

**COUNTY OF SAN MATEO  
PLANNING AND BUILDING DEPARTMENT**

**DATE:** November 30, 2016

**TO:** Planning Commission

**FROM:** Planning Staff

**SUBJECT:** EXECUTIVE SUMMARY: A zoning text amendment to the County's Second Unit Ordinance, Chapter 22.5 of the Zoning Regulations.

County File Number: PLN 2016-00473

**PROPOSAL**

The Planning and Building Department proposes amendments to the County's Second Unit Ordinance, Chapter 22.5 of the Zoning Regulations, to comply with the requirements of California Accessory Dwelling Unit Law (Government Code 65852.1, et seq., formerly known as California's "Second Unit Law"), as most recently amended in September 2016, and to advance the County's goal of facilitating the production of second units as a valuable source of needed housing.

**RECOMMENDATION**

That the Planning Commission recommend that the Board of Supervisors adopt the proposed amendments to the County's Second Unit Ordinance, Chapter 22.5 of the County Zoning Regulations.

**SUMMARY**

Second units are units built on the same property as an existing or proposed primary residence, and may be attached to, within, or detached from the primary residence. Because these units are small, and often rely on existing infrastructure, they are cheaper to construct, and typically much more affordable to occupy, than more traditional units. In addition, because they are typically constructed in already developed areas, they have less impact on neighborhoods, and are more efficient and sustainable than other forms of new development.

San Mateo County has had an ordinance regulating second units since 1984. The ordinance, Chapter 22.5 of the County's Zoning Regulations, establishes standards for placement, design, and construction of second units, as well as the type of review and the process for approval of these units. While the ordinance has been in effect since

adoption, some portions have since been supplanted by State law, and the County has not been applying those parts of the ordinance.

The County is updating the existing ordinance to: 1) comply with changes directly mandated by State law; 2) advance the County's goal of facilitating the production of second units, as a valuable source of affordable housing in San Mateo County's difficult housing market; and 3) make the regulations more consistent, and easier to understand and apply.

**Requirements of State Law.** California's Accessory Dwelling Unit law governs how local jurisdictions may regulate second units. As most recently amended in September 2016, the requirements of State law include:

1. Ministerial Approval. Second units that comply with local regulations must be approved through a ministerial process, with no discretionary approvals.
2. No Public Hearings. Second units that comply with regulations may not be considered at public hearings.
3. No Growth Limits or Quotas. The development of second units cannot be subject to any growth cap or quota establishing a maximum number of units.
4. Specific Parking Requirements. State law limits how much parking may be required for second units, as well as establishing standards for how these requirements may be met.
5. Second Units within Primary Residences. State law imposes limits on how jurisdictions may regulate second units built entirely within existing structures.
6. Second Units within or atop Garages. State law also limits how jurisdictions may regulate units built on or within existing garages.
7. Size Thresholds. Established limits on the size thresholds that jurisdictions may impose on second units.

The amendments to State law adopted in September 2016 require local jurisdictions to update their regulations to comply with these amendments by January 2017. If the County does not update its regulations, they become null and void, and the County must rely only on the State's regulations.

**County Housing Goals.** San Mateo County is experiencing a historic housing crisis, and most households at most income levels cannot afford market rate housing. This crisis is driven, in large part, by the gap between new jobs created in the Bay Area, and new housing created: in San Mateo County, the former has outpaced the latter on the order of twenty-six new jobs for each one new housing unit built. San Mateo County

urgently needs new housing of all kinds, serving all income levels, as quickly as possible.

The County Board of Supervisors has recognized this crisis, and has taken a number of steps to address it. As part of these efforts, the Board has recognized that second units are a valuable source of affordable housing that should be promoted and facilitated, and has directed the County Planning and Building Department to update the County's regulations, both to comply with State law, and also with the explicit intent of making it easier to create new second units.

**Consistency and Clarity.** The County has been applying a patchwork of State law, and those portions of the County's regulations not superseded by State law. This regulatory framework is difficult to interpret and apply. The proposed updates simplify and clarify the regulations, making them easier for both applicants and the County to use.

**Changes to the County's Second Unit Ordinance.** The proposed changes to the County's Second Unit Ordinance include the following:

1. Maximum floor area: Detached second units may be the greater of 750 square feet, or 35% of the primary residence, but with an absolute maximum of 1,200 square feet. Attached second units have the same size restrictions, except that they may be up to 50% of the size of the primary residence. The prior regulations had a maximum of 35% or 700 square feet, with an absolute 1,500 square foot cap. The 1,200 foot maximum, and the 50% threshold for attached units, are consistent with State law.
2. Setbacks: Detached second units of sixteen feet or less in height may have side and rear setbacks of five feet. Detached second units greater than sixteen feet in height may have side setbacks of five feet, and rear setbacks of ten feet. The greater rear setback for taller second units is intended to protect the privacy of adjacent properties.
3. Maximum height: The maximum height of second units is 26 feet. The prior ordinance did not establish a maximum.
4. New standards for the placement of windows, balconies, and decks, to protect the privacy of adjacent properties.
5. A number of new parking exceptions, as required by State law.
6. Alternative means of meeting parking requirements, as required by State law.
7. Different, more permissive standards for units built within or atop an existing garage, as required by State law.

8. Removal of discretionary review: State law prohibits discretionary review of second units that comply with adopted regulations. The existing version of Chapter 22.5 has a number of standards that require significant discretion in their application. To comply with State law, these standards have been eliminated from the revised ordinance.

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**COUNTY OF SAN MATEO  
PLANNING AND BUILDING DEPARTMENT**

**DATE:** November 30, 2016

**TO:** Planning Commission

**FROM:** Planning Staff

**SUBJECT:** A zoning text amendment to the County's Second Unit Ordinance, Chapter 22.5 of the Zoning Regulations, to comply with the requirements of California Accessory Dwelling Law (Government Code Section 65852.1, et seq.), and advance the County's goal of facilitating the production of second units as a valuable source of needed housing.

County File Number: PLN 2016-00473

**PROPOSAL**

A zoning text amendment to the County's Second Unit Ordinance, Chapter 22.5 of the Zoning Regulations, to comply with the requirements of California Accessory Dwelling Unit Law (Government Code 65852.1, et seq., formerly known as California's "Second Unit Law"), as most recently amended in September 2016, and to advance the County's goal of facilitating the production of second units as a valuable source of needed housing.

**RECOMMENDATION**

That the Planning Commission recommend that the Board of Supervisors adopt the proposed amendments to the County's Second Unit Ordinance, Chapter 22.5 of the County Zoning Regulations, to comply with the requirements of California Accessory Dwelling Unit Law (Government Code 65852.1, et seq.), and to advance the County's goal of facilitating the production of second units as a valuable source of housing.

**BACKGROUND**

Report Prepared By: William Gibson

Location: Countywide, unincorporated areas

Existing Zoning: Various (Countywide)

General Plan Designation: Various (Countywide)

Sphere-of-Influence: Various (Countywide)

Existing Land Use: Various (Countywide)

Environmental Evaluation: This project is exempt from environmental review per CEQA Section 21080.17 and CEQA Guidelines Section 15282(h). Adoption of ordinances related to second units (accessory dwelling units) to implement specific Government Code sections (Sections 65852.1 and 65852.2) is exempt from CEQA.

## **DISCUSSION**

### **A. KEY ISSUES**

1. **Second Units.** Second units, also called accessory dwelling units, in-law units, granny units, and various other names, are units built on the same property as an existing or proposed primary residence (or residences). They are usually significantly smaller than a typical primary residence, and may be built as free-standing units, as units attached to the primary residence, or as units constructed entirely within the primary residence. They are not designed to be subdivided or sold separately from the primary residence, but to be occupied by a distinct household which may or may not pay rent for the occupancy.
2. **Advantages of Second Units.** Second units are a form of housing that is often cheaper to build, more affordable to occupy, and more efficient and less impactful than other types of residential development. The benefits of second units include:
  - a. *Reduced Construction Costs.* Because second units are typically small, and because infrastructure to serve the units is usually already in place, they are less expensive to build than other residential options.
  - b. *Affordability.* Because of their reduced size, and their status as subordinate to a primary unit, second units are often more affordable to occupy than other housing types.
  - c. *Limited Impact on Neighborhoods.* Because second units are built on existing properties, they offer a way to create additional housing without adding new multi-family structures, taller buildings, or obtrusive new development in existing neighborhoods.
  - d. *Efficiency and Sustainability.* Because they are built on existing developed properties, rather than undeveloped land, and because they rely on existing infrastructure, second units are a particularly environmentally-friendly form of housing.

- e. *Additional Income.* For owners of a primary residence, the rent from a second unit may be a valuable source of income, in some cases enabling homeowners to pay mortgages or other ownership costs that might otherwise be unsustainable.
- f. *Flexibility.* For owners of the primary residence, second units can offer significant, flexible advantages. For example, second units can provide housing options for elderly relatives aging in place; provide a home for adult children not yet able to afford their own housing; or provide space for live-in caregivers.

In San Mateo County, like the entire Bay Area, home prices and rents have risen rapidly over the past decade, and many County residents are unable to afford typical housing costs. At the same time, land prices are high, developable land is in short supply, and much new development occurs on undeveloped “greenfield” land. Second units provide a more affordable, efficient, environmentally-sustainable source of housing that can benefit the occupants of the second unit, the occupants of the primary unit, the surrounding neighborhood, and the community as a whole.

### 3. Second Unit Ordinance

San Mateo County has had an ordinance regulating second units since 1984. The ordinance, Chapter 22.5 of the County’s Zoning Regulations, establishes standards for the placement, design, and construction of second units, as well as the type of review and the process for approval of second units. Since this ordinance was adopted, State law has superseded certain portions of the existing ordinance. The County has not been applying the preempted parts of the ordinance.

### 4. Reasons for the Update

The County is updating the existing ordinance for three primary reasons. Most significantly, a number of specific changes are directly mandated by new amendments to State law, and the County must update the ordinance accordingly. The update is also intended to advance the County’s goal of facilitating the production of second units, as a valuable source of housing in San Mateo County’s difficult housing market. Finally, the proposed updates are intended to make the regulations more consistent across County areas, and easier to understand and apply. Each of these factors is discussed in greater detail below.

#### a. Changes to State Law

The California legislature has adopted various laws governing how local jurisdictions may regulate and permit second units. These laws are codified in Government Code 65852.1, et seq. Most recently, in September 2016, the legislature enacted substantial amendments to State law governing second units; these amendments will take effect January 1, 2017. In addition to the substantive changes described below, State law now refers to second units as “accessory dwelling units.” The State’s basic statement of intent, as expressed in the newly amended law, is:

*The Legislature finds and declares all of the following:*

*(1) Accessory dwelling units are a valuable form of housing in California; (2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods; (3) Homeowners who create second units benefit from added income, and an increased sense of security; (4) Allowing accessory dwelling units in single-family or multi-family residential zones provides additional rental housing stock in California; (5) California faces a severe housing crisis; (6) The state is falling far short of meeting current and future housing demand with serious consequences for the state’s economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners; (7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character; and (8) Accessory dwelling units are, therefore, an essential component of California’s housing supply.*

*It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.*

(Government Code Section 65852.150, as amended by Senate Bill No. 1069, approved September 27, 2016.)

The law places various limitations on how local jurisdictions may regulate second units, with the intent of ensuring that jurisdictions do not impose excessive constraints on second unit production, and that



the fundamental intent of local ordinances is to allow, rather than restrict, second units. The State's Accessory Dwelling Unit Law has been amended various times since adoption, and in each instance, the amendments imposed additional restrictions on local jurisdictions, and further limited the flexibility jurisdictions have in differing from the State's standards.

The most significant requirements of the existing State law include:

- (1) *Consistency with State standards.* Second unit regulations adopted or enforced by local jurisdictions must be consistent with those promulgated by the State.
- (2) *Ministerial Approval.* Second units that comply with the standards established by local jurisdiction must be approved through a ministerial process, with no discretionary approvals.
- (3) *No Public Hearings.* Second units that comply with regulations may not be considered at public hearings.
- (4) *No Growth Limits or Quotas.* The development of second units cannot be subject to any growth cap or quota establishing a maximum number of units, regardless of whether such a cap applies to second units alone, or second units in combination with other units. If a jurisdiction has a cap on total units of all kinds, second units must be exempted from this limit.
- (5) *No Blanket Prohibition on Second Units.* There must be areas in a local jurisdiction where second units are permitted, and, as noted above, there must be a ministerial approval process for these units.

The state has also established a number of other standards regarding how jurisdictions may regulate the size, placement, required parking, required infrastructure, permitting fees, and various other factors.

Various portions of the County's adopted Second Unit ordinance do not comply with these State requirements, and the County's ordinance has not, to date, been updated to achieve compliance. Until now, the County has been following this path: applying only those parts of Chapter 22.5 that are consistent with State law, while deferring to the State's regulations in cases where there is inconsistency.

However, on September 27, 2016, the State adopted another set of amendments to the Accessory Dwelling Unit Law. These amended regulations:

- (1) Reinforced the prohibition on discretionary review of any kind.
- (2) Imposed a time limit of 120 days for approval or denial of a second unit application.
- (3) Changed the parking requirements that jurisdictions were allowed to impose, and established a set of mandatory parking exceptions.
- (4) Imposed mandatory regulations regarding where parking for a second unit may be provided.
- (5) Established limits on how jurisdictions may regulate second units built entirely within existing structures.
- (6) Established limits on how jurisdictions may regulate units built on or within existing garages.
- (7) Established limits on the size thresholds that jurisdictions may impose on second units.

Importantly, the State also required that local jurisdictions update their second unit regulations to comply with these new amendments by January 2017, if the local jurisdiction wishes to continue to apply its local ordinance. If the County does not update its regulations, those regulations become null and void in their entirety, and the County must rely only on the State's regulations until such time that the regulations are updated to comply with State law.

b. **County Housing Goals**

San Mateo County, like the greater Bay Area and California as a whole, is experiencing a historic housing crisis. Home prices and rents have risen at unprecedented rates, and most households at most income levels cannot afford market rate housing. This housing crisis is driven, in large part, by the gap between new jobs created in the Bay Area, and new housing created: in San Mateo County, the former has outpaced the latter on the order of twenty-six new jobs for each one new housing unit built. Consequently, San Mateo County urgently needs new housing of all kinds, serving all income levels, as quickly as possible.

The County Board of Supervisors has recognized this crisis, and has taken a number of steps to address it.

- (1) In March of 2015, the Board endorsed an Affordable Housing White Paper that proposed a number of policies and programs intended to address the County's housing crisis. Regarding second units, the White Paper stated that second units provide a valuable source of more affordable housing, and that the County should take affirmative steps to facilitate production of new second units, and promote legalization of existing, unpermitted second units.
- (2) Subsequently, the Board allocated funds to promote the creation and legalization of second units. The Board directed the County Planning and Building Department and Housing Department to proceed with several programs, including:
  - (a) Completing updates to the County's Second Unit regulations, with the specific goal of streamlining production and approval of second units
  - (b) Creating a second unit amnesty program, to provide an easier and more affordable path to legalize existing, unpermitted second units, including some funding assistance for those units that might need rehabilitation
  - (c) Assessing the potential for new second units in various County areas
  - (d) Creating second design templates and guidelines to help potential developers of second units navigate the permitting and approval process
- (3) The County's Housing Element, adopted by the Board of Supervisors in 2014, includes a number of policies that express the County's goal of promoting second units. These include Policy HE 32, which commits the County to update the second unit ordinance to comply with State law, and to streamline permitting, standardize the County's regulations, and overall, to facilitate the development of second units.

The amendments to the second unit regulations are intended to advance the County's housing goals and the Board of Supervisors' direction, and facilitate the creation of second units as a needed source of housing.

c. **Consistency and Ease of Use**

The update to the Second Unit ordinance will help establish consistency and clarity in the application of the County's second unit regulations. The County is currently applying a patchwork of pieces of State law, combined with pieces of the County's own ordinance. The current regulatory framework is difficult for applicants to understand, and difficult for planners to apply. This update consolidates all relevant standards into a single, more usable set of regulations that complies with State law, advances the County's housing goals, and is easier to understand and apply. This clarity will help applicants navigate the process more quickly and easily, ideally directly facilitating the production of second units.

5. Other Issues

Coastal Zone Effectiveness and Coastal Commission Certification. The updated ordinance, if adopted, will not be effective in the County's Coastal Zone until certified by the California Coastal Commission. In addition, the California Coastal Act supersedes the State's Accessory Dwelling Unit Law, and some of the provisions required by State law will not be valid in the Coastal Zone. For instance, because design review is required by the County's Local Coastal Program, it will continue to apply to second units in relevant areas of the Coastal Zone, regardless of the requirements of State Accessory Dwelling Unit Law. For the most part, these variations are minor, and are typical of regulations that apply both within the Coastal Zone, and in the unincorporated County as a whole. Should the proposed updates be adopted by the Board of Supervisors, the Coastal Commission certification will proceed after that adoption.

Flexibility and Greater Permissiveness Allowed. While the State establishes limits on how restrictive local jurisdictions may be when regulating second units, State law allows jurisdictions to establish more permissive regulations, if desired. While the County cannot make it harder to build second units than State law requires, and cannot establish standards regarding size, placement, parking requirements, and other requirements that are more stringent than the State's standards, the County is free to establish less stringent restrictions. The County's ordinance largely follows the standards in State law, but in a few cases, the proposed update to Chapter 22.5 is less restrictive. For instance, the County's ordinance allows second units in RM and TPZ zoning districts; while these districts allow residential uses, they are not primarily residential districts, whereas the state's regulations focus only on second units in residential zoning districts.

By the same token, there are several standards imposed by the County's ordinance that address areas that the state does not regulate. For instance, the County's regulations establish maximum heights, and regulate the placement of windows, in order to protect the privacy of adjacent properties.

The state's regulations do not address either of these areas, and the County is therefore free to impose independent standards.

Conditional Permitting Still Allowed. While the County must establish a ministerial process for permitting second units, the County is not prohibited from establishing a conditional permitting process for those second units that do not meet all of the applicable regulations. The revised regulations retain the possibility of conditionally permitted second units, as did the prior ordinance.

6. Other Second Unit Efforts

As noted above, at the direction of the Board of Supervisors, the Planning and Building Department, the Housing Department, and other partners are working on multiple other efforts related to second units. These include:

- a. Second Unit Amnesty Program
- b. Second Unit Rehabilitation Funding
- c. Analysis of Second Unit Potential
- d. Second Unit Design Templates

Each of these efforts is intended to further facilitate the production and legalization of second units, and while this work will be completed subsequent to adoption of the County's revised Second Unit Ordinance, these programs will be designed to be consistent with, and complement, the updated regulations.

7. Changes to the County's Second Unit Ordinance

Attachment B provides a full version of the proposed amendments to Chapter 22.5, with annotations describing the rationale behind each amendment. These changes include, in brief:

a. Maximum Floor Area:

- (1) Detached second units may be the greater of 750 square feet, or 35% of the primary residence, but with an absolute maximum of 1,200 square feet.

The prior regulations had a maximum of 35% or 750 square feet, and an absolute maximum of 1,500 square feet. The change to 1,200 square feet is consistent with State law.

- (2) Attached second units may be the greater of 750 square feet, or 50% of the primary residence, but with an absolute maximum of 1,200 square feet.

The 50% allowance (vs. 35% for detached units) and the 1,200 square foot maximum are consistent with State law.

b. Setbacks:

- (1) Detached second units of sixteen (16) feet or less in height:  
Side Setback: Five (5) feet  
Rear Setback: Five (5) feet
- (2) Detached second units greater than sixteen (16) feet in height:  
Side Setback: Five (5) feet  
Rear Setback: Ten (10) feet

The greater rear setback for taller second units is intended to protect the privacy of adjacent properties.

- c. Maximum Height: 26 Feet: The prior ordinance did not establish a maximum.
- d. New standards for the placement of windows, balconies, and decks, to protect the privacy of adjacent properties.
- e. Removal of discretionary review for all second units that comply with the updated regulations (except for design review in applicable areas of the Coastal Zone).
- f. A number of new parking exceptions, as required by State law (see Attachment B).
- g. A number of alternative means of meeting parking requirements, as required by State law (see Attachment B).
- h. Different, more permissive standards for units built within or atop an existing garage, as required by State law (see Attachment B).
- i. Removal of Discretionary Review: As noted, State law prohibits discretionary review of second units that comply with adopted regulations. The existing version of Chapter 22.5 has a number of standards that require significant discretion in their application, including standards related to design review and subjective findings of impact. The County has not been applying discretionary standards in

order to comply with existing State law, and the proposed updates would eliminate all discretionary standards from the ordinance.

- j. Removal of Most Legalization Procedures: The prior ordinance contains a number of procedures for legalizing existing unpermitted second units, most of which are related to a legalization amnesty period established by the prior ordinance. The amnesty period has long since expired, and most of these procedures are no longer in effect. Similar procedures for legalizing existing second units will be addressed separately by the forthcoming second unit amnesty program, and are not included in the proposed update.

Attachment B provides greater detail on the full updates to Chapter 22.5, and the rationale behind each amendment.

## 8. Timeline

The amendments to State law adopted and signed on September 27, 2016 require all California jurisdictions to update their second unit regulations by January 2017, if the jurisdictions wish to continue to apply their local regulations.

As reported during the informational session on second units at the Planning Commission Hearing on October 20, 2015, the County was already working on an update to the County's second unit regulations, prior to the latest amendments to State law. As described at that hearing, this process was intended to include more extensive public review, as well as additional informational sessions at the Planning Commission and Board of Supervisors. The unexpectedly short timeline mandated by the new State law necessitates changes to this approach, and has significantly accelerated the process of drafting and adoption. The intent is now to move the updated ordinance to a Board of Supervisors hearing in December 2016.

However, the revised ordinance has been distributed to the public and to various stakeholders for review and comment, and will be recirculated as needed after the Planning Commission's consideration. Circulation to-date includes the following:

- a. Public Distribution. The proposed changes have been announced and distributed to various stakeholders, including all local Community Councils, various Realtors' Associations and Building Trades Associations, members of the public who have expressed interest in the updates, and various organizations that work on housing policy issues.

- b. Website. The proposed updates have been announced and provided on the County Planning and Building website, and linked from the Housing Department website and the County's front page, as well as cross-posted via the Home for All website and the 21 Elements website.
- c. Newspaper Notice. Notice of the updates has been distributed in the San Mateo Times and the Half Moon Bay Review.

9. Conclusion

While the timeline for the proposed amendments to the County regulations has been accelerated due to mandates adopted by the State, the amendments remain consistent with the County's housing goals, with the direction of the County Board of Supervisors, and with the County's intent to adopt second unit regulations that are fully compliant with State law, that promote second units as a source of needed housing, and that are consistent, comprehensive, easy to interpret, and easy to apply.

B. ALTERNATIVES

The bulk of the amendments to the County's regulations described herein are crafted specifically to comply with the State's requirements. The alternative to adopting these parts of the update is to apply the State standards when reviewing applications for second units, with no local specialization. Apart from those changes, however, the County does have the discretion to forego adoption of other changes, or craft an alternate set of amendments.

C. ENVIRONMENTAL REVIEW

Per CEQA Section 21080.17 and CEQA Guidelines Section 15282(h), adoption of ordinances relating to second units (accessory dwelling units) to implement specific Government Code sections (Sections 65852.1 and 65852.2) is exempt from CEQA.

D. REVIEWING AGENCIES

Housing Department  
County Counsel

**ATTACHMENTS**

- A. Recommended Findings
- B. Proposed Updates to San Mateo County's Second Unit Regulations, Chapter 22.5 of the County Zoning Regulations, with Annotation



C. Draft Ordinance Adopting Proposed Updates to San Mateo County's Second Unit Regulations

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County of San Mateo  
Planning and Building Department

**RECOMMENDED FINDINGS**

Permit or Project File Number: PLN 2016-00473      Hearing Date: November 30, 2016

Prepared By: William Gibson  
Project Planner

For Adoption By: Planning Commission

**RECOMMENDED FINDINGS**

1. That the proposed revisions to Chapter 22.5 of the County Zoning Regulations are consistent with the County General Plan, and in particular advance Policy HE32 of the Housing Element of the General Plan, which commits the County to update its second unit regulations in order to comply with State law, and in order to streamline permitting, standardize the County's regulations, and overall, to facilitate the development of second units.
2. That the proposed revisions to Chapter 22.5 of the County Zoning Regulations are consistent with and further the County Board of Supervisors' direction to amend the County's second unit regulations for consistency with State law, and to promote and facilitate the production of second units as a needed source of housing.
3. That the proposed revisions to Chapter 22.5 of the County Zoning Regulations are exempt from environmental review, per CEQA Section 21080.17 and CEQA Guidelines Section 15282(h), which state that adoption of ordinances relating to second units (accessory dwelling units) to implement specific Government Code sections (Sections 65852.1 and 65852.2) is exempt from CEQA.

**RECOMMENDATION**

1. That the Planning Commission recommend that the Board of Supervisors adopt the proposed amendments to the County's Second Unit Ordinance, Chapter 22.5 of the County Zoning Regulations, to comply with the requirements of California Accessory Dwelling Unit Law (Government Code 65852.1, et seq.), and to advance the County's goal of facilitating the production of second units as a valuable source of needed housing.

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## **CHAPTER 22.5. SECOND UNITS**

### ***PROPOSED REVISIONS – ANNOTATED***

**SECTION 6425. PURPOSE.** Second units are a residential use that provide an important source of housing. The purpose of this Chapter is to:

1. Increase the supply and diversity of the County’s housing stock, in particular the number of smaller and more affordable units, by allowing second units to be built on existing residential properties, while preserving neighborhood character.
2. Increase the housing stock of existing neighborhoods in a manner that has less impact on the environment than development of housing in undeveloped areas.
3. Allow more efficient use of existing residential areas and supporting infrastructure.
4. Provide a means for residents to remain in their homes and neighborhoods.
5. Provide opportunities for homeowners to earn supplemental income from renting a second unit.
6. Establish standards for second units to ensure that they are safe, habitable, and compatible with existing development.

### **SECTION 6426. DEFINITIONS.**

1. Primary Residence. A “primary residence” is the main residence located or proposed to be located on the parcel on which a second unit is located or proposed to be located.
2. Second Unit. A “second unit” is a dwelling unit located or proposed to be located on a lot which contains, or will contain, a primary residence. Second units may be detached from or attached to the primary residence on the property. Second units may also be (1) efficiency units, as defined in Section 17958.1 of the California Health & Safety Code, or (2) manufactured homes, as defined in Section 18007 of the California Health & Safety Code. Second units are “accessory dwelling units” as that term is used in Government Code Section 65852.2. Second units are not “accessory buildings” as defined in Section 6102.19. Any secondary structure that provides independent facilities for living, sleeping, eating, cooking, and sanitation shall be considered a second unit, unless an applicant can provide compelling evidence to the contrary, to the satisfaction of the Community Development Director.
3. Detached Second Unit. A “detached second unit” is a unit that is an independent structure, entirely separated from the structure of the primary residence.

4. Attached Second Unit. An “attached second unit” is a unit that is built as an addition to, extension of, or within the primary residence.
5. Floor Area. For purposes of this Chapter, the “floor area” of a primary residence or second unit is the area of each floor level included within the walls enclosing each dwelling unit. The floor area shall be measured from the outside face of the walls enclosing each dwelling unit including all closet space and storage areas contained within the unit, including habitable basements and attics, but shall not include unenclosed porches, balconies, or enclosed garages or carports.

**SECTION 6427. LOCATIONS PERMITTED.** Second units shall be allowed in the R-1, R-2, R-E, RH, RM and TPZ districts outside the Coastal Zone and the R-1, R-2, RM/CZ and TPZ-CZ districts within the Coastal Zone.

*The prior ordinance allowed second units in the R-1, R-E, RH, RM and TPZ Zoning Districts outside the Coastal Zone and R-1 Zoning Districts within the Coastal Zone. This amendment expands these districts to include R-2 districts, and RM and TPZ districts within the Coastal Zone.*

**SECTION 6428. APPROVAL.** Second units meeting all of the requirements of Section 6429 shall be approved ministerially, without public notice, public hearing, or discretionary review.

*This provision is required by State law, but is also largely consistent with the County’s existing practices.*

Second units not meeting the standards set forth in Section 6429 will be considered a conditionally permitted use within the districts specified in Section 6427 and may be permitted by a conditional use permit pursuant to a public hearing before the Zoning Hearing Officer, as described in Section 6431.

*This provision merely establishes that second units that do not meet normal zoning standards may still be eligible for conditional use permits, like other uses.*

**SECTION 6429. DEVELOPMENT STANDARDS FOR NEW SECOND UNITS.** New second units shall be subject to the same requirements as any dwelling unit located on the same parcel in the same district, including but not limited to the requirements of Chapters 20 and 22 of the Zoning Regulations, with the following exceptions:

1. **MINIMUM LOT AREA.** Second units shall be exempt from the minimum lot area per dwelling unit provisions in the applicable district.

*This is unchanged from the existing ordinance.*

2. MAXIMUM DENSITY OF DEVELOPMENT. Second units shall be exempt from any and all provisions limiting the maximum density of development in the applicable district.

*This provision is required by State law.*

3. SETBACKS. Notwithstanding the required setbacks in the applicable district, minimum setbacks for second units shall be:

- a. Detached second units of sixteen (16) feet or less in height:

Side Setback: Five (5) Feet

Rear Setback: Five (5) Feet

- b. Detached second units greater than sixteen (16) feet in height:

Side Setback: Five (5) Feet

Rear Setback: Ten (10) Feet

*In general, these setbacks are standardized across districts. The prior ordinance did not establish specific setbacks for second units. Accessory buildings in residential zoning districts are typically allowed to be located within three feet of property lines; the setbacks proposed herein are slightly greater, to buffer adjacent properties.*

*The 10-foot rear setback is also intended to further minimize impacts of taller second units on the adjacent properties.*

- c. Setbacks between attached second units and property lines. Attached second units shall be subject to the same setback requirements as a primary residence in the same district, except as described in 6429.14, below. Second units constructed entirely within an existing garage shall not be subject to setback requirements. Second units constructed above an existing garage, regardless of height, will be subject to the setbacks in 6429.3(a).

*This provision regarding existing garages is mandatory, by State law.*

- d. Setbacks between detached second units and property lines. The setbacks required between a detached second unit and any property lines shall be as specified in this Chapter. If different setbacks to property lines are required by any other section of the Zoning Regulations, those requirements shall be disregarded, and the standards of this Chapter shall govern.

*This provision exempts second units from a few provisions in various portions of the zoning regulations that are no longer relevant, and are not specific to or applicable to second units.*

- e. Detached second units in front of primary residence. If any portion of a second unit is located in front of the primary residence, then the front and side setbacks applicable to the second unit shall be those required of a primary residence in the same zoning district.

*This provision is new, and is intended to protect the character of communities and properties when viewed from the street.*

- f. Distance between detached second units and other buildings. The distance required between a detached second unit and any other building on the same parcel must be a minimum of five (5) feet, measured from foundation to foundation. If a separation distance greater than five (5) feet is required by any other section of the Zoning Regulations, it shall be disregarded, and the standards of this Chapter shall govern.

*This provision also exempts second units from a few provisions in various portions of the zoning regulations that are no longer relevant, and are not specific to or applicable to second units.*

- 4. FLOOR AREA. The floor area of a detached second unit shall not exceed seven hundred fifty (750) square feet or thirty-five percent (35%) of the floor area of the existing or proposed primary residence, whichever is larger, up to a maximum of one thousand five hundred (1,200) square feet. The floor area of an attached second unit shall not exceed seven hundred fifty (750) square feet or fifty percent (50%) of the floor area of the existing or proposed primary residence, whichever is larger, up to a maximum of one thousand five hundred (1,200) square feet. The floor area of a second unit shall count against the total floor area allowed on a parcel, such that the total floor area of the second unit and the primary residence shall not exceed the maximum floor area allowed within the zoning district.

*The prior regulations capped second units at a maximum of 700 square feet, or 35% of the floor area of the primary residence, for both attached and detached units. The 1,200 square foot maximum, and the 50% maximum for attached second units, are consistent with State law.*

- 5. HEIGHT. The maximum height of the second unit shall be twenty-six (26) feet. Building height shall be measured as the vertical distance from any point on the lower of a) finished grade or b) natural grade, to the topmost point of the building immediately above. Chimneys, pipes, mechanical equipment, antennae, and other similar structures may extend up to eight (8) feet beyond the building height, as required for safety or efficient operation. Second units built entirely within an existing building shall be subject to the height limit applicable to that building in the relevant district.

*The existing ordinance does not establish maximum heights, but relies on the maximums in the underlying zoning. This height limit is very similar to the basic standards in most residential districts, and does not exceed any maximum heights in those districts.*

6. **BALCONIES AND DECKS.** Second units that do not meet the setback requirements that would apply to a primary residence in the same district shall have no rooftop decks, and no portion of any balcony or deck shall be located above ten (10) feet in height, measured in the same manner as height in Section 6429.5 except on the side of the second unit facing the primary residence. Second units that meet the setback requirements that would apply to a primary residence in the same district may have rooftop decks and balconies to the extent otherwise allowed in the relevant district.

*This is intended to ensure that the privacy of surrounding residences are not impacted. Balconies and decks are not addressed in prior regulations.*

7. **WINDOWS.** Second units that do not meet the setback requirements that would apply to a primary residence in the same district shall have no windows located above or extending above ten (10) feet on the second unit except on 1) the side(s) of the second unit facing the primary residence and 2) the side(s) of the second unit that comply with the normal setback requirements of the district. On the sides of the second unit that do not meet the normal setback requirements of the district, clerestory windows located above ten (10) feet on the second unit shall be allowed, if they have a lower sill height of no less than seven (7) feet from the nearest interior floor of the second unit, and total window height no greater than twenty-four (24) inches. Skylights shall be allowed.

*This is also intended to ensure that the privacy of surrounding residences is not impacted. The prior regulations do not address windows, except for a provision that windows facing other properties should be “minimized” when second units are built within an existing accessory building.*

8. **INGRESS AND EGRESS.** Second units shall have an independently accessible entrance that does not require passage through the primary residence. For second units attached to the primary residence, any new entrances and exits shall face the side and rear of the parcel only.

*The requirement for side and rear entrances helps to shield these units from street view. Independently accessible entrances help ensure that second units can truly function as discrete, independent units.*

9. **PARKING.** Second units meeting any of the following criteria shall not be required to provide any parking in addition to that already provided on the parcel, or in the case of a concurrent application for a new primary and second dwelling unit that required for the primary unit only:

- a. Second units located within one-half (1/2) mile of a public transit stop or station.
- b. Second units located within a designated architecturally and historically significant historic district.
- c. Second units that are part of the existing primary residence or an existing accessory structure.
- d. Second units located within one (1) block of a car share vehicle pick-up / drop-off location.

*Each of exceptions a through d is required by State law.*

For all other second units, the following parking standards shall apply:

One (1) new parking space, in addition to those already existing on the parcel, shall be provided on-site for each studio, one bedroom, and two bedroom second unit. Two (2) new parking spaces shall be provided on-site for each second unit with three or more bedrooms.

*State law requires no more than one space per unit or bedroom; existing regulations require only “a minimum of one new parking space.” This provision establishes slightly more stringent requirements for units with more bedrooms, compared to the existing ordinance.*

If the parking already existing on the parcel exceeds that required for existing development on the parcel, excess parking spaces shall be counted against the new parking required for the second unit. Parking spaces shall be provided in the following manner:

- a. Pervious Surfaces. All new parking spaces created for the second unit must be provided on pervious surfaces. The maximum amount of impervious surfaces designated to satisfy the second unit parking requirement shall be no greater than the amount of impervious surfaces existing at time of application.

*This provision implements the County’s typical goal of not increasing runoff from hardscape when development occurs.*

- b. Uncovered Parking. All parking required for the second unit may be uncovered.

*This is the same as the existing regulations.*



- c. Front or Side Yard Parking. Two (2) parking spaces may be provided in the front or side yard. Not more than 600 square feet of the front yard area shall be used for parking of any kind.

*State law requires jurisdictions to allow parking in setbacks, unless there are specific local conditions which make such parking unsafe.*

- d. Tandem Parking. Required parking spaces for the primary residence and the second unit may be provided in tandem on a driveway. A tandem parking arrangement consists of one car behind the other. No more than three total cars in tandem may be counted toward meeting the parking requirement.

*The existing ordinance allows tandem parking in conjunction with a parking exception granted on a discretionary basis. State law requires jurisdictions to allow tandem parking.*

- e. Compact Spaces. All parking required for the second unit may be provided by compact parking spaces, as defined in Section 6118.a.

*This is a new provision.*

- f. Parking Exceptions. If the required parking for a second unit cannot be met in accordance with this Section, an application may be submitted for a parking exception, as specified in Section 6120.

*This simply affirms that second units are eligible for the same parking exception procedures as other new development.*

- 10. DESIGN REVIEW. Second units shall not be subject to design review, except to the extent that they are located in the County's Coastal Zone, and are subject to design review requirements incorporated in the County's Local Coastal Program.

*This exemption is required by state law, except in areas where State accessory dwelling unit law is pre-empted by the California Coastal Act.*

- 11. CONCURRENT APPLICATION FOR DEVELOPMENT OF PRIMARY RESIDENCE AND SECOND UNIT. In the case of a concurrent application for development of a new primary residence and new second unit on the same parcel, whichever unit is first issued a certificate of occupancy must conform to all applicable regulations for the primary residence in the relevant district.

*This provision is intended to ensure that applicants do not receive second unit exceptions for a unit that ultimately becomes a primary residence.*

12. CONVERSION OF EXISTING RESIDENCE. An existing residence may be converted to a second unit in conjunction with development of a new primary residence, if the existing residence, once converted, will meet all the standards applicable to development of a new second unit described in this Chapter.

*This is unchanged from the existing regulations.*

13. CONVERSION OF ACCESSORY BUILDING. A second unit may be constructed within or above an existing, detached accessory building provided the resulting unit conforms to all applicable provisions of this Chapter.

*This is unchanged from the existing regulations.*

14. CREATION OF SECOND UNIT ENTIRELY WITHIN A NONCONFORMING PRIMARY RESIDENCE. In the case of an existing primary residence that does not conform to one or more zoning regulations, creation of a second unit that will be entirely within the existing primary residence shall not, in itself, create a requirement that the nonconformities be rectified. However, no other provisions that may require rectification of existing nonconformities are waived merely due to approval of a second unit, unless specifically described in this Chapter.

*This is to make clear that approval of a second unit shall be considered on its own, but issuance of a permit for a second unit is not tacit approval of any other development on a property.*

**SECTION 6430. DEVELOPMENT STANDARDS FOR EXISTING SECOND DWELLING UNITS.**

- 1. Building permits may be issued for existing second units which were constructed without required permits, under the following conditions:
  - a. The second unit conforms to all applicable provisions of this Chapter, and all other applicable required standards for habitability.
  - b. All applicable fees for construction completed without permits have been paid.

*This is a very limited version of the provisions in the existing ordinance, similar to the County's procedures for the legalization of other structures. Other, more detailed provisions will be addressed in the forthcoming amnesty program.*

Second units constructed without permits that do not meet the provisions of this Section may apply for a conditional use permit, as described in Section 6431.

**SECTION 6431. REQUIREMENTS FOR CONDITIONALLY PERMITTED SECOND UNITS.**

Second units not meeting all applicable standards of this Chapter may be conditionally permitted, subject to a conditional use permit. The process for application for and issuance of a conditional use permit for a second unit shall be that set forth in Section 6503 of the County Zoning Regulations, except that the granting of the permit shall be at the determination of the Zoning Hearing Officer. The determination of the Zoning Hearing Officer shall be appealable to the County Planning Commission, as specified in Chapter 30 of the Zoning Regulations. Second units requiring a conditional use permit which are within the CD District shall require a Coastal Development Permit that is appealable to the Coastal Commission.

*This is the same as the existing ordinance, and is similar to the County's process for other types of development.*

In the case of second units meeting all applicable standards of this Chapter except those related to parking requirements, a parking exception may be requested as provided in Section 6429.9(f), and a conditional use permit shall not be required.

*This is also similar to the procedure for other types of development, and affirms that a parking exception alone does not trigger the need for a conditional use permit.*

#### **SECTION 6432. COASTAL DEVELOPMENT DISTRICT.**

In the CD District, all second units shall comply with all of the applicable regulations of the district. Nothing in this Chapter shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act, the San Mateo County Local Coastal Program, or the CD District regulations, except that no public hearing shall be required for second units that meet all relevant standards of this Chapter, and approval of such second unit applications shall be made at the staff level. Second units shall count toward the total residential development quotas described in Section 1.23 of the County's Local Coastal Program.

*This merely formally states the fact that the California Coastal Act supersedes the State's accessory dwelling unit law.*

#### **SECTION 6433. DECISIONS.**

Applications for second units, except for those requiring a conditional use permit as specified in Section 6431, shall be approved or denied ministerially, on the basis of the objective criteria included in this Chapter and other applicable regulations as defined in Section 6434. Consideration of other permits associated with development of the proposed second unit only, that might otherwise be discretionary, including but not limited to Tree Removal, Coastal Development, Resource Management, Use Permits and Variances, shall also be ministerial, except as provided in Section 6431. No public notice or public hearing shall be required for review and approval or denial of a second unit, unless an applicant requests exceptions to the standards set forth in this Chapter.

*This is codification of the requirements of state law, and formalizes much of what the County is already implementing.*

### **SECTION 6433. APPEALS.**

Decisions to approve or deny an application for a second unit that meets all relevant standards set forth in this Chapter are not subject to appeal, except if located in the Coastal Commission appeals area of the CD District, in which case the decision may be appealed as provided in the CD District Regulations, Section 6328.3(s).

*This is also codification of the requirements of State law, again affirming that second units must be permitted ministerially, but that the requirements of the Coastal Act supersede this requirement within the County's Coastal Zone.*

### **SECTION 6434. APPLICABILITY OF COUNTY REGULATIONS.**

With the exception of specific standards and exemptions described in this Chapter, all second units must comply with all applicable provisions in the San Mateo County Ordinance Code, including the Zoning Regulations (Section 6100 et seq.) and Building Code (Section 9000 et seq.).

*The newly adopted State law of September 2016 states that, "no other local ordinance, policy, or regulation [apart from a jurisdiction's second unit regulations, updated for consistency with State law] shall be the basis for the denial of a building permit or a use permit under this subdivision." This provision incorporates the County's ordinance code into this Chapter by reference, ensuring that the other applicable, ministerial County regulations continue to apply.*

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**ORDINANCE NO. .**  
**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,**  
**STATE OF CALIFORNIA**

\* \* \* \* \*

**AN ORDINANCE AMENDING THE COUNTY ORDINANCE CODE, DIVISION VI,  
PART ONE (ZONING REGULATIONS) TO REPLACE CHAPTER 22.5 (SECOND  
UNITS) IN ITS ENTIRETY**

**WHEREAS**, the County of San Mateo adopted an ordinance regulating the creation of second units in 1984, codified as Chapter 22.5 of the Zoning Regulations; and

**WHEREAS**, since that time, the legislature of the State of California has enacted statutes governing how local jurisdictions may regulate second units; and

**WHEREAS**, in September of 2016 the legislature adopted further amendments to Government Code section 65852.2, which require local ordinances to be consistent with State law in order to remain effective after January 1, 2017; and

**WHEREAS**, housing production in San Mateo County has lagged far behind the need for new housing, resulting in housing shortages and housing costs that are unaffordable for many County residents; and

**WHEREAS**, second units are a type of housing that is often cheaper to build, more affordable to occupy, more environmentally sustainable, and less impactful on surrounding neighborhoods than other forms of housing; and

**WHEREAS**, the San Mateo County Board of Supervisors has recognized second units as a valuable source of new housing that can help meet the County's housing needs and goals; and

**WHEREAS**, Policy HE32 of the County's adopted Housing Element commits the County to update its second unit regulations in order to comply with State law, streamline permitting, standardize the County's regulations, and facilitate the development of second units; and

**WHEREAS**, the Board of Supervisors in March of 2015 directed the Planning and Building Department to prepare amendments to Chapter 22.5 to comply with State law; and

**WHEREAS**, the Board of Supervisors in March of 2015 further directed that amendments to Chapter 22.5 facilitate and promote the creation of new second units; and

**WHEREAS**, the said amendments to the Zoning Regulations, Chapter 22.5, will ensure that the County's second unit regulations are consistent with State law, will facilitate and promote the creation of second units, and will help fulfill the County's housing goals.

**NOW, THEREFORE**, the Board of Supervisors of the County of San Mateo, State of California, ordains as follows:

**SECTION 1.** The San Mateo County Ordinance Code (Zoning Regulations), Division VI, Part One, is hereby amended to replace Chapter 22.5 (Second Units), in its entirety, with the following:

### **CHAPTER 22.5. SECOND UNITS**

**SECTION 6425. PURPOSE.** Second units are a residential use that provide an important source of housing. The purpose of this Chapter is to:

1. Increase the supply and diversity of the County's housing stock, in particular the number of smaller and more affordable units, by allowing second units to be built on existing residential properties, while preserving neighborhood character.
2. Increase the housing stock of existing neighborhoods in a manner that has less impact on the environment than development of housing in undeveloped areas.
3. Allow more efficient use of existing residential areas and supporting infrastructure.
4. Provide a means for residents to remain in their homes and neighborhoods.
5. Provide opportunities for homeowners to earn supplemental income from renting a second unit.
6. Establish standards for second units to ensure that they are safe, habitable, and compatible with existing development.

### **SECTION 6426. DEFINITIONS.**

1. Primary Residence. A "primary residence" is the main residence located or proposed to be located on the parcel on which a second unit is located or proposed to be located.
2. Second Unit. A "second unit" is a dwelling unit located or proposed to be located on a lot which contains, or will contain, a primary residence. Second units may be detached from or attached to the primary residence on the property. Second units may also be (1) efficiency units, as defined in Section 17958.1 of the California Health & Safety Code, or (2) manufactured homes, as defined in Section 18007 of the California Health & Safety Code. Second units are "accessory dwelling units" as that term is used in Government Code Section 65852.2. Second units are not "accessory buildings" as defined in Section 6102.19. Any secondary structure that provides independent facilities for living, sleeping, eating, cooking, and sanitation shall be considered a second unit, unless an

applicant can provide compelling evidence to the contrary, to the satisfaction of the Community Development Director.

3. Detached Second Unit. A “detached second unit” is a unit that is an independent structure, entirely separated from the structure of the primary residence.
4. Attached Second Unit. An “attached second unit” is a unit that is built as an addition to, extension of, or within the primary residence.
5. Floor Area. For purposes of this Chapter, the “floor area” of a primary residence or second unit is the area of each floor level included within the walls enclosing each dwelling unit. The floor area shall be measured from the outside face of the walls enclosing each dwelling unit including all closet space and storage areas contained within the unit, including habitable basements and attics, but shall not include unenclosed porches, balconies, or enclosed garages or carports.

**SECTION 6427. LOCATIONS PERMITTED.** Second units shall be allowed in the R-1, R-2, R-E, RH, RM and TPZ districts outside the Coastal Zone and the R-1, R-2, RM/CZ and TPZ-CZ districts within the Coastal Zone.

**SECTION 6428. APPROVAL.** Second units meeting all of the requirements of Section 6429 shall be approved ministerially, without public notice, public hearing, or discretionary review.

Second units not meeting the standards set forth in Section 6429 will be considered a conditionally permitted use within the districts specified in Section 6427 and may be permitted by a conditional use permit pursuant to a public hearing before the Zoning Hearing Officer, as described in Section 6431.

**SECTION 6429. DEVELOPMENT STANDARDS FOR NEW SECOND UNITS.** New second units shall be subject to the same requirements as any dwelling unit located on the same parcel in the same district, including but not limited to the requirements of Chapters 20 and 22 of the Zoning Regulations, with the following exceptions:

1. **MINIMUM LOT AREA.** Second units shall be exempt from the minimum lot area per dwelling unit provisions in the applicable district.
2. **MAXIMUM DENSITY OF DEVELOPMENT.** Second units shall be exempt from any and all provisions limiting the maximum density of development in the applicable district.
3. **SETBACKS.** Notwithstanding the required setbacks in the applicable district, minimum setbacks for second units shall be:



- a. Detached second units of sixteen (16) feet or less in height:  
Side Setback: Five (5) Feet  
Rear Setback: Five (5) Feet
  - b. Detached second units greater than sixteen (16) feet in height:  
Side Setback: Five (5) Feet  
Rear Setback: Ten (10) Feet
  - c. Setbacks between attached second units and property lines. Attached second units shall be subject to the same setback requirements as a primary residence in the same district, except as described in 6429.14, below. Second units constructed entirely within an existing garage shall not be subject to setback requirements. Second units constructed above an existing garage, regardless of height, will be subject to the setbacks in 6429.3(a).
  - d. Setbacks between detached second units and property lines. The setbacks required between a detached second unit and any property lines shall be as specified in this Chapter. If different setbacks to property lines are required by any other section of the Zoning Regulations, those requirements shall be disregarded, and the standards of this Chapter shall govern.
  - e. Detached second units in front of primary residence. If any portion of a second unit is located in front of the primary residence, then the front and side setbacks applicable to the second unit shall be those required of a primary residence in the same zoning district.
  - f. Distance between detached second units and other buildings. The distance required between a detached second unit and any other building on the same parcel must be a minimum of five (5) feet, measured from foundation to foundation. If a separation distance greater than five (5) feet is required by any other section of the Zoning Regulations, it shall be disregarded, and the standards of this Chapter shall govern.
4. FLOOR AREA. The floor area of a detached second unit shall not exceed seven hundred fifty (750) square feet or thirty-five percent (35%) of the floor area of the existing or proposed primary residence, whichever is larger, up to a maximum of one thousand five hundred (1,200) square feet. The floor area of an attached second unit shall not exceed seven hundred fifty (750) square feet or fifty percent (50%) of the floor area of the existing or proposed primary residence, whichever is larger, up to a maximum of one thousand five hundred (1,200) square feet. The floor area of a second unit shall count against the total floor area allowed on a parcel, such that

the total floor area of the second unit and the primary residence shall not exceed the maximum floor area allowed within the zoning district.

5. **HEIGHT.** The maximum height of the second unit shall be twenty-six (26) feet. Building height shall be measured as the vertical distance from any point on the lower of a) finished grade or b) natural grade, to the topmost point of the building immediately above. Chimneys, pipes, mechanical equipment, antennae, and other similar structures may extend up to eight (8) feet beyond the building height, as required for safety or efficient operation. Second units built entirely within an existing building shall be subject to the height limit applicable to that building in the relevant district.
6. **BALCONIES AND DECKS.** Second units that do not meet the setback requirements that would apply to a primary residence in the same district shall have no rooftop decks, and no portion of any balcony or deck shall be located above ten (10) feet in height, measured in the same manner as height in Section 6429.5 except on the side of the second unit facing the primary residence. Second units that meet the setback requirements that would apply to a primary residence in the same district may have rooftop decks and balconies to the extent otherwise allowed in the relevant district.
7. **WINDOWS.** Second units that do not meet the setback requirements that would apply to a primary residence in the same district shall have no windows located above or extending above ten (10) feet on the second unit except on 1) the side(s) of the second unit facing the primary residence and 2) the side(s) of the second unit that comply with the normal setback requirements of the district. On the sides of the second unit that do not meet the normal setback requirements of the district, clerestory windows located above ten (10) feet on the second unit shall be allowed, if they have a lower sill height of no less than seven (7) feet from the nearest interior floor of the second unit, and total window height no greater than twenty-four (24) inches. Skylights shall be allowed.
8. **INGRESS AND EGRESS.** Second units shall have an independently accessible entrance that does not require passage through the primary residence. For second units attached to the primary residence, any new entrances and exits shall face the side and rear of the parcel only.
9. **PARKING.** Second units meeting any of the following criteria shall not be required to provide any parking in addition to that already provided on the parcel, or in the case of a concurrent application for a new primary and second dwelling unit that required for the primary unit only:
  - a. Second units located within one-half (1/2) mile of a public transit stop or station.

- b. Second units located within a designated architecturally and historically significant historic district.
- c. Second units that are part of the existing primary residence or an existing accessory structure.
- d. Second units located within one (1) block of a car share vehicle pick-up / drop-off location.

For all other second units, the following parking standards shall apply:

One (1) new parking space, in addition to those already existing on the parcel, shall be provided on-site for each studio, one bedroom, and two bedroom second unit. Two (2) new parking spaces shall be provided on-site for each second unit with three or more bedrooms.

State law requires no more than one space per unit or bedroom; existing regulations require only “a minimum of one new parking space.” This provision establishes slightly more stringent requirements for units with more bedrooms, compared to the existing ordinance.

If the parking already existing on the parcel exceeds that required for existing development on the parcel, excess parking spaces shall be counted against the new parking required for the second unit. Parking spaces shall be provided in the following manner:

- a. Pervious Surfaces. All new parking spaces created for the second unit must be provided on pervious surfaces. The maximum amount of impervious surfaces designated to satisfy the second unit parking requirement shall be no greater than the amount of impervious surfaces existing at time of application.
- b. Uncovered Parking. All parking required for the second unit may be uncovered.
- c. Front or Side Yard Parking. Two (2) parking spaces may be provided in the front or side yard. Not more than 600 square feet of the front yard area shall be used for parking.
- d. Tandem Parking. Required parking spaces for the primary residence and the second unit may be provided in tandem on a driveway. A tandem parking arrangement consists of one car behind the other. No more than three total cars in tandem may be counted toward meeting the parking requirement.
- e. Compact Spaces. All parking required for the second unit may be

provided by compact parking spaces, as defined in Section 6118.a.

- f. Parking Exceptions. If the required parking for a second unit cannot be met in accordance with this Section, an application may be submitted for a parking exception, as specified in Section 6120.
10. **DESIGN REVIEW**. Second units shall not be subject to design review, except to the extent that they are located in the County's Coastal Zone, and are subject to design review requirements incorporated in the County's Local Coastal Program.
11. **CONCURRENT APPLICATION FOR DEVELOPMENT OF PRIMARY RESIDENCE AND SECOND UNIT**. In the case of a concurrent application for development of a new primary residence and new second unit on the same parcel, whichever unit is first issued a certificate of occupancy must conform to all applicable regulations for the primary residence in the relevant district.
12. **CONVERSION OF EXISTING RESIDENCE**. An existing residence may be converted to a second unit in conjunction with development of a new primary residence, if the existing residence, once converted, will meet all the standards applicable to development of a new second unit described in this Chapter.
13. **CONVERSION OF ACCESSORY BUILDING**. A second unit may be constructed within or above an existing, detached accessory building provided the resulting unit conforms to all applicable provisions of this Chapter.
14. **CREATION OF SECOND UNIT ENTIRELY WITHIN A NONCONFORMING PRIMARY RESIDENCE**. In the case of an existing primary residence that does not conform to one or more zoning regulations, creation of a second unit that will be entirely within the existing primary residence shall not, in itself, create a requirement that the nonconformities be rectified. However, no other provisions that may require rectification of existing nonconformities are waived merely due to approval of a second unit, unless specifically described in this Chapter.

#### **SECTION 6430. DEVELOPMENT STANDARDS FOR EXISTING SECOND DWELLING UNITS.**

1. Building permits may be issued for existing second units which were constructed without required permits, under the following conditions:
  - a. The second unit conforms to all applicable provisions of this Chapter, and all other applicable required standards for habitability.

- b. All applicable fees for construction completed without permits have been paid.

Second units constructed without permits that do not meet the provisions of this Section may apply for a conditional use permit, as described in Section 6431.

**SECTION 6431. REQUIREMENTS FOR CONDITIONALLY PERMITTED SECOND UNITS.**

Second units not meeting all applicable standards of this Chapter may be conditionally permitted, subject to a conditional use permit. The process for application for and issuance of a conditional use permit for a second unit shall be that set forth in Section 6503 of the County Zoning Regulations, except that the granting of the permit shall be at the determination of the Zoning Hearing Officer. The determination of the Zoning Hearing Officer shall be appealable to the County Planning Commission, as specified in Chapter 30 of the Zoning Regulations. Second units requiring a conditional use permit which are within the CD District shall require a Coastal Development Permit that is appealable to the Coastal Commission.

In the case of second units meeting all applicable standards of this Chapter except those related to parking requirements, a parking exception may be requested as provided in Section 6429.9(f), and a conditional use permit shall not be required.

**SECTION 6432. COASTAL DEVELOPMENT DISTRICT.**

In the CD District, all second units shall comply with all of the applicable regulations of the district. Nothing in this Chapter shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act, the San Mateo County Local Coastal Program, or the CD District regulations, except that no public hearing shall be required for second units that meet all relevant standards of this Chapter, and approval of such second unit applications shall be made at the staff level. Second units shall count toward the total residential development quotas described in Section 1.23 of the County's Local Coastal Program.

**SECTION 6433. DECISIONS.**

Applications for second units, except for those requiring a conditional use permit as specified in Section 6431, shall be approved or denied ministerially, on the basis of the objective criteria included in this Chapter and other applicable regulations as defined in Section 6434. Consideration of other permits associated with development of the proposed second unit only, that might

otherwise be discretionary, including but not limited to Tree Removal, Coastal Development, Resource Management, Use Permits and Variances, shall also be ministerial, except as provided in Section 6431. No public notice or public hearing shall be required for review and approval or denial of a second unit, unless an applicant requests exceptions to the standards set forth in this Chapter.

**SECTION 6433. APPEALS.**

Decisions to approve or deny an application for a second unit that meets all relevant standards set forth in this Chapter are not subject to appeal, except if located in the Coastal Commission appeals area of the CD District, in which case the decision may be appealed as provided in the CD District Regulations, Section 6328.3(s).

**SECTION 6434. APPLICABILITY OF COUNTY REGULATIONS.**

With the exception of specific standards and exemptions described in this Chapter, all second units must comply with all applicable provisions in the San Mateo County Ordinance Code, including the Zoning Regulations (Section 6100 et seq.) and Building Code (Section 9000 et seq.).

**SECTION 2.** Adoption of this Ordinance is found to be exempt from environmental review, per CEQA Section 21080.17 and CEQA Guidelines Section 15282(h), which state that adoption of ordinances relating to second units (accessory dwelling units) to implement specific Government Code sections (Sections 65852.1 and 65852.2) is exempt from CEQA.

**SECTION 3.** The Clerk shall publish this Ordinance in accordance with applicable law.

**SECTION 4.** This Ordinance shall be effective thirty (30) days from the passage date thereof.

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