

Amendments to the In Law Unit (Accessory Dwelling Unit) Law

As reported previously in a Newsletter to readers, the City in its continuing efforts to increase the housing stock now allows the addition of one or more in-law units in almost all zoning districts that allow residential uses, notwithstanding the density limit of the zoning (such as RH-2 and RH-3 zoning). These in-law units are known as Accessory Dwelling Units (ADU) and they are created within unused or underutilized space entirely within an existing building. Buildings that have four or fewer legal dwelling units can add one ADU; however, there is legislation being proposed now that would allow more than one ADU in a building of four or fewer legal dwelling units, if the extra unit is created in connection with a voluntary seismic upgrade of the building. Buildings with more than four legal dwelling units may add an unlimited number of ADUs.

Supervisor Peskin proposed and Board of Supervisors enacted on May 2, 2017 an additional amendment which requires that the City expedite a qualifying ADU in a single family home pursuant to new State Law SB 1069 by approving it within 120 days from receipt of the application (without modification or disapproval), *as long as the new unit does not cause the lot's allowed number of units to be exceeded.* His law also states that if an existing parking space is eliminated to create an ADU, a replacement space can be located in any configuration including covered, uncovered, or tandem spaces or mechanical lifts.

The City will waive certain Planning Code requirements such as rear yard, parking, open space, and the amount of window exposure required for any kind of ADU. However, if your existing building is not presently subject to rent control and you use any of these waivers, your new unit will also be subject to rent control.

Certain restrictions apply to adding an ADU. An ADU may not be added to a building that had any owner move-in eviction in the last five years or other no-fault evictions in the last 10 years. An ADU must be built within the envelope of the existing building (or an authorized auxiliary structure on the same lot), and either of these two structures must have existed three years prior to the date that a building permit is filed to construct the ADU. The "built envelope" is defined to include not just what is enclosed within a building today but also certain decks, open areas under a cantilevered room and light well infills, with certain restrictions. An



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ADU cannot be built within space used for an existing residential unit. An ADU also is not permitted in ground floor space that is used for retail in Neighborhood Commercial Districts or in the Chinatown Community Business or Visitor Retail District.

The financial benefits of an ADU may be sometimes restricted. It may not be used for short term rentals such as Airbnb. Finally, an ADU may not be converted to a condominium, with certain exceptions; for example, if a building contained condominiums for three years prior to July 11, 2016 without a rental unit present and there have been no evictions within 10 years prior to July 11, 2016, an ADU can be created as a condominium; or if the building is undergoing a seismic retrofit, an ADU can be created as a condominium if the entire building is selected for conversion to condominiums.

As to the maximum or minimum size of an ADU, San Francisco currently has only one zoning designation that specifies the maximum size of secondary units (ADU's), and that is in RH-1(D) where the ADU is limited to 600 square feet. The smallest kind of ADU is one that meets the Building Code definition of Efficiency Dwelling Unit. In an EDU, the apartment will be a studio and the total area (including bathroom) cannot be smaller than 220 square feet. The unit is limited to two occupants. An additional 100 square feet of unit area must be provided for each occupant over the two person limit. The area of the unit other than the closet and bathroom cannot be smaller than 150 square feet. And of course, Building Code regulations including a minimum ceiling height requirement of a little over 7 feet will apply.

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