



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: JUNE 7, 2018
90 DAY DEADLINE: JUNE 26, 2018

Date: June 7, 2018
Project Name: **Amendments to Accessory Dwelling Units Requirements**
Case Number: 2018-004194PCA, [Board File No. 180268]
Initiated by: Supervisor Tang / Introduced March 20, 2018
Staff Contact: Kimia Haddadan, Legislative Affairs
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Reviewed by: Aaron Starr, Manager of Legislative Affairs
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Recommendation: **Recommend Approval with Modification**

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PLANNING & ADMINISTRATIVE CODE AMENDMENTS

The proposed Ordinance would amend the Planning Code to authorize the Zoning Administrator to waive or modify bicycle parking requirements for an Accessory Dwelling Unit (ADU), allow more than one unauthorized unit constructed without a permit to be legalized, exempt from the permit notification requirement ADUs constructed within the defined existing built envelope, allow conversion of an existing stand-alone garage or storage structure to an ADU and expansion of the existing building envelope to add dormers, eliminate the street tree requirement for an ADU, and allow one ADU to be added to a new residential building of three units or less as a component of the new construction. It would also amend the Building Code to provide for a preapplication plan review for ADUs.

In addition, Supervisor Tang asked the Planning Department (not currently part of the Ordinance) to propose recommendations for allowing vertical expansion when adding ADUs to stand alone garages on corner lots. This concept is referred to as "ADU infill".

The Way It Is Now:

ADUs in new construction

1. ADUs can only be added to existing buildings. If an application proposes demolition and reconstruction, ADUs are not permitted.

The existing built envelope limiting the ADU & neighborhood notification

2. ADUs are required to be built within the existing built envelope of a building as it existed three years prior to the application. The built envelope is defined to include filling under the following spaces as long as they are not in the required rear yard: a cantilevered room, room built on columns, decks that are only supported by the building wall (not by

columns or other walls), as well as filling in lightwells if against a blank neighboring wall at the property line. Per the Zoning Administrator (ZA) Bulletin No. 4 filling in under spaces listed above, whether for an ADU or other types of permits, are exempt from neighborhood notifications of Section 311 of the Planning Code (as long as such spaces are not in the required rear yard).

3. When converting a standalone garage or structure to an ADU, the unit can be added only within the existing built envelope of the structure.

Street tree requirement

4. ADUs are currently subject to the street tree requirements of the Public Works Code¹. When adding a dwelling unit, the sponsor is required to plant a street tree in front of the subject property or pay an in-lieu fee if the tree cannot be planted.

Bicycle parking requirements

5. Corridors that provide access to bicycle parking are currently required to be five feet wide. Vertical bicycle parking is only allowed to satisfy up to one-third of the requirements. There are no ZA waivers available for such requirements for ADUs.

Exposure requirements

6. The ADU program allows the ZA to waive exposure requirements if windows are facing an open area that is 15' by 15' in dimensions without needing to expand vertically. This is a reduction from the standard exposure requirement where the open area should be at least 25' by 25' expanding 5' in every dimension at each floor.

Pre-application meetings with DBI

7. Applicants can choose to schedule a pre-application meeting with DBI to go over preliminary concerns about the project. These meetings are usually staffed by DBI and the Fire Department.

Legalization of Unauthorized Units

8. Only one unauthorized unit per lot can take advantage of the legalization program.
9. The Zoning Administrator has interpreted the Code to clarify situations where unauthorized units can be removed without a conditional use hearing. Per this interpretation, if the unit cannot be legalized through *any path* available in the Code, the unit can be removed without a CU permit.

¹ Article 16, Sections 805(a) and (d)

The Way It Would Be:

ADUs in new construction

1. New construction projects with three units or less would be allowed to include one ADU.

The existing built envelope limiting the ADU & neighborhood notification

2. The proposed Ordinance would allow ADUs to fill in under the following type of spaces, even if such spaces encroach into the required rear yard. These spaces include: a cantilevered room, or room built on columns, or decks that are only supported by the building wall (not by columns or other walls), as well as filling in lightwells if against a blank neighboring wall at the property line. In other words, filling in under such spaces would be a permitted obstruction in the required rear yard. The proposed Ordinance would exempt such permitted obstructions from neighborhood notification.
3. When converting a standalone garage or structure to an ADU, the structure can be expanded to add dormers and such expansion would be exempt from neighborhood notification requirements.

Street Tree Requirement

4. ADUs would not be subject to the street tree requirements of the Public Works Code.

Bicycle Parking Requirements

5. The ZA would be able to provide waivers for bicycle parking requirements for ADUs so that: a) in existing buildings where no new corridors are being built, a three foot corridor could provide access to the bicycle parking space ; b) vertical bicycle parking can satisfy up to 100% of required bicycle parking.

Exposure Requirements

6. The ZA would be able to waive the exposure requirement so long as windows are facing an open area that is 225 sq. ft. with no dimension smaller than nine feet.

Pre-application Meetings with DBI

7. Staff from the Planning Department would be required to attend pre-application meetings if such meeting is requested by applicant.

Legalization of Unauthorized Units

8. All unauthorized units on a lot could take advantage of the legalization program.
9. The Planning Code would be clarified to reflect the existing Zoning Administrator interpretation; if the unit cannot be legalized through *any path* available in the Code (legalization, ADUs, or unit addition within allowable density), the unit could be removed without a CU permit.

BACKGROUND

San Francisco's ADU program has been in effect since 2014 starting as a pilot program in a small area and expanded citywide in 2016. As of the first quarter of 2018, there are 1243 units in the pipeline in 691 permits. A detailed review of ADU permits is provided in the ADU Tracking Report also published on May 30, 2018. Since its inception, the ADU program has been modified multiple times to strike a balance between improving flexibility of adding units and maintaining standard quality of life in those units. The proposed Ordinance includes further modifications to improve this program.

ISSUES AND CONCERNS

Exposure and bicycle parking requirements

After reviewing over 700 ADU permits, which includes a wide cross-section of building types, staff has identified two Planning Code requirements that persistently create challenges for adding ADUs, or significantly delay their approval; exposure requirements and bike parking standards.

The current ZA waiver for exposure requirements in ADUs allows windows to face an open area of at least 15' by 15'; however, even with this waiver, the Department has received several variance applications for exposure. These variances have represented as much as 25% of all requests on the monthly variance hearing calendar. The ZA is inclined to grant such variances when the unit quality is retained through other design measures, but the proposed open space does not meet the strict 15' by 15' dimensions while still containing a total of 225 sq. ft. (15x15). Yet, these variance applications can cause the project to be delayed anywhere between six to nine months. In addition, to meet this 15'x15' requirement, sponsors often propose substantial modifications to components of other units. This usually affects existing tenants or the building and increases the overall project cost. Further, staff has observed that the unit quality is maintained with the open area of 225 sq. ft., and when at least one dimension is no less than nine feet.

Bicycle parking requirements are triggered when adding dwelling units to an existing residential building with required off-street parking, or when required off-street parking is removed. ADUs often meet one or both of these triggers because they are typically built in garage spaces and removing parking. Staff has observed two challenges in meeting the bicycle parking requirements. The first challenge is meeting the five foot width for the corridors required to access the bicycle parking facility. The second is finding sufficient space on the ground floor to accommodate the required racks and spacing between the racks. To address these challenges, applicants often need to re-design the proposed units or the overall building, typically to the detriment of the unit configuration and often causing significant time delays. The proposed ordinance addresses this issue by providing greater flexibility to meet bike parking requirements, while still ensuring that these units have safe and secure bike parking. This Ordinance would provide such flexibility through ZA waivers in two ways: a) where no new corridors are being installed, an existing corridor as narrow as 3' would be sufficient to access the bicycle parking

facility; b) allow use of vertical bicycle parking to satisfy all required racks (currently only one-third of racks can be vertical).

Pre-application meeting

Currently, sponsors can schedule a pre-Application meeting with DBI (includes Building, and Fire, if applicable), or they can also schedule a Project Review meeting with just the Planning Department. These meetings are currently held separately. The proposed Ordinance would amend the Building Code to require that DBI's Pre-application meetings include Planning Department staff. A combined Pre-app meeting would enhance inter-Departmental coordination between Planning, DBI, and Fire Department. Conflicting input from different Departments can be resolved at one meeting, potentially eliminating or reducing the iterative revision process. Further, in February of this year, President of the Building Inspection Commission directed DBI and Planning Department to assess and coordinate a combined Pre-app meeting.

ADUs in new construction

Currently, ADUs are only allowed to be added into existing buildings, but cannot be added to new construction. One way around this rule is for the applicant to design their project in anticipation of adding an ADU, and in three years apply to add an ADU under a separate permit. The three year time period comes from the Planning Code, which stipulates that ADUs can only be added to an existing built envelope as it existed three years prior to the application. This creates inefficiencies in terms of construction and likely discourages owners from adding an ADU. Meanwhile, the City is in a housing crisis and generally encourages opportunities to add ADUs. The proposed Ordinance would create such opportunity by allowing ADUs to be added as a part of new construction permits for buildings of three units or less. Further, ADUs in new construction would benefit from better quality of life standards than traditional ADUs (lower ceiling height, smaller windows, non-standard entry, etc.) because the building would be designed from the beginning with the ADU in mind. At the same time, this may create confusion on how to distinguish ADUs from regular residential units in a new building. While ADUs are always different from residential units in that they cannot be subdivided and sold separately, and that they cannot be rented as Short Term Rentals, physical controls to distinguish ADUs in new construction from a regular unit may be needed.

Built vs. buildable envelope to limit ADUs

In recent years, the City has intensified efforts to provide more housing and has streamlined housing production, especially ADUs. One focus of these streamlining efforts has been on providing more flexibility on the definition of built envelope and the area within which ADUs are limited to be built on any lot. This is because limiting ADUs to the built footprint often affects the quality of ADU. Specifically, decks or cantilevered rooms on the upper stories impose limitations on meeting light exposure requirements. In 2016, the ADU program was amended to allow filling in under those spaces as long as they are not encroaching into the required rear yard. Filling in under such spaces are not generally subject to neighborhood notifications and the same principle applied to ADUs.

The proposed Ordinance would advance this flexibility and allow filling in under such spaces, even if they encroach into the rear yard. This proposal both help improve quality of ADUs with minimum impact to the visible mass of the building (See Exhibit B). In addition, this change would incentivize production of ADUs over expanding an existing unit; it would allow such expansion only for ADUs while expanding an existing unit under such spaces in the required rear yard would still require a variance hearing subject to neighborhood notification.

The Ordinance also proposes another minor change with regards to adding dormers to standalone garages/structures. Currently when an standalone garage is being converted to an ADU, only the existing built envelope can be used. Many of these structures have short ceiling height and a simple change of adding dormers would improve light and ventilation. Dormers would also allow for additional vertical space and therefore a higher quality and more spacious unit.

Finally, a more comprehensive way to improve flexibility for ADUs would be to allow all ADUs to expand within the buildable envelope. The Department has proposed this amendment in the past and still maintains the benefit of such amendment. It would be consistent with the Ordinance's proposal to allow ADUs in new construction, as those ADUs would also be allowed within the buildable envelope. Similarly, it would also be consistent with changes to the ADU program in 2017 to comply with the State Law updates. Those changes applied to single-family homes only and allowed ADUs within the existing buildable envelope. Lastly, these expansions are available for enlarging an existing unit and it would be reasonable to allow same provisions when adding to the City's housing stock.

Street tree requirement

Staff has heard that the process to satisfy the street tree requirement of the Public Works Code can prove lengthy and complicated. The permit for street tree requires review of site conditions, and a determination on whether a street tree can be planted, and finally an approval of street tree permit. The proposed Ordinance exempts ADUs from meeting this requirement to help address this issue. A sponsor may also need additional permits from Public Works; for example, if removing off-street parking, a permit to reinstall the curb is required.

Staff also realized that the same limitations of the street tree requirement apply to unauthorized units undergoing legalization and those permits can also benefit from some flexibility for meeting the street tree requirements.

Vertical expansion in the required rear yard of corner lots

Per a request by the sponsoring Supervisor, staff looked into vertical expansion of a standalone garage on a corner lot to add ADUs (not part of the draft Ordinance). Standalone garages in corner lots are often legal non-forming structures within the required rear yard. They also create a gap in the street wall as a one story structure, while most buildings are two stories and more. Currently such a garage/structure can be converted to an ADU without expansions. Allowing a one story expansion above the existing footprint would provide opportunities for either a higher quality ADU, or more than one ADU. It would also allow filling the street wall gap and improve the physical continuity of the block (See Exhibit C).

Legalization Program: Cap on number of units & eviction loophole

In a memo to the Commission dated April 20, 2017, staff highlighted two policy concerns with the legalization program. The first was the cap of one unit per lot that can be legalized. The proposed Ordinance addresses that concern by allowing more than one unit to be legalized per lot. The second concern was the limitations related to eviction history. The proposed Ordinance does not address this concern.

Currently, unauthorized units cannot be legalized if there has been a no-fault eviction associated with the unit. The policy goal for this provision is to protect tenants from potential evictions; the opportunity to legalize a unit could incentivize the owner to evict the tenant, legalize the unit, and put the unit back on the market for higher rent. However, subsequent legislative changes conflict with the eviction prohibition in the legalization program and create a loophole. The City now requires Conditional Use (CU) authorization to remove unauthorized units unless the unit is not eligible for legalization. This change has incentivized property owners who wish to remove the unit to evict their tenant, making the unit ineligible for the legalization program. The property owner is then allowed to remove the unit without a CU authorization. In this way, the eviction prohibition in the legalization program is no longer serving its original goal to protect tenants.

In addition, the original concerns driving the eviction prohibition have been addressed through another piece of legislation, commonly known as Eviction Protection 2.0. This legislation incorporated a five year price control into five types of no-fault evictions: owner move-in, condo conversions, capital improvements, lead abatement, and demolition/removal from housing. The latter is the most common type of eviction used for tenants in unauthorized units. The price control removes the incentive to evict a tenant prior to legalization, since higher rents would not be allowed for five years; therefore, the need for an eviction prohibition in the legalization program is no longer necessary. In addition, a right to return provision can further protect the tenants in the unauthorized units. The right to return already exists for three types of no-fault evictions for five years: Ellis Act, owner move-in, and Capital Improvements.

General Plan Compliance

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.

The proposed Ordinance would provide further flexibility for Accessory Dwelling unit program in pursuit of goals to increase housing opportunities. It would also provide more opportunities to preserve existing unauthorized units.

Objective 7

Secure funding and resources for permanently affordable housing, including innovative programs that are not solely reliant on traditional mechanisms or capital.

Policy 7.7

Support housing for middle income households, especially through programs that do not require a direct public subsidy.

ADUs are subordinate to the original unit due to their size, location of the entrance, lower ceiling heights, etc. ADUs are anticipated to provide a lower rent compared to the residential units developed in newly constructed buildings and therefore the proposed Ordinance would support housing for middle income households. Similarly existing unauthorized units generally offer lower rents compared to other units on the market. The proposed Ordinance would expand the legalization program and therefore maintain more housing for low and middle income households.

Implementation

The Department determined that this ordinance will impact our current implementation procedures in the following ways:

- The proposed Ordinance would update some of the current controls for ADUs. Department's ADU fact sheets and webpage would need to be updated for the public. The Department would also need to hold training sessions for staff for these updates.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

The Department recommends the following modifications:

- 1) Restrict the size of the ADUs added as a part of new construction to 1,200 sq. ft. in order to differentiate them from a regular unit.
- 2) Allow expansion of ADUs within the buildable envelope.
- 3) Allow expansion of ADUs under cantilevered rooms and decks in required rear yard without neighborhood notification, as drafted in the Ordinance, but amend Section 136 (c) to list filling under those spaces as permitted obstructions when adding ADUs.
- 4) On a corner lot, allow one story expansion of existing standalone garage structures limited to its existing footprint.
- 5) Clarify that the provision to allow dormers when converting existing standalone garages/structures to ADUs would allow such expansion even if those structures are in the required rear yard.
- 6) Allow ADUs to pay into an in-lieu fee for street tree requirements. Apply the same provision to unauthorized units undergoing legalization.
- 7) Remove the prohibition to use the legalization program where no-fault evictions have occurred and amend the Planning and Rent Ordinance to:
 - i. clarify that the existing five year price control applies to no-fault evictions in unauthorized units (Section 37.3(f) of the Administrative Code)
 - ii. require the unit be offered to the previous tenant evicted similar to provisions for capital improvement (37.9a(11)), Ellis Act (37.9A), and owner move-in evictions (37.9(B)).

BASIS FOR RECOMMENDATION

The Department supports the overall goals of this Ordinance as it would provide more flexibility to build ADUs while maintaining quality of these units. The following is the basis for the Department's recommended modifications:

1) Restrict the size of the ADUs added as a part of new construction to 1,200 sq. ft. in order to differentiate them from a regular unit:

As discussed earlier, traditional ADUs added to existing buildings generally have low ceiling heights, indirect entry, smaller windows, etc. ADUs in new construction would likely not have such limitations and may physically look similar to regular residential units. To distinguish an ADU in new construction from a regular residential unit, staff recommends using a unit size limit already identified for ADUs in State Law, which is a maximum of 1,200 sq. ft.

2) Allow expansion of ADUs within the buildable envelope.

As discussed earlier, allowing ADUs to expand within the buildable envelope is consistent with recent changes to the ADU program per State Law. Those changes allowed ADUs in single-family homes to expand within the buildable envelope. In addition, the City allows enlarging an existing unit within the buildable envelope. Applying same provisions to ADUs would be consistent with the City's policy to produce more housing.

3) Allow expansion for ADUs under cantilevered rooms and decks in required rear yard without neighborhood notification, as drafted in the Ordinance, but amend Section 136 (c) to list filling under those spaces as permitted obstructions when adding ADUs.

Staff supports this amendment as drafted in the Ordinance which would provide property owners with flexibility to expand the ADU under decks and cantilevered room even if they are in the required rear yard. This would improve light access for the unit and would help with meeting the exposure requirements. Infill under these spaces has minimal impact on the mid-block open space as they would fill under already existing and legal projection into the rear yard. For Code consistency and clarity, Staff recommends amending Section 136 (c) of the Code to reflect this change as well. This section of the Code includes all permitted obstructions allowed in the required rear yard. Similarly allowing filling in under decks and cantilevered rooms in the required rear yard for ADUs would be a permitted obstruction in the required rear yard.

4) On a corner lot, allow up to one story expansion of existing standalone garage structures limited to its existing footprint.

As discussed earlier, standalone garages on corner lots can already be converted to ADUs but only within their existing built footprint. These garages face the street and as a one-story structure create a gap in the street wall. Allowing one-story expansion of legal non-conforming garages/structures for ADUs would create a consistent street wall and improve the continuity of the buildings in the block. Such expansion would not affect the quality of mid-block open space. Lastly, these ADUs would likely have direct access to the street, better access to light, and are therefore generally higher quality units.

- 5) **Clarify that the provision to allow dormers when converting existing standalone garages/structures to ADUs would allow such expansion even if those structures are in the required rear yard.**

The Ordinance as drafted would allow expansion of standalone garages/structures to add dormers. Many of such standalone garages/structures are currently in the required rear yard. However the language as drafted is not clear that dormers could be added to structures even when they are in the required rear yard. Staff recommends clarifying the language to reflect such provision. Adding dormers when converting a one story garage would provide opportunities for additional light and ventilation, and would increase occupiable floor area by raising the vertical clearance of a room.

- 6) **Allow ADUs to pay into an in-lieu fee for street tree requirements. Apply the same provision to unauthorized units undergoing legalization.**

Staff acknowledges how meeting the street tree requirements can prove lengthy and complicated for ADUs. Instead of exempting ADUs from this requirement, staff recommends allowing ADUs to pay into an in lieu fee to satisfy this requirement. This would shorten the review period from the Department of Public Works for ADUs while still implementing the City's Better Street Plan by creating more trees and greenery on streets. Similarly same issues apply to unauthorized units that are undergoing the legalization program. To maintain consistency, staff recommends offering the same flexibility to those permits so that those applicants can pay into an in-lieu fee in order to satisfy the street tree requirement.

- 7) **Remove the prohibition to use the legalization program where no-fault evictions have occurred and amend the Planning Code and the Rent Ordinance to:**

- i. **clarify that the existing five year price control applies to no-fault evictions in unauthorized units (Section 37.3(f) of the Administrative Code)**
- ii. **require the unit be offered to the previous tenant evicted similar to provisions for capital improvement (37.9a(11)), Ellis Act (37.9A), and owner move-in evictions (37.9(B)).**

Staff identified a need to address the eviction loophole currently existing in the legalization program. Through this loophole, property owners inclined to remove an unauthorized unit can evict their tenants, and then remove the unit without a CU permit. The eviction prohibition in the legalization program was originally placed to protect tenants but no longer serves this goal (see page 6-7 for more details). To address this loophole, staff's recommendations would maintain the goal of tenant protection but change how the legalization program serves this goal. Staff recommends removing the eviction prohibition in the legalization program; this would eliminate using tenant evictions as an excuse to remove the unauthorized unit. It would also help the City to preserve its existing rent control housing stock.

In addition, already existing price control laws now address the goal of tenant protections. This means that property owners no longer have the opportunity to evict a tenant, legalize their unit, and then increase the rental price. Instead, to re-rent a newly

legalized unit within five years subsequent to an eligible² no-fault eviction, the owner can only ask for the rental rates at the time of eviction (plus allowable annual increases). Staff recommends simply making a reference in the legalization program that those price controls apply. Second, to fully discourage evictions prior to legalization, staff recommends using the right to return model currently in practice for Capital Improvement, Ellis Act, and Owner Move-in evictions. In these models, property owners are required to offer the unit to tenants previously evicted, if the unit is being re-rented for a period of time after eviction occurred. Together with price control, this would mean that if an owner legalizes a unit subsequent to a no-fault eviction and then re-rents the unit, the unit would have to be first offered to the same tenant and at the same rate as the time of eviction (plus allowable annual increases). This would further prevent using the legalization program as a means for evicting tenants.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

ENVIRONMENTAL REVIEW

The Environmental review for this Ordinance is pending and will be available for the Commission Hearing. Staff anticipates the proposed Ordinance is covered under the Addendum 4 to the Housing Element EIR issued June 15, 2016.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any comments about this Ordinance.

RECOMMENDATION:	Recommendation of Approval with Modification
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² Eligible evictions for five year price control are: Owner move-in, condo conversion, demolitions and removal from housing, capital improvements, and lead abatement.

Attachments:

- Exhibit A: Draft Planning Commission Resolution for BF No. 180268
- Exhibit B: Three-Dimensional Graphics Showing the Proposed Changes To Allow Filling In Under Cantilevered Rooms And Decks That Are In The Required Rear Yard
- Exhibit C: Three-Dimensional Graphics Showing the Proposed Changes To Allow Vertical Expansions of Standalone Garages on Corner Lots
- Exhibit D: Draft Ordinance



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution

HEARING DATE JUNE 7, 2018

Project Name: Amendments to Accessory Dwelling Units Requirements
Case Number: 2018-004194PCA, [Board File No. 180268]
Initiated by: Supervisor Tang / Introduced March 20, 2018
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Reviewed by: Aaron Starr, Manager of Legislative Affairs
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RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD ORDINANCE AMENDING THE PLANNING CODE TO AUTHORIZE THE ZONING ADMINISTRATOR TO WAIVE OR MODIFY BICYCLE PARKING REQUIREMENTS FOR AN ACCESSORY DWELLING UNIT (ADU), ALLOW MORE THAN ONE UNAUTHORIZED UNIT CONSTRUCTED WITHOUT A PERMIT TO BE LEGALIZED, EXEMPT FROM THE PERMIT NOTIFICATION REQUIREMENT ADUS CONSTRUCTED WITHIN THE DEFINED EXISTING BUILT ENVELOPE, ALLOW CONVERSION OF AN EXISTING STAND-ALONE GARAGE OR STORAGE STRUCTURE TO AN ADU AND EXPANSION OF THE EXISTING BUILDING ENVELOPE TO ADD DORMERS, ELIMINATE THE STREET TREE REQUIREMENT FOR AN ADU, AND ALLOW ONE ADU TO BE ADDED TO A NEW RESIDENTIAL BUILDING OF THREE UNITS OR LESS AS A COMPONENT OF THE NEW CONSTRUCTION; AMENDING THE BUILDING CODE TO PROVIDE FOR A PREAPPLICATION PLAN REVIEW FOR ADUS; 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

WHEREAS, on March 20, 2018 Supervisor Tang introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 180268, which would the Planning and Building Code to provide some amendments to the Accessory Dwelling Unit program; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on June 7, 2018; and,

WHEREAS, the proposed Ordinance has been covered under the Addendum 4 to the Housing Element EIR issued June 15, 2016; 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 1650 Mission Street, Suite 400, 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 with modifications** the proposed ordinance.

- 1) **Restrict the size of the ADUs added as a part of new construction to 1,200 sq. ft. in order to differentiate them from a regular unit.**
- 2) **Allow expansion of ADUs within the buildable envelope.**
- 3) **Allow expansion for ADUs under cantilevered rooms and decks in required rear yard without neighborhood notification, as drafted in the Ordinance, but amend Section 136 (c) to list filling under those spaces as permitted obstructions when adding ADUs.**
- 4) **On a corner lot, allow one story expansion of existing standalone garage structures limited to its existing footprint.**
- 5) **Clarify that the provision to allow dormers when converting existing standalone garages/structures to ADUs would allow such expansion even if those structures are in the required rear yard.**
- 6) **Allow ADUs to pay into an in-lieu fee for street tree requirements. Apply the same provision to unauthorized units undergoing legalization.**
- 7) **Remove the prohibition to use the legalization program where no-fault evictions have occurred and amend the Planning Code and the Rent Ordinance to:**
 - i. **clarify that the existing five year price control applies to no-fault evictions in unauthorized units (Section 37.3(f) of the Administrative Code)**
 - ii. **require the unit be offered to the previous tenant evicted similar to provisions for capital improvement (37.9a(11)), Ellis Act (37.9A), and owner move-in evictions (37.9(B)).**

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 supports the overall goals of this Ordinance as it would provide more flexibility to build ADUs while maintaining quality of these units.
2. To distinguish an ADU in new construction from a regular residential unit, the Commission recommends using a unit size limit already identified for ADUs in State Law, which is a maximum of 1,200 sq. ft.
3. Allowing ADUs to expand within the buildable envelope is consistent with recent changes to the ADU program per State Law. Those changes allowed ADUs in single-family homes to expand

Amendments to Accessory Dwelling Units Requirements

within the buildable envelope. In addition, the City allows enlarging an existing unit within the buildable envelope. Applying same provisions to ADUs would be consistent with the City's policy to produce more housing.

4. The Commission supports allowing infill under cantilevered rooms and decks even when they are in the required rear yard. This would improve light access for the unit and would help with meeting the exposure requirements. Infill under these spaces has minimal impact on the mid-block open space as they would fill under already existing and legal projection into the rear yard. For Code consistency and clarity, the Commission recommends amending Section 136 (c) of the Code to reflect this change as well. This section of the Code includes all permitted obstructions allowed in the required rear yard. Similarly allowing filling in under decks and cantilevered rooms in the required rear yard for ADUs would be a permitted obstruction in the required rear yard.
5. Standalone garages on corner lots can already be converted to ADUs but only within their existing built footprint. These garages face the street and as a one-story structure create a gap in the street wall. Allowing one-story expansion of legal non-conforming garages/structures for ADUs would create a consistent street wall and improve the continuity of the buildings in the block. Such expansion would not affect the quality of mid-block open space. Lastly, these ADUs would likely have direct access to the street, better access to light, and are therefore higher quality units.
6. The Ordinance as drafted would allow expansion of standalone garages/structures to add dormers. Many of such standalone garages/structures are currently in the required rear yard. However the language as drafted is not clear that dormers could be added to structures even when they are in the required rear yard. The Commission recommends clarifying the language to reflect such provision. Adding dormers when converting a one story garage would provide opportunities for additional light and ventilation, and would increase occupiable floor area by raising the vertical clearance of a room.
7. The Commission acknowledges how meeting the street tree requirements add to the complexities of permit processes for ADUs. Instead of exempting ADUs from this requirement, the Commission recommends allowing ADUs to pay into an in lieu fee to satisfy this requirement. This would shorten the review period from the Department of Public Works for ADUs while still implementing the City's Better Street Plan by creating more trees and greenery on streets. Similarly same issues apply to unauthorized units that are undergoing the legalization program. To maintain consistent provision, the Commission recommends offering the same flexibility to those permits so that those applicants can pay into an in-lieu fee in order to satisfy the street tree requirement.
8. The Commission identified a need to address the eviction loophole currently existing in the legalization program. Through this loophole, property owners inclined to remove an unauthorized unit can evict their tenants, and then remove the unit without a CU permit. The eviction prohibition in the legalization program was originally placed to protect tenants but no longer serves this goal. To address this loophole, the Commission's recommendations would maintain the goal of tenant protection but change how the legalization program serves this goal. The Commission recommends removing the eviction prohibition in the legalization program; this would eliminate using tenant evictions as an excuse to remove the unauthorized unit. It would also help the City to preserve its existing rent control housing stock.

In addition, already existing price control laws now address the goal of tenant protections. This means that property owners no longer have the opportunity to evict a tenant, legalize their unit,

Amendments to Accessory Dwelling Units Requirements

and then increase the rental price. Instead, to re-rent a newly legalized unit within five years subsequent to an eligible¹ no-fault eviction, the owner can only ask for the rental rates at the time of eviction (plus allowable annual increases). The Commission recommends simply making a reference in the legalization program that those price controls apply. Second, to fully discourage evictions prior to legalization, the Commission recommends using the right to return model currently in practice for Capital Improvement, Ellis Act, and Owner Move-in evictions. In these models, property owners are required to offer the unit to tenants previously evicted, if the unit is being re-rented for a period of time after eviction occurred. Together with price control, this would mean that if an owner legalizes a unit subsequent to a no-fault eviction and then re-rents the unit, the unit would have to be first offered to the same tenant and at the same rate as the time of eviction (plus allowable annual increases). This would further prevent using the legalization program as a means for evicting tenants.

9. The proposed Ordinance will correct the Planning Code so that it is in line with the City's current practices and adopted budget.
10. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

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.

The proposed Ordinance would provide further flexibility for Accessory Dwelling unit program in pursuit of goals to increase housing opportunities. It would also provide more opportunities to preserve existing unauthorized units.

OBJECTIVE 7

SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL.

POLICY 7.7

Support housing for middle income households, especially through programs that do not require a direct public subsidy.

ADUs are subordinate to the original unit due to their size, location of the entrance, lower ceiling heights, etc. ADUs are anticipated to provide a lower rent compared to the residential units developed in newly constructed buildings and therefore the proposed Ordinance would support housing for middle income households.

¹ Eligible evictions for five year price control are: Owner move-in, condo conversion, demolitions and removal from housing, capital improvements, and lead abatement.

Amendments to Accessory Dwelling Units Requirements

Similarly existing unauthorized units generally offer lower rents compared to other units on the market. The proposed Ordinance would expand the legalization program and therefore maintain more housing for low and middle income households.

11. 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.

12. **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 WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on June 7, 2018.

Jonas P. Ionin
Commission Secretary

AYES:

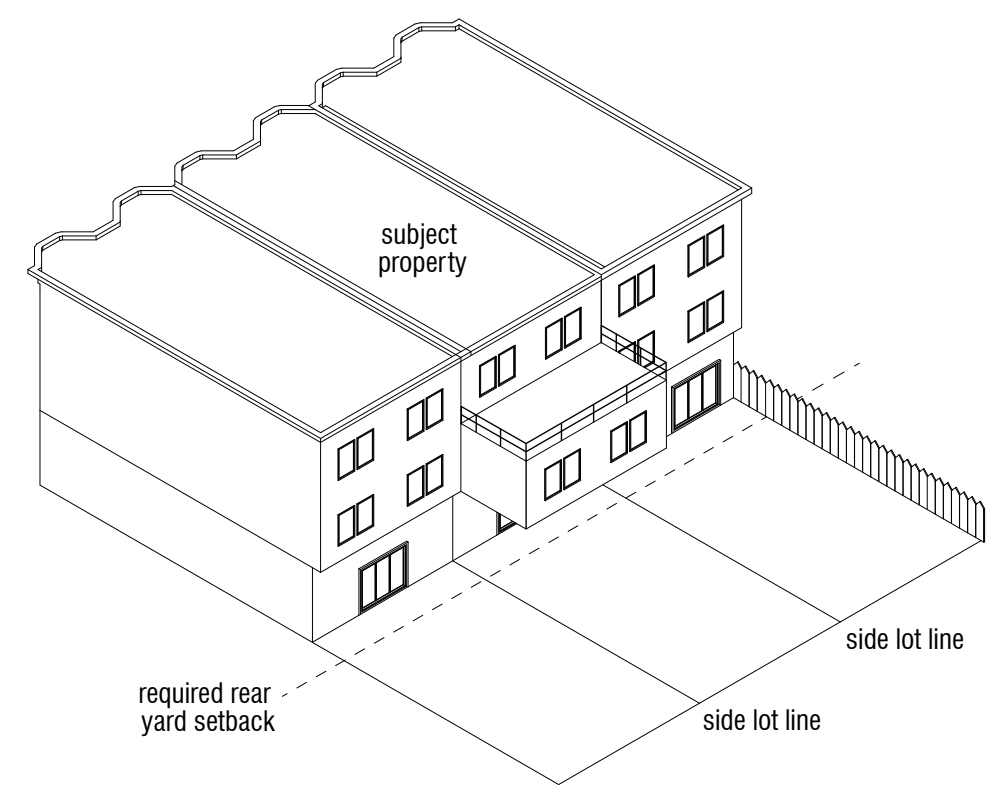
NOES:

ABSENT:

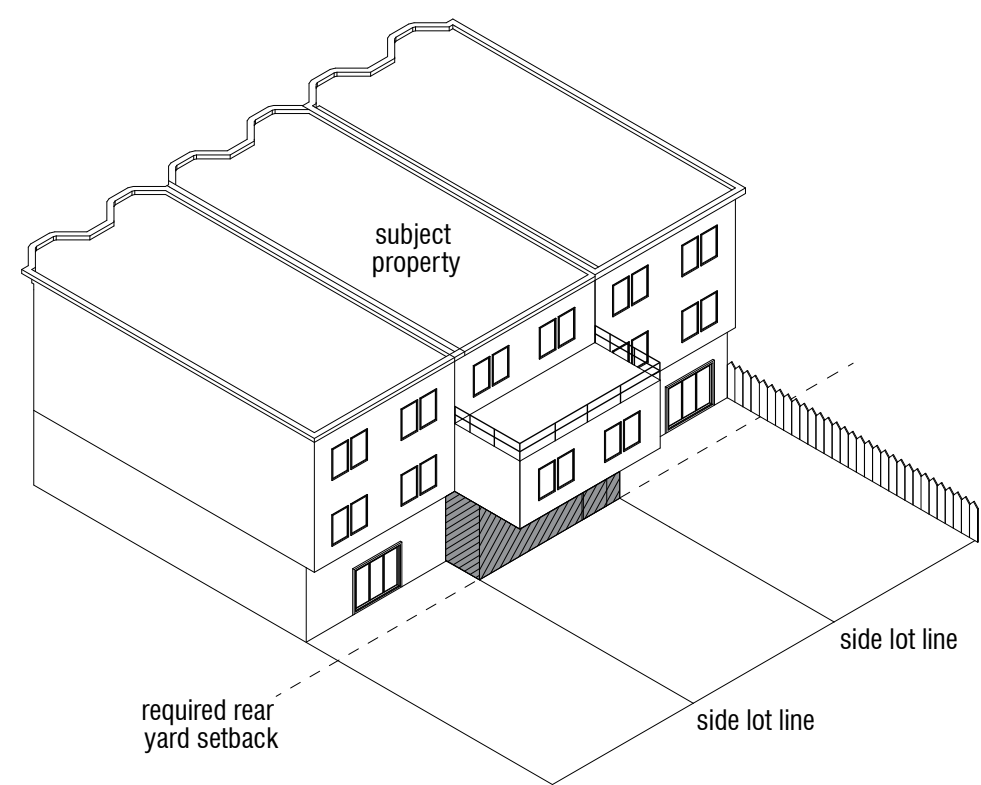
ADOPTED:

Exhibit B- Proposed Amendment to Allow
Filling in Under:
a) Cantilevered Rooms That Are In the
Required Rear Yard

EXISTING



ALLOWED
TODAY



PROPOSED

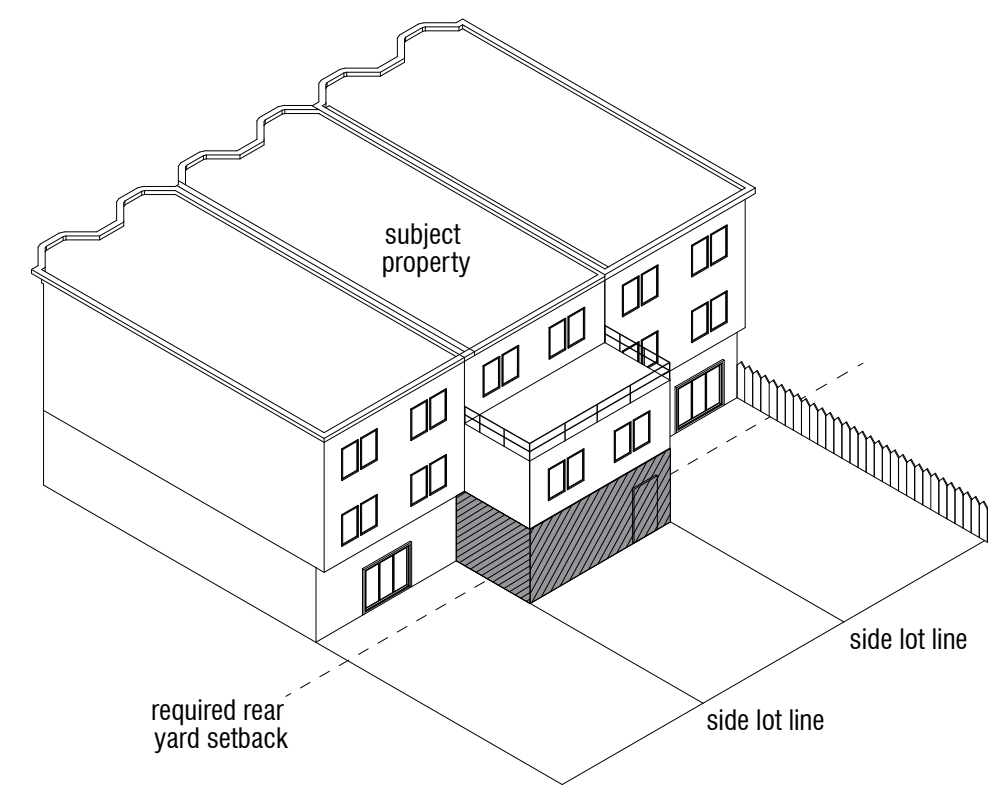
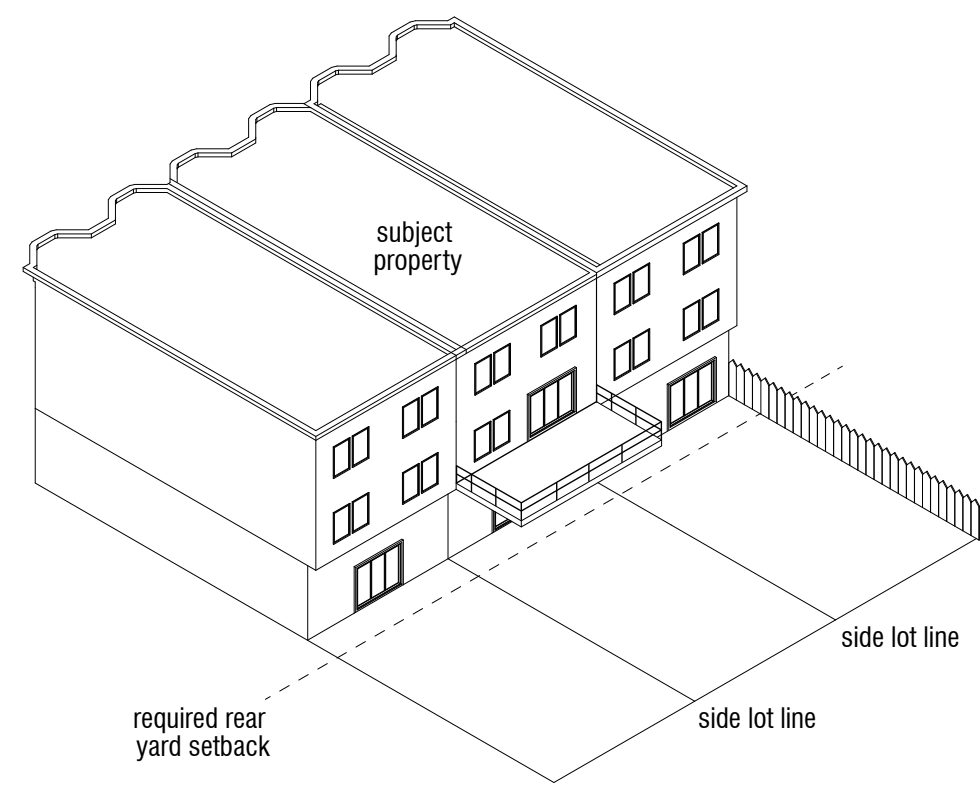
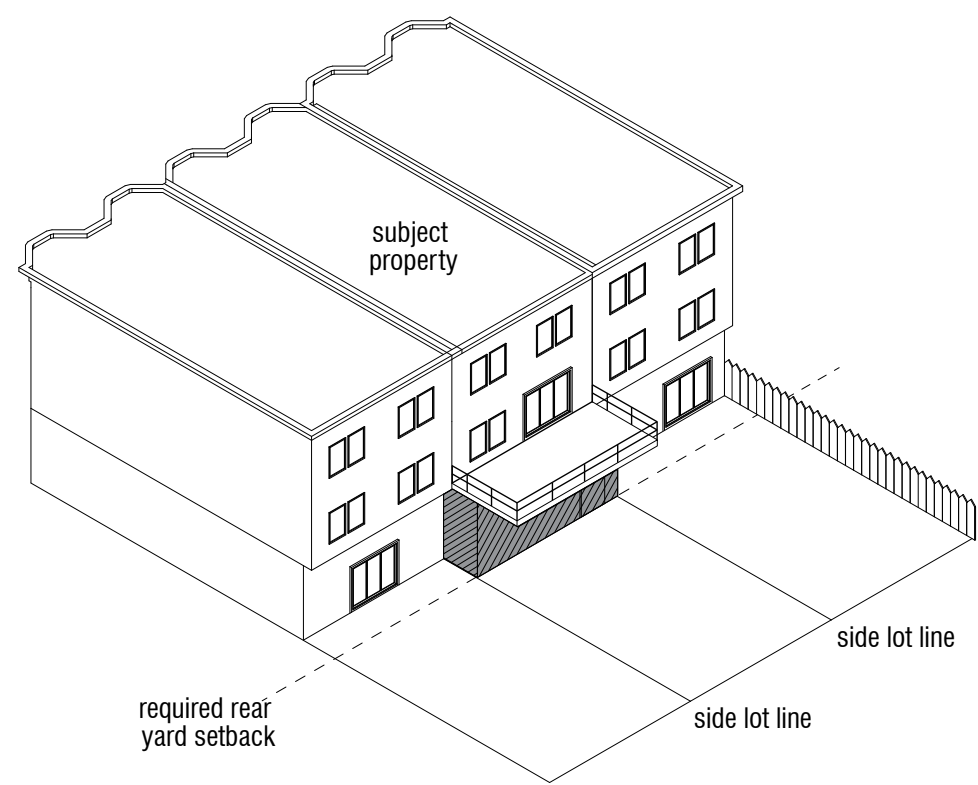


Exhibit B- Proposed Amendment to Allow
Filling in Under:
b) Decks That Are In the Required Rear Yard

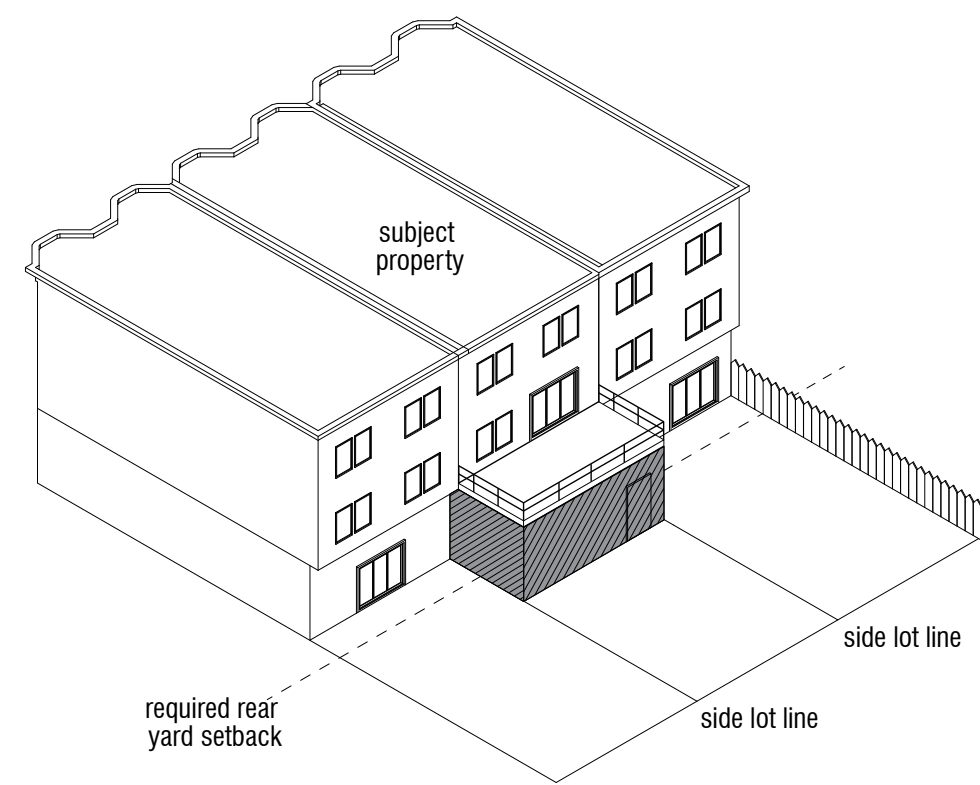
EXISTING



ALLOWED
TODAY



PROPOSED



*Exhibit C- Proposal to Allow Vertical
Expansion of of A Standalone Garage on a
Corner Lot (Within the Required Rear Yard)
a) Existing Views*

EXISTING STAND-ALONE GARAGE
ON CORNER LOT

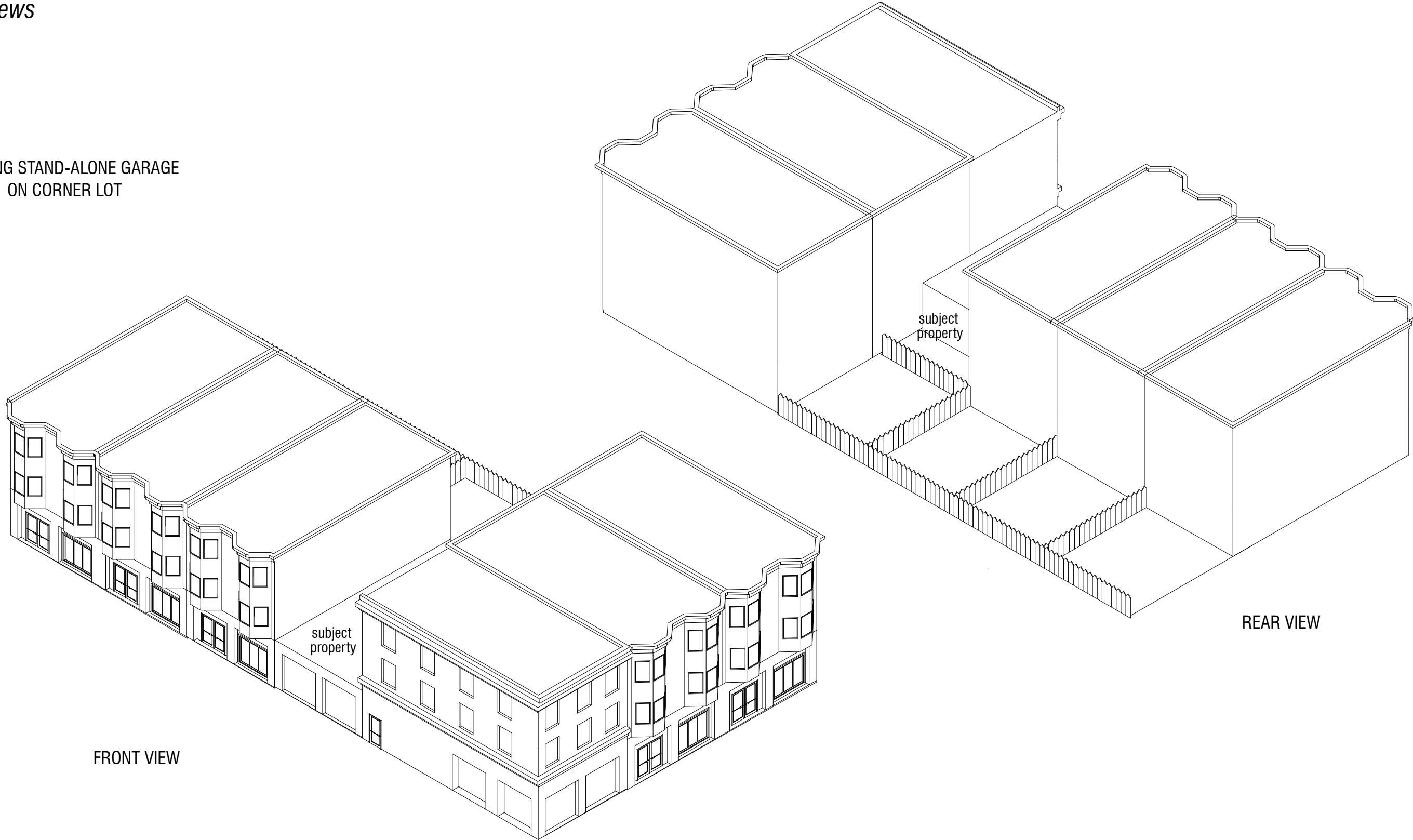
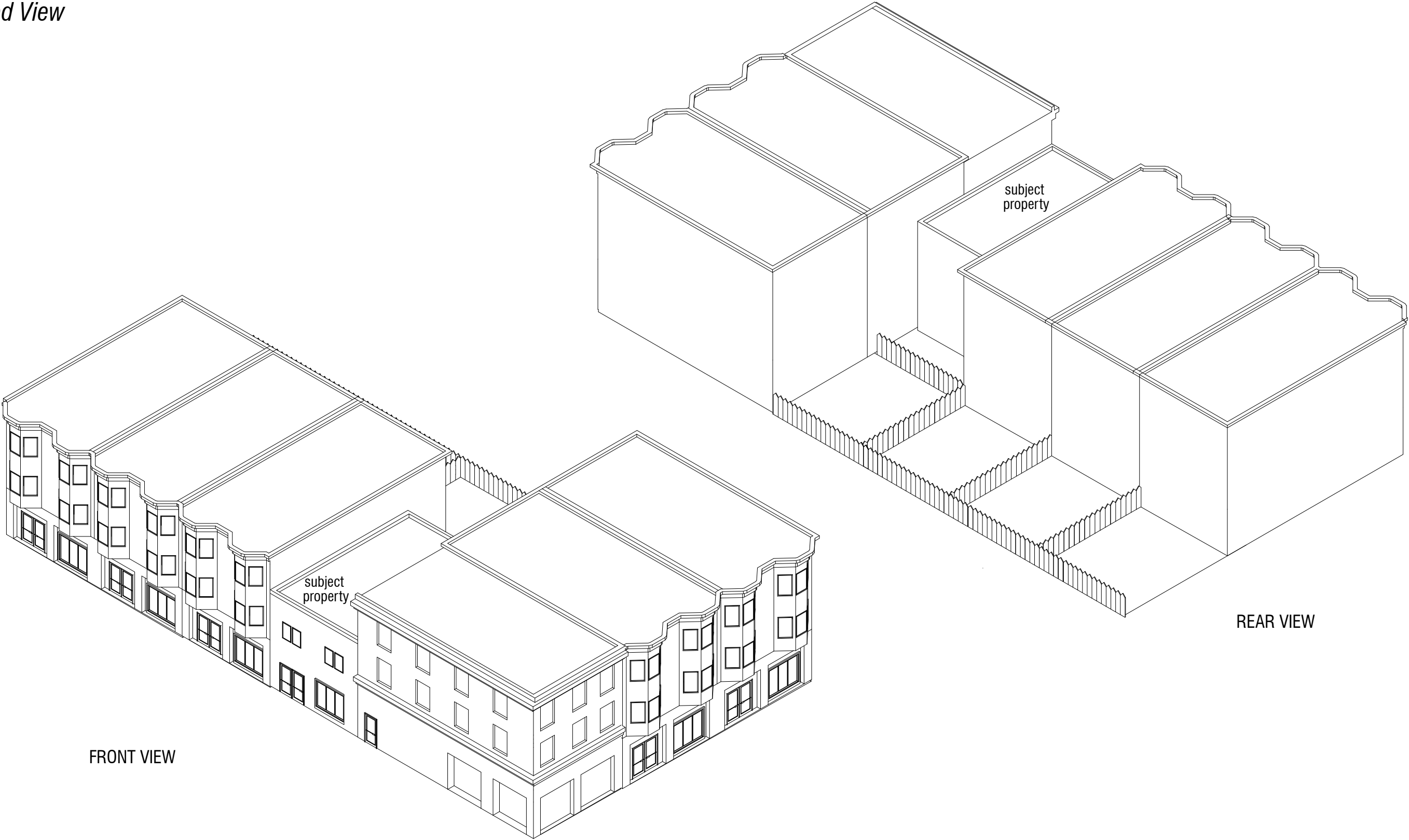


Exhibit C- Proposal to Allow Vertical
Expansion of of A Standalone Garage on a
Corner Lot (Within the Required Rear Yard)
b) Proposed View



BOARD of SUPERVISORS



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1 Dr. Carlton B. Goodlett Place, Room 244
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Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

March 26, 2018

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On March 20, 2018, Supervisor Tang introduced the following legislation:

File No. 180268

Ordinance amending the Planning Code to authorize the Zoning Administrator to waive or modify bicycle parking requirements for an Accessory Dwelling Unit (ADU), allow more than one unauthorized unit constructed without a permit to be legalized, exempt from the permit notification requirement ADUs constructed within the defined existing built envelope, allow conversion of an existing stand-alone garage or storage structure to an ADU and expansion of the existing building envelope to add dormers, eliminate the street tree requirement for an ADU, and allow one ADU to be added to a new residential building of three units or less as a component of the new construction; amending the Building Code to provide for a preapplication plan review for ADUs; 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; adopting findings of public necessity, convenience, 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.

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board



for By: Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

- c: John Rahaim, Director of Planning
- Aaron Starr, Acting Manager of Legislative Affairs
- Scott Sanchez, Zoning Administrator
- Lisa Gibson, Environmental Review Officer
- AnMarie Rodgers, Senior Policy Advisor
- Laura Lynch, Environmental Planning
- Joy Navarrete, Environmental Planning

[Planning, Building Codes - Accessory Dwelling Units]

Ordinance amending the Planning Code to authorize the Zoning Administrator to waive or modify bicycle parking requirements for an Accessory Dwelling Unit (ADU), allow more than one unauthorized unit constructed without a permit to be legalized, exempt from the permit notification requirement ADUs constructed within the defined existing built envelope, allow conversion of an existing stand-alone garage or storage structure to an ADU and expansion of the existing building envelope to add dormers, eliminate the street tree requirement for an ADU, and allow one ADU to be added to a new residential building of three units or less as a component of the new construction; amending the Building Code to provide for a preapplication plan review for ADUs; 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; adopting findings of public necessity, convenience, 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. Findings.

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

6 (b) On _____, the Planning Commission, in Resolution No. _____,
7 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
8 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
9 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
10 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

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

14 (d) Pursuant to Charter Section D3.750-5, the Building Inspection Commission
15 considered this ordinance at a duly noticed public hearing held on _____, 2018.

16
17 Section 2. The Planning Code is hereby amended by revising Sections 102, 138.1,
18 140, 155.1, 207, 207.3, 307, and 317, to read as follows:

19 **SEC. 102. DEFINITIONS.**

20 * * * *

21 **Dwelling Unit, Accessory.** Also known as a Secondary Unit or In-Law Unit, is a
22 Dwelling Unit that is constructed either entirely within the existing built envelope, the "living
23 area" as defined in State law, or the buildable area of an existing building in areas that allow
24 residential use; or is constructed within the existing built envelope ~~or buildable envelope~~ of an
25 existing and authorized auxiliary structure on the same lot.

* * * *

SEC. 138.1. STREETSCAPE AND PEDESTRIAN IMPROVEMENTS.

* * * *

(c) **Required streetscape and pedestrian improvements.** Development projects shall include streetscape and pedestrian improvements on all publicly accessible rights-of-way directly fronting the property as follows:

(1) **Street trees.** Project Sponsors shall plant and maintain street trees as set forth in Article 16, Sections 805(a) and (d) and 806(d) of the Public Works Code; provided, however, that a street tree or trees shall not be required for an ADU authorized to be constructed pursuant to Section 207(c)(4) or 207(c)(6) of this Code.

* * * *

SEC. 140. ALL DWELLING UNITS IN ALL USE DISTRICTS TO FACE ON AN OPEN AREA.

* * * *

(c) **Exceptions.**

(1) For historic buildings identified in Section 307(h), and for the conversion of a nonconforming use in an existing building to a Residential Use in a district where the Residential Use is principally permitted, the requirements of this Section 140 may be modified or waived pursuant to the procedures and criteria set forth in Sections 307(h) and 329. This administrative exception does not apply to new additions to historic buildings.

(2) For Accessory Dwelling Units, the requirements of this Section 140 may be modified or waived pursuant to the procedures and criteria set forth in Sections 307(l) and 207(c)(4)(G).

155.1. BICYCLE PARKING: DEFINITIONS AND STANDARDS.

* * * *

(b) **Standards for Location of Bicycle Parking Spaces.** These standards apply to all bicycle parking subject to Section 155.2, as well as bicycle parking for City-owned and leased buildings, parking garages and parking lots subject to Section 155.3. Bicycle racks shall be located in highly visible areas as described in subsections below in order to maximize convenience and minimize theft and vandalism. *For Accessory Dwelling Units, the requirements of this subsection (b) may be modified or waived pursuant to the procedures and criteria set forth in Sections 307(l) and 207(c)(4)(G).*

* * * *

(c) **Design Standards for Bicycle Parking Spaces.** These design standards apply to all bicycle parking spaces subject to Sections 155.2 and 155.3. Bicycle parking shall follow the design standards established in Zoning Administrator Bulletin No. 9, which includes specific requirements on bicycle parking layout and acceptable types of Class 1 and Class 2 bicycle parking spaces. *For Accessory Dwelling Units, the requirements of this subsection (c) may be modified or waived pursuant to the procedures and criteria set forth in Sections 307(l) and 207(c)(4)(G).*

* * * *

SEC. 207. DWELLING UNIT DENSITY LIMITS.

* * * *

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

* * * *

(4) **Accessory Dwelling Units in Multifamily Buildings; Accessory Dwelling Units in Single-Family Homes That Do Not Strictly Meet the Requirements in Subsection (c)(6).**

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

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

8 (i) only one ADU will be constructed;

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

11 (iii) the ADU will be constructed entirely within the “living area”
12 (as defined in subsection (c)(6)(B)(iii)) or the buildable area of an existing single-family home,
13 or constructed within the built envelope of an existing and authorized auxiliary structure on the
14 same lot;

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

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

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

1 ~~construct the ADU. This provision shall not apply if the tenant was evicted under Section 37.9(a)(11) or~~
2 ~~37.9(a)(14) and the applicant(s) either (A) have certified that the original tenant reoccupied the unit~~
3 ~~after the temporary eviction or (B) have submitted to the Department and to the Rent Board a~~
4 ~~declaration from the property owner or the tenant certifying that the property owner notified the tenant~~
5 ~~of the tenant's right to reoccupy the unit and the tenant chose not to reoccupy it.~~

6 (C) **Controls on Construction.** An Accessory Dwelling Unit is
7 permitted to be constructed under the following conditions:

8 (i) For lots that have four existing Dwelling Units or fewer, one
9 ADU is permitted; for lots that have more than four existing Dwelling Units or are undergoing
10 seismic retrofitting under subsection (c)(4)(F) below, there is no limit on the number of ADUs
11 permitted; provided, however, that the Department shall not approve an application for construction
12 of an Accessory Dwelling Unit in any building regulated by this subsection (c)(4) where a tenant has
13 been evicted pursuant to Administrative Code Sections 37.9(a)(9) through 37.9(a)(14) under a notice of
14 eviction served within 10 years prior to filing the application for a building permit to construct the
15 ADU or where a tenant has been evicted pursuant to Administrative Code Section 37.9(a)(8) under a
16 notice of eviction served within five years prior to filing the application for a building permit to
17 construct the ADU. This provision shall not apply if the tenant was evicted under Section 37.9(a)(11)
18 or 37.9(a)(14) and the applicant(s) either (A) have certified that the original tenant reoccupied the unit
19 after the temporary eviction or (B) have submitted to the Department and to the Rent Board a
20 declaration from the property owner or the tenant certifying that the property owner notified the tenant
21 of the tenant's right to reoccupy the unit and the tenant chose not to reoccupy it.

22 (ii) Except as provided in subsections (iii) and (iv) below, A
23 Accessory Dwelling Unit shall be constructed entirely within the built envelope of an existing
24 building or within the built envelope of an existing and authorized stand-alone garage, storage
25 structure, or other auxiliary structure on the same lot, as the built envelope in either case

1 existed three years prior to the time the application was filed for a building permit to construct
2 the ADU. For purposes of this provision, the "built envelope" shall include the open area under
3 a cantilevered room or room built on columns; decks, except for decks ~~that encroach into the~~
4 ~~required rear yard, or decks~~ that are supported by columns or walls other than the building wall
5 to which ~~it is~~ they are attached and are multi-level or more than 10 feet above grade; and
6 lightwell infills provided that the infill will be against a blank neighboring wall at the property
7 line and not visible from any off-site location; as these spaces exist as of July 11, 2016 ~~and~~
8 ~~except for any of these spaces that encroach on the required rear yard.~~ An ADU constructed entirely
9 within the existing built envelope, as defined in this subsection (ii), of an existing building or authorized
10 auxiliary structure on the same lot, or where an existing stand-alone garage or storage structure has
11 been expanded to add dormers, is exempt from the notification requirements of Section 311 of this
12 Code.

13 (iii) One ADU over the density limits in this Code is allowed in a
14 newly-built residential structure of three units or less as a component of the new construction.

15 (iv) When a stand-alone garage or storage structure is being
16 converted to an ADU, an expansion to the envelope is allowed to add dormers.

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

24 (vi) ~~(iv)~~ A building undergoing seismic retrofitting may be eligible
25 for a height increase pursuant to ~~S~~subsection (c)(4)(F) below.

1 ~~(vii)~~ ~~(v)~~ Notwithstanding any other provision of this Code, an
2 Accessory Dwelling Unit authorized under this Section 207(c)(4) may not be merged with an
3 original unit(s).

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

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

11 (E) **Restrictions on Subdivisions.** Notwithstanding the provisions of
12 Article 9 of the Subdivision Code, a lot with an Accessory Dwelling Unit authorized under this
13 Section 207(c)(4) shall not be subdivided in a manner that would allow for the ADU to be sold
14 or separately financed pursuant to any condominium plan, housing cooperative, or similar
15 form of separate ownership; provided, however, that this prohibition on separate sale or
16 finance of the ADU shall not apply to a building that (i) within three years prior to July 11, 2016
17 was an existing condominium with no Rental Unit as defined in Section 37.2(r) of the
18 Administrative Code, and (ii) has had no evictions pursuant to Sections 37.9(a) through
19 37.9(a)(14) of the Administrative Code within 10 years prior to July 11, 2016.

20 (F) **Buildings Undergoing Seismic Retrofitting.** For Accessory
21 Dwelling Units on lots with a building undergoing mandatory seismic retrofitting in compliance
22 with Chapter 4D of the Existing Building Code or voluntary seismic retrofitting in compliance
23 with the Department of Building Inspection's Administrative Bulletin 094, the following
24 additional provision applies: If allowed by the Building Code, a building in which an Accessory
25

1 Dwelling Unit is constructed may be raised up to three feet to create ground floor ceiling
2 heights suitable for residential use. Such a raise in height

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

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

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

15 (iv) pursuant to subsection (4)(C)(i), there is no limit on the
16 number of ADUs that are permitted to be added in connection with a seismic retrofit.

17 (G) **Waiver of Code Requirements; Applicability of Rent**

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

1 Arbitration Ordinance (Chapter 37 of the Administrative Code) as a condition of approval of
2 the ADU(s). For purposes of this requirement, Rental Units shall be as defined in Section
3 37.2(r) of the Administrative Code.

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

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

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

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

19 (iv) The property owner and the Planning Director (or ~~his~~ the
20 Director's designee), on behalf of the City, will execute the Agreement, which shall be
21 reviewed and approved by the City Attorney's Office. The Agreement shall be executed prior
22 to the City's issuance of the First Construction Document for the project, as defined in Section
23 107A.13.1 of the San Francisco Building Code.

24 (v) Following execution of the Regulatory Agreement by all
25 parties and approval by the City Attorney, the Regulatory Agreement or a memorandum

1 thereof shall be recorded against the property and shall be binding on all future owners and
2 successors in interest.

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

6 (I) **Monitoring Program.**

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

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

24 (iii) **Department Report.** The Department shall publish a report
25 annually until April 1, 2019, that describes and evaluates the types of units being developed

1 and their affordability rates, as well as their use as Short-Term Residential Rentals. The report
2 shall contain such additional information as the Director or the Board of Supervisors
3 determines would inform decision makers and the public on the effectiveness and
4 implementation of this subsection (c)(4) and include recommendations for any amendments to
5 the requirements of this Section 207(c)(4). The Department shall transmit this report to the
6 Board of Supervisors for its review and public input. In subsequent years, this information on
7 Accessory Dwelling Units shall be reported annually in the Housing Inventory.

8 * * * *

9 **(6) Accessory Dwelling Units in Existing Single-Family Homes.**

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

19 (B) **Lots Zoned for Single-Family or Multifamily Use and Containing an**
20 **Existing Single-Family Home; Controls on Construction.** An Accessory Dwelling Unit
21 located in a residential zoning district and constructed pursuant to this subsection (c)(6) shall
22 meet all of the following:

23 (i) The ADU will strictly meet the requirements set forth in this
24 subsection (c)(6)(~~BE~~) without requiring a waiver of Code requirements pursuant to subsection
25 (c)(4)(G).

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

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

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

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

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

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

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

23 (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
25 the existing single-family home must be replaced. If replacement parking is required, it may be

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

3 (x) When a stand-alone garage or storage structure is being converted to an
4 ADU, an expansion to the envelope is allowed to add dormers.

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

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

14 (E) **Rental; Restrictions on Subdivisions.**

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

18 (ii) Notwithstanding the provisions of Article 9 of the Subdivision
19 Code, a lot with an Accessory Dwelling Unit authorized under this subsection (c)(6) shall not
20 be subdivided in a manner that would allow for the ADU to be sold or separately financed
21 pursuant to any condominium plan, housing cooperative, or similar form of separate
22 ownership; ~~provided, however, that this prohibition on separate sale or finance of the ADU shall not~~
23 ~~apply to a building that within three years prior to July 11, 2016, was an existing condominium with no~~
24 ~~Rental Unit as defined in Section 37.2(r) of the Administrative Code, and also within 10 years prior to~~
25

1 ~~July 11, 2016 had no evictions pursuant to Sections 37.9(a) through 37.9(a)(14) of the Administrative~~
2 ~~Code.~~

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

8 **SEC. 207.3. AUTHORIZATION OF DWELLING UNITS CONSTRUCTED WITHOUT A**
9 **PERMIT IN AN EXISTING BUILDING ZONED FOR RESIDENTIAL USE.**

10 Notwithstanding Section 207.2 or any other provision of this Code, certain dwelling
11 units that were constructed without benefit of permit in an existing residential building or in an
12 ancillary structure located on the same lot may be granted legal status subject to the
13 conditions and procedures set forth below. For purposes of this Section 207.3, a dwelling unit
14 shall not include single room occupancy units.

15 (b) **Scope.**

16 (1) Except as provided in subsection (2) below, this Section 207.3 shall apply
17 to an existing building or an ancillary structure on the same lot, that is located in a district
18 where residential use is principally permitted, and that has one or more dwelling units that
19 were constructed prior to January 1, 2013 without benefit of permit and used as residential
20 space. ~~One~~ Any of the unauthorized dwelling units ~~per~~ on the lot ~~that~~ meeting this threshold
21 requirement and the requirements of this Section may be granted legal status this Section,
22 regardless of the density limits of the zoning district.

23 * * * *

1 **SEC. 307. OTHER POWERS AND DUTIES OF THE ZONING ADMINISTRATOR.**

2 In addition to those specified in Sections 302 through 306 of this Code, the Zoning
3 Administrator shall have the following powers and duties in administration and enforcement of
4 this Code.

5 * * * *

6 **(l) Exceptions from Certain Specific Code Standards Through Administrative**
7 **Review for Accessory Dwelling Units Constructed Pursuant to Section 207(c)(4) of this**
8 **Code.** The Zoning Administrator may allow complete or partial relief from the density limits
9 and from the off-street parking, bicycle parking, rear yard, exposure, and/or open space
10 requirements of this Code when modification of the requirement would facilitate the
11 construction of an Accessory Dwelling Unit, as defined in Section 102 and meeting the
12 requirements of Section 207(c)(4) of this Code.

13 **(1) Exposure.** The exposure requirements of Section 140 apply, except that
14 subsection (a)(2) may be satisfied through windows facing an open area that is at least 225
15 square feet, with no horizontal direction being less than nine feet, and 15 feet in every horizontal
16 direction that is not required to expand on subsequent floors. Permitted obstructions that are
17 outlined in Section 140 and fire escapes, not projecting more than 4 feet 6 inches, would be allowed in
18 such open area. In considering any request for complete or partial relief from these Code
19 requirements, the Zoning Administrator shall facilitate the construction of such Accessory
20 Dwelling Units to the extent feasible and shall consider any criteria elsewhere in this Section
21 307 that he or she determines to be applicable. Nothing in this Section shall be interpreted as
22 allowing for an existing nonconforming non-conforming use to be deemed conforming.

23 **(2) Bicycle Parking.** The requirements of Sections 155.1 and 155.2 shall apply,
24 except that (A) in a building with no new corridors, an existing three-foot corridor may satisfy the
25

requirement of a legal nonconforming access corridor for purposes of bicycle parking access in existing buildings and (B) vertical bicycle parking may satisfy up to 100% of required bicycle parking.

SEC. 317. LOSS OF RESIDENTIAL AND UNAUTHORIZED UNITS THROUGH DEMOLITION, MERGER AND CONVERSION.

* * * *

(c) Applicability; Exemptions.

(1) Any application for a permit that would result in the Removal of one or more Residential Units or Unauthorized Units is required to obtain Conditional Use authorization. *For Unauthorized Units, this Conditional Use authorization will not be required for Removal if the unit cannot be legalized under any available provision of this Code.* The application for a replacement building or alteration permit shall also be subject to Conditional Use requirements.

* * * *

(g) Conditional Use Criteria.

* * * *

(6) Removal of Unauthorized Units. In addition to the criteria set forth in Subsections (g)(1) through (g)(4) above, the Planning Commission shall consider the criteria below in the review of applications for removal of Unauthorized Units:

(A) ~~whether the Unauthorized Unit or Units are eligible for legalization under Section 207.3 of this Code;~~

~~(B)~~ whether the costs to legalize the Unauthorized Unit or Units under the Planning, Building, and other applicable Codes is reasonable based on how such cost compares to the average cost of legalization per unit derived from the cost of projects on the Planning Department's Master List of Additional Dwelling Units Approved required by Section 207.3(k) of this Code;

1 (~~BE~~) whether it is financially feasible to legalize the Unauthorized Unit or
2 Units. Such determination will be based on the costs to legalize the Unauthorized Unit(s)
3 under the Planning, Building, and other applicable Codes in comparison to the added value
4 that legalizing said Units would provide to the subject property. The gain in the value of the
5 subject property shall be based on the current value of the property with the Unauthorized
6 Unit(s) compared to the value of the property if the Unauthorized Unit(s) is/are legalized. The
7 calculation of the gain in value shall be conducted and approved by a California licensed
8 property appraiser. Legalization would be deemed financially feasible if gain in the value of
9 the subject property is equal to or greater than the cost to legalize the Unauthorized Unit.

10 (~~CD~~) If no City funds are available to assist the property owner with the
11 cost of legalization, whether the cost would constitute a financial hardship.

12
13 Section 3. The Building Code is hereby amended by revising Section 106A.4.9, to read
14 as follows:

15 **106A.4.9 Preapplication plan review or inspection.** When a party wishes to discuss
16 specific design issues or submit preliminary designs for review and comment by the
17 Department prior to formal application for a permit, a request for preapplication plan review
18 must be submitted in writing to the Building Official. See Section 110A, Table 1A-B – Other
19 Building Permit and Plan Review Fees – for applicable fees. Payment of the minimum fee
20 must be submitted with the letter of request.

21 **106A.4.9.1. Accessory Dwelling Units.** A preapplication plan review meeting for
22 construction of an Accessory Dwelling Unit under Planning Code Section 207(c)(4) or 207(c)(6) shall
23 include representatives from the Department of Building Inspection, Fire Department, and Planning
24 Department. The representatives of these Departments shall review with the applicant all applicable
25 state and local Code requirements as well as acceptable Code equivalencies.

1
2 Section 4. Effective Date. This ordinance shall become effective 30 days after
3 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
4 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
5 of Supervisors overrides the Mayor's veto of the ordinance
6

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

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

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

21 By:


22 JUDITH A. BOYAJIAN
23 Deputy City Attorney
24
25

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LEGISLATIVE DIGEST

[Planning, Building Codes - Accessory Dwelling Units]

Ordinance amending the Planning Code to authorize the Zoning Administrator to waive or modify bicycle parking requirements for an Accessory Dwelling Unit (ADU), allow more than one unauthorized unit constructed without a permit to be legalized, exempt from the permit notification requirement ADUs constructed within the defined existing built envelope, allow conversion of an existing stand-alone garage or storage structure to an ADU and expansion of the existing building envelope to add dormers, eliminate the street tree requirement for an ADU, and allow one ADU to be added to a new residential building of three units or less as a component of the new construction; amending the Building Code to provide for a preapplication plan review for ADUs; 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; adopting findings of public necessity, convenience, 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.

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 (c)(6) apply only to existing single-family homes that strictly meet the state law's ADU requirements. An ADU must be constructed entirely within the existing built envelope, "living area," or buildable area of an existing building or within the existing built envelope of an existing and authorized auxiliary structure on the same lot. Sections 207(c)(4) and 307(l) authorize the Zoning Administrator to modify or waive the density limits, parking, rear yard, exposure, or open space standards of the Code in order to facilitate the construction of an ADU. Section 207.3 authorizes the legalization of one dwelling unit per lot that was constructed prior to January 1, 2013 without the required permit.

Section 138.1 establishes the requirements for streetscape and pedestrian improvements, including the obligation to plant and maintain street trees; pursuant to the Article 2 Zoning Control Tables, planting street trees is required for projects in areas zoned for residential use. Section 140 requires all dwelling units to face/have exposure to an open area that meets specified minimum requirements. Section 155.1 contains the requirements and standards for bicycle parking. Section 317, among other things, requires a Conditional Use authorization for the Removal of an unauthorized dwelling unit. Building Code Section 106A.4.9 establishes a process for preapplication plan review or inspection if a party wants to discuss specific design issues or submit preliminary designs for review and comment prior to formal application for a permit.

Amendments to Current Law

Section 102 is amended to make the definition consistent with the language in Sections 207(c)(4) and (c)(6). Section 207(c)(4) is amended to provide that construction of an ADU is not subject to Section 311 notification if it is entirely within the “built envelope” of the existing structure, which is defined to include a cantilevered room and other specified areas, or if the envelope of a converted stand-alone garage, storage structure, or other existing auxiliary structure is expanded to add dormers for the ADU. Section 207(c)(4) is amended to allow an ADU in new construction. Section 207.3 is amended to allow the legalization of more than one unauthorized unit on the lot if the unit can meet all the Code requirements.

Section 138.1 is amended to exempt construction of an ADU from the street tree requirement. Sections 140, 155.1, and 307(l) are amended to authorize the Zoning Administrator to modify or waive the exposure and bicycle parking requirements in order to facilitate the construction of an ADU. Section 317 is amended to provide that if an unauthorized unit can be legalized under any available provision of the Code, its Removal requires a Conditional Use authorization. Building Code Section 106A.4.9 is amended to provide for a preapplication consultation at which the Planning, Building, and Fire Departments review with the applicant for an ADU all applicable state and local Code requirements as well as acceptable Code equivalencies

Background Information

The State Legislature has declared that second units (ADUs) are a valuable form of housing in California for many reasons. They are also an affordable type of housing because they do not include the costs of purchasing land or require major new infrastructure. In San Francisco, an ADU can be added to an existing building without changing the character of the neighborhood. San Francisco first enacted an ADU ordinance in 2015 and since then has updated its ADU program in response to amendments to the state law.

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