

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 APR -6 PM 3:05

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ 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, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN, AND
PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

DATE OF ATTESTATION: _____