

# REPLACEMENT SUPPLEMENTAL

COUNCIL AGENDA: 04-08-08  
ITEM: 4.3



## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel and  
Leslye Krutko

**SUBJECT:** SECONDARY UNIT ORDINANCE  
AND PARKLAND IN-LIEU FEE

**DATE:** April 2, 2008

Approved

Date

4-4-08

**COUNCIL DISTRICT:** City-Wide  
**SNI AREA:** ALL

### REPLACEMENT SUPPLEMENTAL MEMO

#### REASON FOR REPLACEMENT SUPPLEMENTAL

This memo provides analysis of issues raised by Councilmember Constant at the Community and Economic Development Committee meeting of February 25, 2008 regarding secondary unit parking and recommendation for an additional secondary unit parameter based on recent experience with the Pilot Program. This replacement contains the correct information in Table 1: Summary of Recommended Secondary Unit Parameters.

#### RECOMMENDATION

It is recommended that the City Council 1) approve an ordinance amending Title 20 of the San Jose Municipal Code to establish secondary unit requirements in the City's Zoning Code as recommended by staff, 2) adopt a resolution amending the Schedule of Parkland In Lieu Fees charged pursuant to Chapters 14.25 and 19.38 of the San Jose Municipal Code to establish a parkland fee of 50% of the fees applicable to SRO units, resulting in a parkland fee in the range of \$2,275 to \$5,500 per secondary unit, and 3) that the ordinance and fee resolution be effective on June 15, 2008.

#### OUTCOME

Approval of the proposed secondary unit ordinance and amendment to the Schedule of Parkland In Lieu Fees (Schedule of Fees) to add a parkland fee for secondary units will allow: (1) the continued production of secondary units with development parameters previously established and then modified based on lessons learned through the Secondary Unit Pilot Program, and (2) ensure that new secondary units contribute towards the provision of park facilities in an amount that is commensurate with their size and character.

## **BACKGROUND**

At the Community and Economic Development Committee meeting of February 25, 2008, Councilmember Constant asked staff to further explore the issue of allowing required parking for secondary units in the front setback. He expressed concern that the current requirement precludes secondary units on lots that are otherwise large enough to accommodate such a unit and asked staff to provide further analysis on this issue. The requested analysis is provided below.

The current Pilot Program parameters do not restrict the number of bathrooms that may be included in a secondary unit. Neighbors of a proposed secondary unit recently contacted staff with concern that two full bathrooms proposed for the unit were intended to allow its rental to more than one household. Despite the small size of the unit and its conformance with the pilot program parameters, staff concurs that its design, including a second bathroom and a separate exterior entrance to the bedroom, would facilitate conversion for occupancy by more than one household, contrary to the objectives of the Pilot Program. This issue is discussed in the Analysis section below.

## **ANALYSIS**

### **Parking**

The Secondary Unit Pilot Program parameters require that a secondary unit provide one parking space in addition to the two covered spaces<sup>1</sup> required for the primary residence; this parking space need not be covered and can be provided in a tandem configuration<sup>2</sup>, but may not be located in the front or side setback. The latter provision is consistent with Zoning Ordinance Section 20.90.120, which specifies that "No off-street parking space ... shall be located within any side or front setback area required by other provisions of this Title"<sup>3</sup>.

The requirement that secondary units provide an additional parking space not located in the front or side setback encourages a pattern of development that achieves two key objectives. First and foremost, the parameter encourages the provision of new parking above and beyond existing on-site parking. Based on this provision, driveway aprons located in front of an attached garage are generally not eligible to serve as required parking for a secondary unit because such aprons are typically located within the front setback. As result, most new units must provide an additional parking space that actually increases available on-site parking above that already used by the primary residence. Second, the limitation on parking in the front setback helps to preserve the pattern of front yard landscaping in existing neighborhoods by pushing the additional paved parking space away from the front property line. This parameter results in the location of most required secondary

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<sup>1</sup> Covered parking spaces must be provided in a garage or carport.

<sup>2</sup> Tandem parking consists of cars parked one behind the other so that exiting of the front car must be coordinated with that of the rear car.

<sup>3</sup> This provision applies to required parking. It does not prevent the actual parking of vehicles on a driveway apron located in the front setback.

unit parking spaces to the side of or behind the house where they are less visible from the street and from surrounding properties. In some instances, a deep front yard allows the required space to be provided in front of the house, but outside the front setback. In such cases, the depth of the front yard and the greater distance of the parking space from the street, lessen the visual impact of the additional paved area.

The current Pilot Program parameters, including those relative to parking, attempt to strike a balance between allowing property owners to construct secondary units and protecting residential neighborhoods from undue impact. During the public outreach conducted for the Pilot Program, the potential parking impact of secondary units was a major community concern. In response to this concern, the Pilot Program parameters were intentionally crafted to ensure that most new units must provide an additional parking space. This provision clearly makes implementation of a secondary unit infeasible on some single-family properties; nevertheless, staff believes it is a key factor in minimizing parking impacts and in the considerable public acceptance the Pilot Program appears to have achieved.

Based on the above analysis, staff concluded -- and upon reexamination of all of the above information and outreach performed continues to recommend -- that the limitation on parking in the front setback be retained. The current requirements for parking promote positive development patterns and effectively balance competing community objectives for this new housing option while addressing its potential negative impacts.

### **Limitation on Number of Bathrooms**

Current Pilot Program parameters limit secondary units to one bedroom and a maximum floor area of between 600 and 700 square feet, but do not limit the number of bathrooms. Staff is now recommending the addition of a new parameter limiting secondary units to a maximum of one bathroom (See Table 1). Recent experience with the Pilot Program has raised concern that a second full bathroom, strategically located, could facilitate conversion of a secondary unit's bedroom to an additional living unit resulting in potential code enforcement issues. The proposed single bathroom limitation is consistent with the overall objective of allowing secondary units designed for one or two person households. Such a limitation would not appear to be burdensome to most applicants in that only three percent of the secondary units approved under the Pilot Program include a second full or half bathroom, despite the fact that this has been an allowable design option. For these reasons, staff concludes that the proposed limitation on the number of bathrooms provides appropriate protection against potential impacts without unduly constraining the design of these small units.

**Table 1. Summary of Recommended Secondary Unit Parameters**

<b>Current Pilot Program Parameters (Approved by the Council in October, 2007)</b>	
<b>Applicable Zoning</b>	All R-1 Districts and PD Districts with R-1 standards
<b>Minimum Lot Size</b>	Attached unit - 6,000 sq. ft. Detached unit - 8,000 sq. ft.
<b>Maximum Unit Size</b>	≤ 9,000 sq.ft. lot      600 sq.ft. 9,001 to 10,000 lot    650 sq.ft. ≥ 10,000 lot            700 sq.ft.
<b>Bedrooms and Size</b>	One bedroom required and maximum allowed. 400 sq. ft. maximum
<b>Storage</b>	60 sq. ft. maximum
<b>Required Parking</b>	One space (outside front and side setbacks)
<b>Setbacks Attached Unit</b>	Same as primary unit, including exception reducing rear setback to 15 ft. for single story.
<b>Setbacks Detached Unit</b>	Same as primary dwelling, including exception reducing rear setback to 15 ft. Façade of secondary unit must be set behind that of primary residence. Units must be separated from any other structure by 6 feet.
<b>Height</b>	18 feet maximum 14 feet average
<b>Design Criteria</b>	Exterior materials and roof pitch to match existing house. Front door cannot be on same façade as that of primary unit. Windows cannot have views of adjacent residential rear yards or interiors.
<b>Ownership</b>	Property owner must certify that he/she occupies existing house at the time of application.
<b>Detached Garage</b>	Secondary unit can be attached to detached garage if garage meets secondary unit setbacks.
<b>Recommended Additions to the Current Parameters</b>	
<b>Rear Yard Coverage</b>	Secondary units, accessory buildings and accessory structures (excluding above-ground swimming pools), in the cumulative, shall cover no more than 40% of the rear yard area.
<b>Bathrooms</b>	Maximum of one bathroom allowed.

**POLICY ALTERNATIVES**

The alternative policy actions available to the Council in regard to parking requirements for secondary units include the following:

**Alternative #1:** Approve a permanent secondary unit ordinance with parameters that allow required secondary unit parking to be provided within the front and side setbacks in a tandem configuration.

**Pros:** Allowing parking in the front setback would make it easier to construct secondary units on lots where the existing configuration of the house limits options for additional parking.

**Cons:** Allowing required parking in the front setback would make it possible for many new secondary units to rely on existing apron parking spaces and avoid provision of additional parking, thereby resulting in potentially negative parking impacts in neighborhoods where parking shortages exist. This provision would be inconsistent with other provisions of the Zoning Ordinance that generally prohibit required parking in the front setback for other residential uses.

**Reason for not recommending:** The parking requirements tested through the Pilot Program, as amended by the City Council in October 2007, appear to be working well in balancing the objectives of facilitating secondary units while protecting surrounding properties from undue, negative parking impacts.

**Alternative #2:** Approve a permanent secondary unit ordinance with parameters that allow required parking in the front and side setbacks, but not in a tandem configuration.

**Pros:** Allowing parking in the front setback would make it easier to construct secondary units on lots where the existing configuration of the house limits options for locating parking outside setback areas. The prohibition on tandem parking would prohibit counting an existing driveway apron in front of a garage as required parking and would encourage the provision of an additional parking space, thereby lessening potential parking impacts.

**Cons:** Allowing parking in the front setback so long as it is not provided in a tandem configuration, would encourage the expansion of paved parking areas close to the front of the site where it is most visible and most likely to disrupt existing neighborhood patterns of front yard landscaping. This provision would be inconsistent with other provisions of the Zoning Ordinance prohibiting required parking in the front setback.

**Reason for not recommending:** The parking requirements tested through the Pilot Program, as amended by the City Council in October 2007, appear to be working well in balancing the objectives of facilitating secondary units while protecting surrounding properties from undue negative parking impacts.

**Alternative #3:** Approve an ordinance with no restriction on the number of bathrooms allowed in a secondary unit.

**Pros:** No restriction on the number of bathrooms would allow single-family homeowners greater flexibility in designing a secondary unit.

**Cons:** No limitation on the number of bathrooms could facilitate conversion of a secondary unit to two units, contrary to the objectives of the secondary unit ordinance.

**Reason for not recommending:** Experience gained through the Pilot Program has indicated that allowance of a second bathroom has the potential to create future code enforcement problems and that limiting secondary units to one bathroom would not be unduly burdensome in that most applicants have chosen a single-bathroom design.

**COORDINATION**

This project was coordinated with the Department of Park, Recreation and Neighborhood Services and the City Attorney.



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