COUNCIL AGENDA: ~~4-19-05~~ 5-3-05
ITEM: ~~4.6~~ 4.3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Nadine N. Nader

SUBJECT: **SEE BELOW**

DATE: March 30, 2005

Approved [signature] Date 3-30-05

SUBJECT: SECONDARY UNITS [DRIVING A STRONG ECONOMY COMMITTEE]

On March 28, 2005 staff made a presentation to the Committee on Secondary Units and recommended that a limited pilot program for secondary units in selected areas of the City be considered.

The Committee accepted the report and directed staff to cross-reference the item and forward it to the full Council for discussion.

A copy of the staff memo is attached for your review.

[signature]
NADINE N. NADER
Senior Executive Analyst
City Manager's Office

Attachment

DSE Agenda: 03-28-05
Item #: 4c

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: DRIVING A STRONG ECONOMY COMMITTEE

FROM: Leslye Corsiglia and Stephen M. Haase

SUBJECT: SECONDARY UNITS

DATE: March 10, 2005

Approved Paul Krutko Date 3/15/05

COUNCIL DISTRICT: Citywide
SNI: All

RECOMMENDATION

It is recommended that the City Council direct the Administration to proceed with a limited pilot program for secondary units in selected areas of the City.

BACKGROUND

Currently, State law requires local jurisdictions to either have a ministerial process to approve secondary dwelling units, or to make findings of adverse impact precluding them. A secondary unit is a self-contained independent living area that is built into or attached to an existing single-family dwelling. The unit is usually private, generally smaller than the primary unit, and may share, at most, an entrance, yard and parking spaces. Second units, also known as accessory units and granny flats, are units that are typically added to an existing single-family dwelling by the owner.

In 1984, the City Council passed an ordinance precluding secondary units in the City of San José, citing traffic, infrastructure, and safety concerns as the major reasons for the prohibition. The ordinance and its findings are included with this report as Attachment A.

In August and October 2003, the Driving a Strong Economy Committee heard two presentations regarding the status of discussions and working group meetings surrounding the issue of secondary residential units. Based on the information provided at these meetings, the Committee directed the Departments of Planning, Building and Code Enforcement and Housing to draft parameters for a possible secondary unit ordinance in San José. On March 22, 2004 the Departments of Housing and Planning, Building and Code Enforcement presented the proposed parameters to the DSE Committee. The Committee recommended that the proposal and draft parameters go to the City Council for further direction.

At its April 6, 2004 meeting, the City Council debated whether to initiate an ordinance allowing secondary units. As a result, the Council unanimously directed staff to conduct public outreach to gather community input about the possibility of a secondary unit ordinance prior to any formal consideration of an ordinance. The Council directed staff to conduct up to two community meetings in each Council District. Between June and October of last year, Planning, Building and Code Enforcement and Housing Department staff has made a total of 24 presentations throughout the City. This report summarizes the feedback on secondary units gathered through the public outreach process.

This report also identifies three options for the Council to take in light of this feedback, with staff's recommendation for one of those options.

In addition to providing feedback from the community meetings, this memorandum responds to the questions raised at the September 1, 2004 Rules Committee meeting. At this meeting the two Departments were asked to provide the Council with additional details regarding the secondary units issue. The Rules Committee asked staff to present additional information to the City Council and Driving a Strong Economy Committee regarding the 1984 ordinance and findings, a comparison of how much affordable housing is being built in the State's ten largest cities, and an overview of how existing, illegal units will be dealt with in San José.

ANALYSIS

Rules Committee Information

1984 Findings

Since 2002, a team comprised of the Housing Department and Planning, Building, and Code Enforcement have been working together to better understand the pros and cons of secondary units in the City of San José and whether the City could accommodate the development of secondary units. Research efforts began with reviewing the City's current findings made in 1984 and adopted in Ordinance 21663.

The City adopted findings in accordance with the requirements of the law in 1984. In accordance with State law, the City acknowledged that by precluding development of secondary units, the City recognized this action may "limit housing opportunities of the region." State law further requires that the findings indicate that, "specific adverse impacts on the public health, safety, and welfare would result from allowing secondary units within single-family and multifamily zoned areas." The findings made by the Council identified strains on City resources, General Plan buildout and planning, and traffic issues, as well as the potential for large numbers of secondary units, as facts justifying the prohibition.

Affordable Housing in the 10 Largest California Cities

Also requested by the Rules Committee, City staff contacted the State Department of Housing and Community Development (HCD) to help determine the affordable housing developed by the 10 largest cities in California. The Housing Department contacted each of the 10 largest jurisdictions in California and asked them to provide information regarding the number of affordable housing they have built over a five-year period beginning in the 1998-1999 Fiscal Year. The data provided in Attachment B indicates that San Jose has built nearly triple the amount of affordable housing as the next closest city, San Diego. However, it should be noted that this outcome was the result of significant contribution of funding from the San José Redevelopment Agency. Future funding for affordable housing is not so certain, given the significant decrease in redevelopment tax increment. As a result, it is likely that San José will not experience this amount of affordable housing development in the coming years and that alternative tools and programs will be needed to fill the need for affordable housing development.

Public Outreach Meetings on Secondary Units

General Comments

Residents expressed a wide range of sentiments during the public outreach process. The main themes that the public expressed are outlined below, with additional comments summarized in matrix form in Attachment C. The primary concerns regarding secondary units were related to the potential change in the character of residential neighborhoods and the impact on property values, parking, increased demand on existing parkland, and the lack of a strategy to bring existing illegal units into compliance. On a positive note, community members indicated that secondary units could provide additional affordable housing opportunities and could provide a way to accommodate an extended family on a single parcel.

There were also several people attending the meetings interested in legalizing existing secondary units or building new units on their property (i.e., property owners who either had an unpermitted unit that they wanted to legalize, or who had enough lot area and a compelling family situation to consider a secondary unit).

At fourteen of the meetings, staff polled the audience for their thoughts on secondary units. Audiences were asked if the City should approve some form of secondary units ordinance (support), or re-affirm the 1984 findings of adverse impact (oppose). At eight of the meetings, a majority of those voting opposed, and at five meetings, there was a majority in support. There was one tie. At eight out of the fourteen meetings where a vote was taken, the largest component of the audience did not vote. This could be attributed to the fact that the secondary unit discussion was part of a larger, more general meeting, such as SNI NAC meetings or neighborhood association meetings, with other agenda items beyond secondary units. This could also reflect a desire for more understanding of the issues surrounding secondary units.

Code Enforcement of Existing Illegal Secondary Units

How to proceed with code enforcement against existing illegal secondary units was a significant issue at the community meetings. There were strong negative comments regarding the Code Enforcement Division's ability to handle existing unpermitted units. The pervasive opinion of the community was that abatement of existing unpermitted units was a difficult and time-consuming process, and that the Code Enforcement Division is too overloaded to respond effectively to secondary unit concerns.

A significant number of people were against legalization of existing units, and were concerned about the overcrowding that already goes on in unpermitted units. People also noted that existing units in older neighborhoods already have an adverse effect on the area.

Conversely, people pointed out that legalizing existing unpermitted units would be beneficial because it would give property owners the opportunity to bring unpermitted structures up to code. There would be standards and oversight for the construction of unpermitted units. There would also be a financial incentive for property owners, because legalized units would count towards the legal square footage of the building, which would in turn raise the property's value.

The City is cautious about finding itself in the situation of having to displace housed individuals, however, understands the need and serious issue of enforcing against secondary units with health and life safety violations. Should the City proceed with any future ordinance, this is an area that will require much more consideration and careful examination. The City is committed to its current practice of enforcing codes to ensure safe living conditions for all of its residents.

Code Enforcement of the Owner Occupancy Provision

A number of participants at the community meetings felt that the owner-occupancy requirement was key to making the proposed secondary unit ordinance workable. However, a greater number thought that the provision would be unenforceable, and would add an additional workload to an already overburdened Code Enforcement Division. A number of participants were also concerned about how the current budget crisis would further hamper enforcement efforts.

In exploring potential parameters for a possible secondary unit ordinance in San José, staff is suggesting that any ordinance require that one of the two units to be owner-occupied. However, continued monitoring of this provision would be difficult to sustain.

Parking and Traffic

Also as part of the exploration of possible elements of a potential secondary unit ordinance, staff is suggesting requiring one additional parking space on the parcel for a secondary unit. This single parking space would not have to be covered or be independently accessible, but would have to be located outside of the front and side setback areas. The Zoning Code requirement for single-family parking is two covered, independently accessible parking spaces.

Residents were concerned that both the suggested parking requirement and allowed configuration would not be adequate. People were very concerned that families living in secondary units would have three or more cars. In many neighborhoods, people were also concerned about the possibility of the use of on-street parking spaces. People were concerned that extra cars could also hinder trash collection and street sweeping services.

Overcrowding

At almost every meeting, the subject of the maximum occupancy of a secondary unit came up. Audiences were routinely surprised by the number of occupants that could potentially live in a secondary unit legally under the State Housing Code. The Housing Code allows two occupants in a sleeping room 150 square feet in size, and one additional occupant for each additional 70 square feet of sleeping room area. Assuming 500 square feet of a 650 square foot secondary unit was considered sleeping area, up to seven people could legally live in a secondary unit. In most cases the maximum number of occupants is likely to be less, based on the floor plan of the unit.

There are two facts to remember about the Housing Code: the first is that the City of San José is required to implement the State Housing Code; and the second is that the Housing Code applies to all residential dwellings, and not just to secondary units.

Local Control

There was a strong sentiment that zoning is a local issue and that the State should not be involved in dictating land use issues at the local level. These sentiments were most strongly expressed at the District 6 and District 10 meetings. However, State law does allow cities some latitude to adopt secondary unit ordinances that reflect local conditions, including ordinances prohibiting secondary units entirely.

It should further be noted that the City of San José routinely opposes the loss of local control and will continue to oppose measures that seek to hinder local government from land use planning decisions.

NEXT STEPS

At this point, staff sees three options for proceeding with the secondary units issue. The first is to continue to preclude secondary units in the City of San José.

The second option is to direct the Administration to prepare a secondary units ordinance, which would allow second units in prescribed circumstances Citywide. The Council could direct specific parameters for the ordinance based on the input received from the outreach meetings. Such a proposed ordinance would undergo additional public outreach, environmental review, public hearings at the Planning Commission, the Housing Advisory Commission, and at a public hearing before the City Council.

If the Council decides to proceed with an ordinance, the outreach process has provided valuable direction to staff for potential parameters. These parameters include:

- 6,000 square foot minimum lot size
- 650 square foot maximum unit size
- One bedroom maximum
- Secondary unit allowed (attached or detached) within the buildable envelope
- One additional parking space required outside of front and side setback
- Design criteria to insure neighborhood compatibility including matching materials, matching roof pitch, and front door to secondary unit not visible from street.

A third option is to direct the Administration to draft a limited pilot program for secondary units. In this case, staff should be directed to review the current circumstances and provide such updated data and information regarding impact on the City's neighborhoods, traffic, parking, and resources to the Council that would support such an exemption from the current Citywide prohibition. The pilot program would return to the Council for its consideration. This pilot program would take into consideration much of feedback received by staff during the public outreach process with a goal to reconcile the diverse opinions expressed by community members.

Staff is recommending that the Committee recommend that the Council direct the Administration to pursue the pilot program option. A pilot program would allow the City to better understand the opportunities and costs of allowing secondary units without effecting wide-ranging change throughout the City.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

CEQA

Not a project.

LESLYE CORSIGLIA
Director of Housing

STEPHEN M. HAASE
Director of Planning, Building and
Code Enforcement

Attachments (3)