

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

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

The Board of Supervisors of the County of San Mateo, State of California,

ORDAINS as follows

SECTION 1. The Board of Supervisors of the County of San Mateo (“County”) hereby finds and declares as follows:

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, in January 2017 the County updated Chapter 22.5 in order to comply with amendments to Government Code section 65852.2, which require local ordinances to be consistent with State law; and

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

WHEREAS, further amendments to the County’s second unit regulations are required in order to achieve consistency with current State law; and

WHEREAS, additional amendments to the updates adopted in 2017 are required to increase clarity and consistency with other portions of the Zoning Regulations, and to

increase compatibility with the intent of the State law, as clarified by subsequent guidance promulgated by the State; and

WHEREAS, housing production in San Mateo County continues to lag behind the need for new housing, resulting in housing shortages and housing costs that are unaffordable for many County residents; and

WHEREAS, second units remain 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 San Mateo County Planning Commission considered the proposed amendments on February 23, 2019; and

WHEREAS, on February 23, 2019 the County Planning Commission unanimously recommended that the Board of Supervisors adopt the proposed amendments; and

WHEREAS, the proposed amendments are consistent with the County's Local Coastal Program; and

WHEREAS, the proposed amendments constitute an amendment to the Implementation Plan of the Local Coastal Program; and

WHEREAS, on adoption, the amendments will be submitted to the California Coastal Commission for review and certification; 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 ensure that the regulations are easier to interpret and implement, 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 2. 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:

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 the 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 may be considered a second unit, at the discretion of the Community Development Director, 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 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 not including unenclosed porches, balconies, or any enclosed garages or carports.

SECTION 6427. LOCATIONS PERMITTED.

1. Second units shall be allowed in the R-1, R-2, R-E, RH, RM and TPZ Districts outside the Coastal Zone and in the R-1 District within the Coastal Zone.
2. Second units shall be allowed in R-3 Districts outside the Coastal Zone subject to the following conditions:
 - a. The R-3 zoned parcel on which the second unit is proposed is vacant, or contains no more than a single existing primary residence or duplex; and
 - b. The regulations of the associated zoning combining district preclude development of three or more residential units on the parcel, not including a second unit.
3. Per Section 3.22 of the County’s Local Coastal Program, second units are not allowed on non-conforming R-1 parcels of less than 5,000 square feet 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. Front Setbacks. Front Setbacks. With the exception of second units created within an existing garage, which shall remain governed by the provisions of 6429.3(e) regardless of location, for all other second units regardless of height, the second unit may be located no closer to the front property line of the subject parcel than the lesser of:
 - the setback required by the relevant zoning district, or
 - the distance from the front property line of the primary residence located or proposed to be located on that parcel.

In cases where an existing primary residence may be closer to the front property line than the front setback normally required in the same district, the second unit shall also be allowed to be located as close to the front property line as the primary residence.

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

- d. 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 6429.17, below.
 - e. Second Units Constructed Entirely Within an Existing Attached or Detached Garage. Second units constructed entirely within an existing garage shall not be subject to setback requirements. For purposes of this Section, this shall include second units constructed within the building envelope of a garage partially or fully demolished or converted in order to create a second unit.
 - f. Second Units Constructed Above an Existing Attached or Detached Garage. Second units constructed above an existing garage, regardless of height, shall be subject to the setbacks in 6429.3(b).
 - g. 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.
 - h. Distance Between Detached Second Units and Other Residential Structures. The distance required between a detached second unit and any other residential structure 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. Notwithstanding any floor area standards applicable to second units in the applicable district, the following floor area standards shall apply:
- a. Floor Area of Detached Second Units. 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 (1,500) square feet. The floor area of the primary residence shall be calculated in the manner described in the relevant base or overlay district Zoning Regulations.

The floor area of a detached second unit shall count against the total floor area allowed on a parcel, such that the total floor area of the second unit in combination with the square footage of the primary residence and other structures on or proposed to be on the parcel shall not exceed the maximum floor area allowed within the zoning district.

- b. Floor Area of Attached Second Units. 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 (1,500) square feet. The floor area of the primary residence shall be calculated in the manner described in the relevant base or overlay district Zoning Regulations.

With the exception of second units built entirely within an existing structure, as described in 6429.4(c), below, the floor area of an attached second unit shall count against the total floor area allowed on a parcel, such that the total floor area of the second unit in combination with the square footage of the primary residence and other structures on or proposed to be on the parcel shall not exceed the maximum floor area allowed within the zoning district.

- c. Floor Area of Internal Second Units. Second units built entirely within an existing primary residence or accessory structure, including existing garages, shall not count as additional floor area for purposes of calculating the total floor area allowed on a parcel, regardless of the limitations of the base or overlay zoning district.

5. Lot Coverage. Second units shall count against the allowed lot coverage on a parcel.

However, should the base or overlay Zoning Regulations applicable to the parcel establish lot coverage limitations that vary based on the characteristics of existing or proposed development or the characteristics of the parcel, the second unit, independently or in combination with the square footage of the primary residence and other structures on or proposed to be on the parcel, shall be subject only to the least restrictive lot coverage limitation in the applicable district.

The least restrictive lot coverage calculation shall apply to the second unit regardless of the characteristics of the second unit, the subject parcel, and/or the primary residence which might otherwise trigger more restrictive lot coverage standards.

This limitation applies only to the second unit, and does not provide an exemption or relaxation of any standards applying to the primary residence or any other structures. Any subsequent proposed conversion of the second unit to any other type of development shall also remain subject to the lot coverage standards that would normally apply in the relevant zoning district.

6. 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 greater of the height limit applicable to that building in the relevant district, or the maximum height of the existing primary residence, measured in the manner described in the Zoning Regulations of the relevant district.

7. Daylight Plane. Neither second units built above an existing detached or attached garage or accessory structure, nor detached second units taller than sixteen (16) feet in height, shall be subject to daylight plane requirements.
8. 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 6429.6 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.
9. 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 a total window height no greater than twenty-four (24) inches. Skylights shall be allowed.
10. 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, except in the case that clearance and/or landing requirements preclude door placement on the side or rear of the parcel, in which case the required entrance may face the front of the parcel.
11. Ingress and Egress for Attached Second Units. Attached second units having a connecting doorway or other permanent ingress or egress between the primary residence and the second unit must ensure that such doorway is independently securable from within the second unit, and must obtain a use permit in the manner described in Section 6431.
12. Parking
 - a. Parking exemptions. 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, shall not be required to provide any parking in addition to the parking required for the primary residence only:

- (1) Second units located within one-half (1/2) mile of a public transit stop or station, measured as a direct line from the transit stop. Public transit stops must be served by a transit line serving the public, and not solely by specialized, private, or limited population services such as school buses, privately run shuttles, or other services that cannot be used by all public riders.
- (2) Second units located within a designated architecturally and historically significant historic district.
- (3) Second units that are part of the existing primary residence or an existing accessory structure, including attached or detached garages.
- (4) Second units located within one (1) block of a car share vehicle pick-up/drop-off location.

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

- (1) Required parking. One (1) new parking space, in addition to those already existing on the parcel, shall be provided on-site for each new attached or detached second unit.
- (2) Conversion of covered parking. Any covered parking removed in order to create a second unit, if required to be replaced, may be replaced with uncovered parking of any type and configuration allowed by Section 6429.11(c), below. For purposes of this Section, conversion includes partial or full demolition of covered parking required to create a second unit.
- (3) Garage conversion. If an existing attached or detached garage is converted to a second unit, the parking previously provided by that garage may be replaced by uncovered parking of any type and configuration allowed by Section 6429.11(c), below, and no additional parking related to the second unit is required. For purposes of this Section, conversion includes partial or full demolition of the garage and partial or full replacement with a second unit.
- (4) Use of existing parking. 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.

c. Parking spaces shall be provided in the following manner:

- (1) 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. Existing impervious surface area may be used for parking and need not be converted to pervious surface.
 - (2) Uncovered Parking. All parking required for the second unit may be uncovered.
 - (3) Front or Side Yard Parking. Three 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.
 - (4) 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.
 - (5) Compact Spaces. All parking required for the second unit may be provided by compact parking spaces, as defined in Section 6118.a.
- d. Parking Exceptions. If the required parking for a second unit cannot be met in accordance with this Chapter, an application may be submitted for a parking exception, as specified in Section 6120. For parking provided in accordance with the provisions of this Chapter, a parking exception shall not be required.
13. 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 relevant design review requirements incorporated in the County's Local Coastal Program and Zoning Regulations. Second units subject to design review within the County's Coastal Zone shall not be reviewed by a Design Review Committee, nor shall their design be subject to consideration at any public hearing. Compatibility with applicable design standards for such units shall be determined by staff, at the discretion of the Community Development Director.
 14. Architectural Review. Second units located in scenic corridors outside the County's Coastal Zone are not subject to architectural review. In the Coastal Zone, such units shall be subject to architectural review as normally required.
 15. 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.

16. 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.
17. Conversion of Accessory Buildings. 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.

Second units constructed within or above an existing, detached accessory building that conforms to all applicable provisions of this Chapter shall not be required to obtain a use permit, regardless of the requirements of the applicable district.

Second units built within or above existing garages are subject to the specific provisions of this Chapter regarding such units.

18. Creation of Second Unit Entirely Within a Non-Conforming 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.

1. Second units not meeting all applicable standards of this Chapter may be conditionally permitted, subject to a conditional use permit.

2. With the exception of second units described in 6431.3., below, 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 only, subject to the procedures specified in Chapters 24 and Chapter 30 of the Zoning Regulations.
3. In the case of second units within the Coastal Zone which are proposed in conjunction with other development that is required to be reviewed by the Planning Commission, the conditional use permit will be reviewed and granted by the Planning Commission only, and shall not be appealable. The Planning Commission's review may not consider issues related to design review.
4. Second units requiring a conditional use permit which are within the CD District may require a Coastal Development Permit that may be appealable to the Coastal Commission.
5. In the event that the creation or legalization of a second unit creates conflicts with standards specific to the base or overlay zoning of the parcel, or other standards for which specific exceptions are not provided in this Chapter, those conflicts must be addressed by whatever relief, if any, and through whatever procedures, are normally required by the regulations in which those standards are contained.
6. 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. HOME IMPROVEMENT EXCEPTIONS

Home Improvement Exceptions. For second units that may be allowed contingent on approval of a Home Improvement Exception, as described in Section 6531, second units are exempt from the requirements of Section 6531 that:

- *the improvement may not result in the creation of a new story.* Second units permitted contingent on an HIE may result in creation of a new story.
- *at least 75% of the existing exterior walls (in linear feet) will remain.* Second units may be permitted contingent on an HIE regardless of the percent of linear feet of existing walls remaining.
- *at least 50% of the existing roof (in square feet) will remain.* Second units may be permitted contingent on an HIE regardless of the percent of existing roof remaining.

- *the addition will be located at least three feet from a property line.* In the case of second units located within an existing garage, as described in 6429.3(e), second units may be permitted contingent on an HIE regardless of setbacks.
- *the existing structure is located in an area with an average slope of less than 20%.* Second units may be permitted contingent on an HIE regardless of the average slope.

These exceptions to HIE standards are applicable only to the second unit, not to the primary residence or any other development on the subject parcel.

Home Improvement Exceptions may not be used to allow a second unit of greater floor area than that allowed by Section 6429.4.

SECTION 6433. COASTAL DEVELOPMENT DISTRICT.

In the CD District, all second units shall comply with all of the applicable regulations of the district, including but not limited to the Sensitive Habitats, Visual Resources, and Hazards policies of the Local Coastal Program. 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 6434. 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, and Grading Permits, shall also be ministerial, except as provided in Section 6431. Except for units that are within the Coastal Zone's Appeals Jurisdiction and/or that require a Coastal Development Permit, 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. In the case of units that are within the Coastal Zone's Appeals Jurisdiction, and/or require a Coastal Development permit, all required public notice will be provided.

SECTION 6435. APPEALS.

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

SECTION 6436. 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 the Building Code (Section 9000 et seq.).

SECTION 3. Adoption of this Ordinance is 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 4. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this Ordinance.

SECTION 5. The Clerk shall publish this Ordinance in accordance with applicable law.

SECTION 6. This Ordinance shall be effective thirty (30) days from the passage date thereof, except in the County's Coastal Zone, where it shall be effective immediately upon certification by the California Coastal Commission.

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