

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.

Under Planning Code Section 207(c)(4)(G), the Zoning Administrator may grant an ADU a complete or partial waiver of certain Planning Code standards. If the Zoning Administrator grants such a waiver, and the lot contains any Rental Units, as that term is defined in Administrative Code Section 37.2(r), the property owner must enter into a regulatory agreement with the City subjecting the ADU to the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Administrative Code Chapter 37).

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 ADU under subsection 207(c)(6) from the notification and review requirements of Planning Code Section 311.

This ordinance requires ADUs approved under the City’s state-mandated ADU program to comply with ministerial architectural review standards to prevent adverse impacts on certain historic resources. This ordinance also limits the maximum size of ADUs approved under the City’s state-mandated ADU program that involve expansions of the building envelope.

This ordinance amends Section 207(c)(4)(G) to require a property owner to enter into a regulatory agreement with the City subjecting the ADU to the Rent Ordinance if the Zoning Administrator grants a waiver of certain Planning Code standards, regardless of whether the lot contains any Rental Units. This ordinance also requires that the total area of floorspace of an ADU proposed to be constructed with a proposed single-family dwelling shall not be less than 50 percent of the proposed primary dwelling living area, except that an efficiency unit (as defined in Section 1208.4 of the Building Code) may be constructed.

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 an affordable type of housing because they do not include the costs of purchasing land or require major new infrastructure. Since adoption, the Legislature has amended state ADU law several times to tighten requirements and make ADU approval 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.

This Legislative Digest reflects amendments made by the Land Use Committee of the Board of Supervisors on May 20, 2019. These amendments include clerical amendments, and

modifications to the City's state-mandated ADU program to: (1) require compliance with architectural review standards to prevent adverse impacts on certain historic resources; (2) limit the maximum size of ADUs involving expansions of the building envelope; and (3) require that the total area of floorspace of an ADU proposed to be constructed with a proposed single-family dwelling shall not be less than 50 percent of the proposed primary dwelling living area, except that an efficiency unit may be constructed. These amendments also the City's discretionary approval process to require a property owner to enter into a regulatory agreement with the City subjecting the ADU to the Rent Ordinance if the Zoning Administrator grants a waiver of certain Planning Code standards, regardless of whether the lot contains any Rental Units.

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