structure,
12 or other auxiliary structure on the same lot, as the built envelope existed three years prior to
13 the time the application was filed for a building permit to construct the ADU. For purposes of
14 this provision, the "built envelope" shall include the open area under a cantilevered room or
15 room built on columns; decks, except for decks that are supported by columns or walls other
16 than the building wall to which they are attached and are multi-level or more than 10 feet
17 above grade; and lightwell infills provided that the infill will be against a blank neighboring wall
18 at the property line and not visible from any off-site location; as these spaces exist as of July
19 11, 2016.- An ADU constructed entirely within the existing built envelope, as defined in this
20 subsection (ii), along with permitted obstructions allowed in Section 136(c)(32), of an existing
21 building or authorized auxiliary structure on the same lot, or where an existing stand-alone
22 garage or storage structure has been expanded to add dormers, is exempt from the
23 notification requirements of Section 311 of this Code unless the existing building or authorized
24 auxiliary structure on the same lot is in an Article 10 or Article 11 District in which case the
25 notification requirements will apply. If an ADU will be constructed under a cantilevered room

1 or deck that encroaches into the required rear yard, a pre-application meeting between the
2 applicant and adjacent neighbors for all the proposed work is required before the application
3 may be submitted.

4 (iii) When a stand-alone garage, storage, or other auxiliary structure is
5 being converted to an ADU, an expansion to the envelope is allowed to add dormers even if
6 the stand-alone garage, storage structure, or other auxiliary structure is in the required rear
7 yard.

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

12 (v) An Accessory Dwelling Unit shall not be constructed using space
13 from an existing Dwelling Unit except that an ADU may expand into habitable space on the
14 ground or basement floors provided that it does not exceed 25% of the gross square footage
15 of such space. The Zoning Administrator may waive this 25% limitation if (a) the resulting
16 space would not be usable or would be impractical to use for other reasonable uses included
17 but not limited to storage or bicycle parking or (b) waiving the limitation would help relieve any
18 negative layout issues for the proposed ADU.

19 (vi) *An existing* building undergoing seismic retrofitting may be eligible
20 for a height increase pursuant to subsection (c)(4)(F) below.

21 (vii) Notwithstanding any other provision of this Code, an Accessory
22 Dwelling Unit authorized under this Section 207(c)(4) may not be merged with an original
23 unit(s).
24
25

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

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

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

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

(i) ~~s~~Shall be exempt from the notification requirements of Section ~~s~~ 311 and ~~312~~ of this Code; and

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

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

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

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

14 Pursuant to the provisions of Section 307(l) of this Code, the Zoning Administrator may grant
15 an Accessory Dwelling Unit a complete or partial waiver of the density limits and off-street
16 parking, bicycle parking, rear yard, exposure, or open space standards of this Code. If the
17 Zoning Administrator grants a complete or partial waiver of the requirements of this Code and
18 the subject lot contains any Rental Units at the time an application for a building permit is filed
19 for construction of the Accessory Dwelling Unit(s), the property owner(s) shall enter into a
20 Regulatory Agreement with the City under subsection (c)(4)(H) subjecting the ADU(s) to the
21 San Francisco Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the
22 Administrative Code) as a condition of approval of the ADU(s). For purposes of this
23 requirement, Rental Units shall be as defined in Section 37.2(r) of the Administrative Code.
24
25

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

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

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

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

16 (iv) T-he property owner and the Planning Director (or the Director's
17 designee), on behalf of the City, will execute the Agreement, which shall be reviewed and
18 approved by the City Attorney's Office. The Agreement shall be executed prior to the City's
19 issuance of the First Construction Document for the project, as defined in Section ~~Section~~
20 107A.13.1 of the San Francisco Building Code.

21 (v) Following execution of the Regulatory Agreement by all parties
22 and approval by the City Attorney, the Regulatory Agreement or a memorandum thereof shall
23 be recorded against the property and shall be binding on all future owners and successors in
24 interest.
25

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

4 (I) **Monitoring Program.**

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

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

22 (iii) **Department Report.** The Department shall publish a report
23 annually until April 1, 2019, that describes and evaluates the types of units being developed
24 and their affordability rates, as well as their use as Short-Term Residential Rentals. The report
25 shall contain such additional information as the Director or the Board of Supervisors

determines would inform decision makers and the public on the effectiveness and implementation of this subsection (c)(4) and include recommendations for any amendments to the requirements of this Section 207(c)(4). The Department shall transmit this report to the Board of Supervisors for its review and public input. In subsequent years, this information on Accessory Dwelling Units shall be reported annually in the Housing Inventory.

* * * *

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

(A) **Applicability.** This subsection (c)(6) shall apply to the construction of Accessory Dwelling Units (as defined in Section 102) in existing or proposed single-family homes or in a detached auxiliary structure on the same lot if the ADU ~~that~~ meets the requirements of this subsection. An ADU constructed pursuant to this subsection is considered a residential use that is consistent with the General Plan and the zoning designation for the lot. Adding one ADU to an existing or proposed single-family home or in a detached auxiliary structure on the same lot does not exceed the allowable density for the lot. If construction of the ADU will not meet the requirements of this subsection and the ADU cannot be constructed without a waiver of Code requirements pursuant to subsection (c)(4)(G), the ADU is regulated pursuant to subsection (c)(4) and not this subsection (c)(6).

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

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

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

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

13 (iv) ~~If contained within the existing space of a single-family residence or~~
14 ~~accessory structure, the~~ ADU must have independent exterior access from the existing or
15 proposed primary dwelling residence or existing accessory structure, and side and rear setbacks
16 sufficient for fire safety.

17 (v) If construction of the ADU will have adverse impacts on a property
18 listed in the California Register of Historic Places or any other known historical resource, the
19 Department shall require modification of the proposed project to the extent necessary to
20 prevent or mitigate such impacts.

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

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

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

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

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

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

(C) **Permit Application Review and Approval.** ~~Except as authorized by subsections (c)(6)(B)(v) and (vi), the~~ The Department shall approve an application for a permit to construct an Accessory Dwelling Unit within 120 days from receipt of the complete application, without modification or disapproval, if the proposed construction fully complies with the requirements set forth in subsection (c)(6)(B). No requests for discretionary review shall be accepted by the Planning Department for permit applications meeting the requirements of this subsection (c)(6). The Planning Commission shall not hold a public hearing for discretionary review of permit applications meeting the requirements of this subsection (c)(6). Permit applications meeting the requirements of this subsection (c)(6) shall not be subject to the notification or review requirements of Section 311 of this Code.

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

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

8 (EF) **Rental; Restrictions on Subdivisions.**

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

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

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

22
23 **SEC. 311. PERMIT REVIEW PROCEDURES**

24 (a) **Purpose.** The purpose of this Section 311 is to establish procedures for reviewing
25 building permit applications to determine compatibility of the proposal with the neighborhood

1 and for providing notice to property owners and residents on the site and neighboring the site
2 of the proposed project and to interested neighborhood organizations, so that concerns about
3 a project may be identified and resolved during the review of the permit.

4 (b) **Applicability.** Except as indicated herein, all building permit applications in
5 Residential, NC, NCT, and Eastern Neighborhoods Districts for a change of use;
6 establishment of a Micro Wireless Telecommunications Services Facility; establishment of a
7 Formula Retail Use; demolition, new construction, or alteration of buildings; and the removal
8 of an authorized or unauthorized residential unit shall be subject to the notification and review
9 procedures required by this Section 311. In addition, all building permit applications that
10 would establish Cannabis Retail or Medical Cannabis Dispensary Uses, regardless of zoning
11 district, shall be subject to the review procedures required by this Section 311.

12 Notwithstanding the foregoing or any other requirement of this Section 311, a change of use
13 to a Child Care Facility, as defined in Section 102, shall not be subject to the review
14 requirements of this Section 311. Notwithstanding the foregoing or any other requirement of this
15 Section 311, building permit applications to construct an Accessory Dwelling Unit pursuant to Section
16 207(c)(6) shall not be subject to the notification or review requirements of this Section 311.

17 * * * *

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

8 By:


9 PETER R. MILJANICH
Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning, Business and Tax Regulations Codes - Accessory Dwelling Units in New Construction]

Ordinance amending the Planning Code and Business and Tax Regulations Code to authorize the addition of an Accessory Dwelling Unit in the construction of a new single-family home or multi-family building; clarifying the ministerial approval process and creating an expedited Board of Appeals process for certain Accessory Dwelling Units in single-family homes meeting specific requirements; 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.

Existing Law

Planning Code Section 102 defines "Accessory Dwelling Unit" (ADU) and Sections 207(c)(4) and 207(c)(6) establish the requirements for constructing an ADU in areas in San Francisco that are zoned for residential use. The provisions in Section 207(c)(4) apply to the City's local program for construction of ADUs in multi-family buildings and single-family homes that do not meet the state law criteria; the provisions in Section 207(c)(6) apply to existing single-family homes that strictly meet the state law's ADU requirements without requiring a Zoning Administrator waiver of Planning Code provisions.

Planning Code Section 311 establishes the notice requirements and permit review procedures for building permit applications in Residential, NC, NCT, and Eastern Neighborhoods Districts for a change of use, and demolition, new construction, or alteration of buildings.

Section 8 et seq. of the Business and Tax Regulations Code establish the procedures for appeals to the Board of Appeals. Section 26 authorizes a permit-issuing agency to take into account the effect of a code-complying project on surrounding property and its residents and exercise its sound discretion in determining whether to grant, deny, or revoke a permit.

Amendments to Current Law

The state law currently requires that a local jurisdiction ministerially approve the addition of one ADU in the new construction of a single-family home that meets all the requirements of state law. The ADU can be within the living area of the primary structure, attached to the primary structure, or in a detached structure on the same lot as the primary structure. This ordinance amends Planning Code Section 207(c)(6) – the City's state mandated ADU program – to reflect the current provisions of state law. This ordinance also amends Planning Code Section 207(c)(4) – the City's local ADU program – to allow construction of an ADU as

part of new construction of the primary structure. The definition in Planning Code Section 102 is amended to include new construction.

This ordinance exempts building permit applications to construct an Accessory Dwelling Unit pursuant to subsection 207(c)(6) from the notification and review requirements of Planning Code Section 311.

This ordinance amends Business and Tax Regulations Code Section 8 and 26 to eliminate the exercise of discretion in the review of permits for the construction of an ADU under Planning Code Section 207(c)(6).

Background Information

The State Legislature has declared that Accessory Dwelling Units are a valuable form of housing in California. They are also an affordable type of housing because they do not include the costs of purchasing land or require major new infrastructure. Since its first adoption, the Legislature has amended the state's ADU law several times to tighten the requirements and make approval of an ADU less discretionary.

San Francisco first enacted a local ADU ordinance in 2015 and has updated its ADU program several times since then, both in response to amendments to the state law and also to facilitate the construction of ADUs under the City's local program. This legislation will update San Francisco's ADU program to comply with amendments to the state law.

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