

ORDINANCE NO. 1162

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO AMENDING SAN ANSELMO MUNICIPAL CODE TITLE 10 (PLANNING AND ZONING), CHAPTER 6 (ACCESSORY DWELLING UNITS), ADDING NEW SECTION 10-6.210 SALE OF ACCESSORY DWELLING UNITS FOR LOW AND MODERATE INCOME HOUSING

WHEREAS, Accessory Dwelling Units expand the opportunity for small, lower cost, housing units in San Anselmo; and

WHEREAS, the Town has approved 100% of its share of the Regional Housing Need Allocation for the 2015-2023 Housing Element cycle and almost half of the approved units have been Accessory Dwelling Units; and

WHEREAS at its meeting of June 23, 2020, the Town Council discussed its desire to promote development of deed restricted affordable housing and affirmatively promote fair housing and equity; and

WHEREAS, the Town Council wants to provide additional opportunities for the development of affordable housing within existing neighborhoods by allowing nonprofit organizations to sell Accessory Dwelling Units separately from the primary residence for affordable housing pursuant to Government Code Section 65852.26; and

WHEREAS, on September 28, 2021, Governor Gavin Newsom signed AB-345, which requires local agencies to allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if certain conditions are met; and

WHEREAS, on November 15, 2021, the Planning Commission conducted a public hearing on the proposed Zoning Ordinance amendments, and considered all staff reports, attachments, testimony and found the proposed ordinance consistent with the General Plan and recommended that the Town Council adopt the proposed ordinance; and

WHEREAS, the Town Council held a public hearing on January 25, 2022, to consider the Planning Commission recommendation and introduce the draft Ordinance; and has found that the provisions of this ordinance are consistent with the goals and policies of the Town's General Plan and other adopted ordinances and regulations of the Town;

WHEREAS, notice of the Planning Commission hearing was published in the Marin Independent Journal on November 5, 2021, and notice of the Town Council hearing was published in the Marin Independent Journal on January 15, 2022.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES ORDAIN AS FOLLOWS:

SECTION 1: The Town Council finds and determines that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. The ordinance is intended to

modify existing local regulatory requirements to be consistent with State and local law which encourage development of Accessory Dwelling Units. The ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section 21080.17 as it implements the provisions of Government Code sections 65852.2 and 65852.22. Similarly, the ministerial approval of Accessory Dwelling Unit applications would not be a "project" for CEQA purposes, and environmental review would not be required prior to approving individual applications.

SECTION 2: Title 10 Planning and Zoning Section 10-6.209 Subsection (b) is amended to read as follows:

“(b) Except as provided in Section 10-6.210, the unit shall not be intended for sale separate from the primary residence (including creation of a stock cooperative or similar common interest ownership arrangement) and may be rented. Rental of accessory dwelling units approved after January 1, 2020, shall be for a term longer than 30 days. A deed restriction shall be recorded prior to issuance of the building permit that requires rental for a term longer than 30 days.”

SECTION 3: Title 10 Planning and Zoning is amended to add a new Section 10-6.210 Sale of Accessory Dwelling Units for Low and Moderate Income Housing as required by California Government Code Section 65852.26 to read as follows:

10-6.210 Sale of Accessory Dwelling Units for Low and Moderate Income Housing.

(a) For purposes of this section, the following definitions apply:

- (1) “Qualified Buyer” means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.
- (2) “Qualified Nonprofit Corporation” means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

(b) Notwithstanding 10-6.209 (b) an accessory dwelling unit may be sold or conveyed separately from the primary residence to a qualified buyer upon receipt of a conditional use permit from the Planning Director pursuant to Government Code Section 65852.26. The Town Council may establish a fee for the permit. The Planning Director shall issue the permit upon receipt of evidence demonstrating the following requirements have been met.

- (1) The accessory dwelling unit or the primary dwelling was built or developed by a Qualified Nonprofit Corporation.
- (2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the Qualified Buyer and the Qualified Nonprofit Corporation that satisfies all of the requirements specified in Section 402.1(a)(10) of the Revenue and Taxation Code.

- (3) The property will be held pursuant to a recorded tenancy in common agreement that includes all of the following:
- (A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling that each qualified buyer occupies.
 - (B) A repurchase option that requires the Qualified Buyer to first offer the Qualified Nonprofit Corporation to buy the accessory dwelling unit or primary dwelling if the buyer desires to sell or convey the property.
 - (C) A requirement that the Qualified Buyer occupy the accessory dwelling unit or primary dwelling as the buyer's principal residence.
 - (D) Affordability restrictions on the sale and conveyance of the accessory dwelling unit or primary dwelling that ensure the accessory dwelling unit and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a Qualified Buyer.
 - (E) Separate water, sewer, or electrical connection to a utility providing service to the primary residence, if required by that utility.
 - (F) If the tenancy in common agreement is recorded after December 31, 2021, it shall also include all the following:
 - a. Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant shall agree not to claim a right of occupancy to an area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.
 - b. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property. This delineation shall only be binding on the parties to the agreement, and shall not supersede or obviate the liability, whether joint and several or otherwise, of the parties for any cost, obligation, or liability associated with the property where such liability is otherwise established by law or by agreement with a third party.
 - c. Procedures for dispute resolution among the parties before resorting to legal action.
- (4) A condition of approval shall require a grant deed naming the grantor, grantee, and describing the property interests being transferred to be recorded with the Marin County

Clerk and a Preliminary Change of Ownership Report to be filed concurrently with the grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

SECTION 3: Severability. To the extent allowed under State law, the Town Council hereby declares every section, paragraph, sentence, cause and phrase is severable. To the extent allowed under State law, if any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 4: Inclusion in the San Anselmo Municipal Code. It is the intention of the San Anselmo Town Council that the text in Section 2 be made a part of the San Anselmo Municipal Code and that the text may be renumbered or relettered and the word "Ordinance" may be changed to "Section", "Chapter", or such other appropriate word or phrase to accomplish this intention.

SECTION 5: This Ordinance shall go into effect thirty (30) days from its adoption and shall be posted or published as required by State law.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the San Anselmo Town Council on January 25, 2022, and was adopted at a regular meeting of the San Anselmo Town Council on February 8, 2022 by the following vote:


AYES: Fineman, Burdo, Burke, Greenè, Colbert

NOES: None

ABSENT: None

ABSTAIN: None


ATTEST: Carla Kacmar, Town Clerk



Alexis Fineman, Mayor