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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL
ORDINANCE NO. ~~13485~~ 13495 C.M.S.

ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, AMENDING THE OAKLAND PLANNING CODE TO: 1) REVISE REGULATIONS FOR SECONDARY UNITS TO COMPLY WITH STATE LAW; 2) CREATE AND MAP A NEW ZONING OVERLAY THAT IDENTIFIES AREAS IN THE CITY WHERE NEW CATEGORY TWO SECONDARY UNITS ARE NOT PERMITTED; 3) MAKE MINOR CHANGES IN VARIOUS CHAPTERS OF THE PLANNING CODE; AND 4) MAKE APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATIONS

~~WHEREAS, housing in California is becoming increasingly unaffordable, and the availability of housing is a substantial concern for individuals of all demographics, ages, and income groups in communities throughout the City of Oakland; and~~

WHEREAS, the 2015-2023 Housing Element of the City's General Plan specifically includes policies to encourage the construction of Secondary Units in single-family zones and recognizes these units as a source of affordable housing; and

WHEREAS, the housing affordability crisis threatens the public health, safety, and/or welfare of our citizenry; and

WHEREAS, recognizing the severity of the housing affordability crisis, on February 16, 2016, the City Council adopted Ordinance No. 13357 C.M.S., which revised the City's Secondary Unit regulations to streamline the process of approval. As part of the final adoption, Council directed staff to prepare further amendments to the Secondary Unit regulations, including a clarification that the City's zoning regulations do not invalidate stricter regulations that may be imposed by a homeowners' association's Covenants, Conditions, and Restrictions (CC&Rs); and

WHEREAS, in September 2016, Governor Brown signed into law Senate Bill 1069 and Assembly Bill 2299, amending Government Code section 65852.2, and relating to the creation of accessory dwelling units (Secondary Units). These new bills were intended to address the housing crisis by easing regulatory barriers, thereby encouraging homeowners to build Secondary Units, and providing additional rental housing supply in California; and

WHEREAS, on January 1, 2017, SB 1069 and AB 2299 went into effect, rendering the City's existing Secondary Unit regulations null and void until an ordinance is adopted that fully complies with State law. The Bureau of Planning is currently issuing permits for Secondary Units under interim regulations required by State law. These interim regulations have not yet been tailored to meet the City's needs, and consequently may be more restrictive in some cases than the previous Secondary Unit regulations Oakland adopted in 2016; and

WHEREAS, changes to the California Government Code require that the City update its Secondary Unit regulations; and

WHEREAS, the City of Oakland's Strategic Planning Division staff has prepared the following amendments to the Oakland Planning Code and Zoning Map to: (a) bring the City's Secondary Unit regulations into full compliance with California State law, and address the Council's direction from February 16, 2016 (where not superseded by State law); (b) reduce regulatory barriers to the development of Secondary Units; (c) identify areas of the city where Secondary Units involving new construction or addition are not permitted due to impacts on traffic flow and public safety; and (d) clarify language in various chapters of the Planning Code; and

WHEREAS, the proposed amendments comply with Government Code Section 65852.2, which establishes standards for the development of accessory dwelling units so as to increase the supply of affordable housing; and

WHEREAS, Article XI, Section 5 of the California Constitution provides that the City, as a home rule charter city, has the power to make and enforce all ordinances and regulations in respect to municipal affairs, and Article XI, Section 7, empowers the City to enact measures that protect the health, safety, and/or welfare of its residents; and

WHEREAS, Section 106 of the Oakland City Charter provides that the City has the right and power to make and enforce all laws and regulations with respect to municipal affairs; and

WHEREAS, the City desires to further the public health, safety and/or welfare by bringing the City's Planning Code into compliance with new State law; and

WHEREAS, on January 18, 2017, at a duly noticed public hearing, the Planning Commission recommended approval of the proposed changes to Secondary Unit regulations and miscellaneous minor changes in various Chapters of the Planning Code; and

WHEREAS, after a duly noticed public meeting on April 11, 2017, the Community and Economic Development Committee voted to recommend the proposal to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on April 18, 2017 to consider the proposal, and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

WHEREAS, the adoption of an ordinance to implement Government Code section

65852.2 is exempt from CEQA under Public Resources Code section 21080.17. Similarly, the ministerial approval of Secondary Unit applications would not be a “project” for CEQA purposes, and environmental review would not be required prior to approving individual applications; and

WHEREAS, in addition, the proposed amendments to the Planning Code and Zoning Map rely on the previous set of applicable CEQA documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs - West Oakland (2003), Central City East (2003), and Coliseum (1995); the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, “Previous CEQA Documents”). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163; and

WHEREAS, the Previous CEQA Documents provide analysis of the environmental impacts of the proposed amendments and support all levels of approval necessary to implement the Planning Code and Zoning Map amendments; and

WHEREAS, the proposed amendments to the Planning Code and Zoning Map would not result in any significant effect that has not already been analyzed in the Previous CEQA Documents, and there will be no significant environmental effects caused by the change that have not already been analyzed in the Previous CEQA Documents; and

WHEREAS, the City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163 are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the Previous CEQA Documents due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no “new information of substantial importance,” as defined in CEQA Guidelines Section 15162(a)(3); and

WHEREAS, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment); now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council finds and determines the foregoing recitals to be true and correct and an integral part of the City Council’s decision, and hereby adopts such recitals as findings.

Section 2. The City Council finds and determines the adoption of this Ordinance is

exempt from CEQA under Public Resources Code Section 21080.17. Similarly, the ministerial approval of Secondary Unit applications would not be a “project” for CEQA purposes, and environmental review would not be required prior to approving individual applications. In addition, the City Council finds and determines the adoption of this Ordinance complies with CEQA in reliance on the Previous CEQA Documents. Further, the Council finds the adoption of this Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment). Each of these provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance

Section 3. The Environmental Review Officer shall file a Notice of Exemption/Notice of Determination, and an Environmental Declaration under the California Fish and Game Code (Section 711.4) with the County of Alameda.

Section 4. Title 17 of the Oakland Planning Code is hereby amended pursuant to *Exhibit A* attached hereto and incorporated by reference herein. Additions to Title 17 of the Oakland Planning Code are shown as underline and omissions are shown as ~~strikethrough~~.

Section 5. The Oakland Zoning and Height Maps are hereby amended pursuant to *Exhibit B* attached hereto and incorporated by reference herein.

Section 6. This Ordinance shall be effective 10 days from the date of final passage by the City Council, but shall not apply to (a) building/construction related permits already issued and not yet expired, or (b) zoning applications approved by the City and not yet expired, or (c) zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code and Zoning Map amendments if the applicant chooses to do so.

Section 7. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 8. If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full effect.

Section 9. This Ordinance serves the public interest and is necessary to protect the health, safety and/or general welfare of the citizens of Oakland, and is enacted pursuant to the City of Oakland’s general police powers, Section 106 of the Charter of the City of Oakland, Government Code Section 65852.2, and Article XI, Sections 5 and 7 of the California Constitution.

Section 10. The City Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), prior to formal publication of the amendments in the Oakland Planning Code.

Section 11. The City Clerk of the City of Oakland is hereby directed to transmit this Ordinance with Exhibits to the Department of Housing and Community Development within 60 days of adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, MAY - 2 2017

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, ~~GRULLO~~, GIBSON MCELHANEY, GUILLÉN, KALB, ~~KAPLAN~~ AND PRESIDENT REID - 6

NOES - 0

ABSENT - 2 Grullo and Kaplan

ABSTENTION - 0

Introduction Date

APR 18 2017

ATTEST: LaTonda Simmons
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: May 16, 2017

Oakland Tribune

1970 Broadway, Suite 100
Oakland, CA 94612
510-723-2850

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OAKLAND, CITY OF
KRISTAL SAMS, CITY CLERK'S OFC.
1 FRANK H. OGAWA PLZ., 2ND FL.
OAKLAND, CA 94612-1923

PROOF OF PUBLICATION

FILE NO. A. Landingham Oakland Png Code

In the matter of

Oakland Tribune

The Oakland Tribune

I am a citizen of the United States; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the Legal Advertising Clerk of the printer and publisher of The Oakland Tribune, a newspaper published in the English language in the City of Oakland, County of Alameda, State of California.

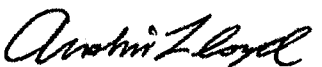
I declare that The Oakland Tribune is a newspaper of general circulation as defined by the laws of the State of California as determined by this court's order, dated December 6, 1951, in the action entitled In the Matter of the Ascertainment and Establishment of the Standing of The Oakland Tribune as a Newspaper of General Circulation, Case Number 237798. Said order states that "The Oakland Tribune is a newspaper of general circulation within the City of Oakland, and the County of Alameda, and the State of California, within the meaning and intent of Chapter 1, Division 7, Title 1 [§§ 6000 et seq.], of the Government Code of the State of California." Said order has not been revoked, vacated, or set aside.

I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

04/28/2017

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated: April 28, 2017



Public Notice Advertising Clerk

Legal No.

0005945501

NOTICE AND DIGEST

An Ordinance, As Recommended By The City Planning Commission, Amending The Oakland Planning Code To: 1) Revise Regulations For Secondary Units To Comply With State Law; 2) Create And Map A New Zoning Overlay That Identifies Areas In The City Where New Category Two Secondary Units Are Not Permitted; 3) Make Minor Changes In Various Chapters Of The Planning Code; And 4) Make Appropriate California Environmental Quality Act Determinations

This Ordinance would amend Secondary Unit regulations in the Oakland Planning Code to comply with changes in State law, including but not limited to: creation of two separate categories of Secondary Units: "Category One" - those entirely within the building envelope of an existing One-Family Dwelling Facility or detached accessory structure; and "Category Two" - those that involve construction of a new structure or an addition to the building envelope of an existing structure; ministerial approval of all Secondary Units; elimination of parking requirements for all "Category Two" Secondary Units when located: within one-half mile of a public transit stop, in an historic district, in an area where on-street parking permits are required but not offered to the occupant of the secondary unit, or within one block of a dedicated car share space; allowance for tandem parking and other parking configurations; elimination of requirements for separate utility connections for "Category One" Secondary Units; and elimination of requirements for fire sprinklers if the primary unit does not require them. Amendments are also proposed beyond the minimum required by State Law to further reduce the regulatory barriers to the development of Secondary Units. Secondly, this Ordinance would create a new Zoning Map overlay (S-9) that identifies areas in the city where the street pavement width and/or cul-de-sac length are not conforming to minimum emergency access standards; and such narrow streets and long cul-de-sacs are located, in whole or part, in a designated "Very High Fire Hazard Severity Zone". The initial purpose of this new zoning overlay would be to prohibit new "Category Two" Secondary Units in specific areas due to impacts on traffic flow and public safety. Finally, the Ordinance includes miscellaneous minor changes throughout the Planning Code intended to improve consistency, reduce redundancies, and clarify language, such as the addition of a definition for the term "Transit Accessible Area" to Section 17.09.040 of the Planning Code. The City has a need for this definition unrelated to Secondary Units, since it is a currently undefined term in Section 17.116.110 - Special Parking Exemptions and Reductions - which is part of the new parking regulations recently adopted by City Council.

Notice of Publication

This Ordinance was introduced at the City Council meeting, Tuesday evening April 18, 2017, and passed to print **7 Ayes, 1 Excused Reid**. Final adoption has been scheduled for the City Council meeting Tuesday evening May 2, 2017, at 5:30 P.M., at One Frank H. Ogawa Plaza, Council Chamber, 3rd floor, Oakland, California.

Three full copies are available for use and examination by the public in the Office of the City Clerk at One Frank H. Ogawa Plaza, 1st floor, Oakland, California.

LATONDA SIMMONS, City Clerk
OT #5945501; Apr. 28, 2017