



Memorandum

TO: HONORABLE MAYOR  
AND CITY COUNCIL

FROM: Joseph Horwedel  
Leslye Krutko

SUBJECT: SEE BELOW

DATE: November 20, 2006

Approved

*Kay Winer*

Date

*11/22/06*

COUNCIL DISTRICTS: Citywide  
SNI AREA: All

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE EXTENDING THE  
SECONDARY RESIDENTIAL UNIT PILOT PROGRAM

RECOMMENDATION

Staff recommends that the City Council adopt the proposed ordinance extending the pilot program for secondary units, which allows up to 100 total new permits until June 30, 2007.

OUTCOME

The proposed ordinance would allow staff to continue to accept and process applications for secondary units until June 30, 2007, six months beyond the current expiration date of the pilot program, without changing the maximum of 100 permits allowed under the program.

BACKGROUND

Currently, State law requires local jurisdictions to have a ministerial process in place to approve secondary dwelling units or to make findings of adverse impact precluding them. 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.

On November 14, 2005, after significant public outreach, the City Council approved an ordinance creating a temporary pilot program for secondary dwelling units. The pilot program was proposed to determine whether this additional housing option could be implemented without resulting in negative impacts on the surrounding neighborhood. The one-year pilot, extending from January 1, 2006 through December 31, 2006, established parameters for implementation of secondary units in the R-1 Zoning Districts subject to approval of a secondary unit permit, and provided for issuance of a maximum of 100 such permits. Those parameters include the following:

- Allowed only in R-1 Single Family Residence Zoning Districts;
- Minimum lot area 6,000 square feet for attached unit and 8,000 for detached unit;
- Maximum 600 square feet of floor area for secondary unit;
- Maximum of one bedroom (maximum size of bedroom 400 square feet);
- Requires one additional parking space (in addition to the two provided for the main dwelling unit);
- Subject to setbacks of the relevant R-1 Zoning District;
- Requires owner-occupied residency in either the primary or secondary dwelling unit; and
- Other design and siting criteria to minimized potential impacts on the surrounding neighborhoods.

Since January 1, 2006, staff has accepted 37 applications for secondary units. Twenty-eight of these applications have been approved and the remaining applications are in various stages of the plan check process. Only two units have completed final construction inspections. Any applications not approved prior to expiration of the pilot program on December 31, 2006, will not be able to proceed.

Additional prospective applicants have indicated interest in pursuing a second unit permit, but have expressed concern that they may not be able to complete the permit process prior to the December 31, 2006 expiration of the pilot program. The proposed ordinance would extend the pilot for an additional six months, allowing staff to continue to process applications currently on file, to accept new applications and to continue to collect data evaluating the pilot's parameters and the impact of new secondary units on residential neighborhoods.

### ANALYSIS

As result of a smaller than anticipated number of applications, and very few completed secondary units, the pilot program has collected insufficient data to allow a full assessment of the issues surrounding secondary units. Approximately six weeks before the program is scheduled to end, only twenty-eight percent of the maximum number of secondary units allowed under the pilot program have been approved and only two percent have completed construction and undergone final inspection by the Building Division. Staff believes that extension of the program is needed to provide additional approved and constructed secondary units on which to assess the appropriateness of the pilot development parameters and the effect of secondary units on their surrounding single-family residential neighborhoods. An additional six months will allow staff to continue to accept and approve applications for secondary units subject to the original 100-unit maximum and ensure time for additional units to be constructed during the spring/summer construction season before staff undertakes a comprehensive evaluation of the program. Additionally, an extension will provide continuity in the program and allow the Administration time for determining whether to recommend a permanent second unit program.

### POLICY ALTERNATIVES

The following are the alternative actions available to the Council in regard to this item:

Alternative No. One: Approval of a permanent secondary unit program in San José.

Pros: This would allow for continuity of the current program and avail other prospective applicants an opportunity to legally build a secondary unit.

Cons: There is not sufficient data or analysis available at this time to determine the true outcomes of the pilot program. Additionally, there has been no public outreach conducted regarding a permanent secondary unit program.

**Alternative No. Two:** Allow the current program to expire on December 31, 2006.

Pros: This alternative would allow staff to proceed to evaluate the pilot program and report to the City Council regarding alternative courses of action.

Cons: This alternative would not allow prospective applicants currently interested in the program to produce secondary units. This would also mean that there is insufficient data available to assess the full impacts of the pilot program. Evaluation of the pilot program would be based on a very limited number of approved and constructed secondary units.

**Alternative No. Three:** Approval of an ordinance to extend the pilot program for an additional period of time or up to the 100 limit proposed in the initial pilot program.

Pros: By allowing more time for approval of additional secondary units, subject to the 100-permit limit, this alternative would provide a greater number of secondary units to be approved and constructed and provide a larger data set on which to base an evaluation of the program.

Cons: Extension of the pilot program to allow additional secondary units to be approved and constructed would further delay the City Council's consideration of whether to adopt a permanent program for secondary dwelling units.

### **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

A public hearing notice for the proposed ordinance was published in the San José Post Record and the San José Mercury News and emailed to a citywide list of neighborhood associations and building

industry representatives. Staff has posted the staff report, as well as the hearing dates, on the Department of Planning, Building and Code Enforcement's website.

**COORDINATION**

This ordinance has been coordinated with the City Attorney's Office, Department of Transportation, and the Redevelopment Agency.

**FISCAL/POLICY ALIGNMENT**

N/A

**BUDGET REFERENCE**

N/A

**CEQA**

The proposed ordinance is exempt under CEQA Guidelines Section 15061(b)(3), which states that if it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, then the activity is not subject to CEQA. Given that secondary units are required to be built within the buildable envelope of a lot, the proposed ordinance does not alter the amount or location of living space that can be built on a lot, but instead allows alternative living space configurations within the existing buildable area of a single-family lot. That fact, combined with fact that the proposed ordinance allows for a very limited number of new secondary units citywide, makes it possible to see with certainty that the proposed ordinance will not have a significant effect on the environment.

  
LESLEYE KRUTKO  
Director of Housing

  
for JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Carol Hamilton, Senior Planner, at 535-7837.

**DRAFT**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING ORDINANCE NO. 27606 TO EXTEND THE EXPIRATION DATE OF A LIMITED PILOT PROGRAM TO ALLOW CERTAIN SECOND RESIDENTIAL UNITS, FROM DECEMBER 31, 2006 TO JUNE 30, 2007, WHICH PROGRAM AUTOMATICALLY TERMINATES IF 100 PERMITS ARE ISSUED; AND AMENDING ORDINANCE NO. 27675 TO EXTEND UNTIL JUNE 30, 2007 THE TEMPORARY SUSPENSION OF CHAPTER 14.25 OF TITLE 14 OF THE SAN JOSE MUNICIPAL CODE PERTAINING TO PARK IMPACT REQUIREMENTS OTHERWISE APPLICABLE TO SECOND UNITS, WITHOUT MODIFYING OTHER PARTS OF THE SECOND UNIT PILOT PROGRAM**

**WHEREAS**, on November 15, 2005, the City Council approved Ordinance No. 27606 providing for a limited and temporary exception to Ordinance No. 21663, adopted May 15<sup>th</sup>, 1984 which precluded second units in San Jose; and

**WHEREAS**, Ordinance No. 27606 provides for a limited pilot program for permitting second units to no more than 100 new units within the City of San Jose during the period from January 1, 2006, through December 31, 2006; and

**WHEREAS**, Ordinance No. 27675, adopted by the City Council on March 14<sup>th</sup>, 2006, providing for a suspension of Chapter 14.25 of Title 14 of the San Jose Municipal Code for secondary unit building permits issued in accordance with the provisions of Ordinance No. 27606; and

**WHEREAS**, City desires to extend the pilot program for second units and to extend the suspension of the requirements of Chapter 14.25 with regard to the pilot program, until June 30, 2007.

**WHEREAS**, on \_\_\_\_\_, this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970, as amended, under File No. PP \_\_\_\_\_;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

1. Section 8 of Ordinance No. 27606 is hereby amended to read as follows:  
**“Section 8. Termination of Pilot Program.** This Ordinance and the second unit pilot program set forth herein shall expire and be of no further force and

effect as of June 30, 2007. The expiration of this Ordinance and the second unit pilot program shall not affect the permitted legal status of second units duly authorized during the pilot program. Upon expiration of this Ordinance, or upon the issuance of 100 second unit permits, whichever first occurs, the total preclusion of second units set forth in Ordinance No. 21663 shall automatically resume.”

2. Section 2 of Ordinance No. 27675 is hereby amended to read as follows:

“**Section 2.** This Ordinance shall be retroactive to January 1, 2006 and shall automatically expire and be of no further force and effect as of June 30, 2007. The suspension of the requirements Chapter 14.25 of Title 14 authorized herein shall automatically cease and be of no further force and effect as of the date on which the building permit for the 100<sup>th</sup> unit in the secondary unit pilot program is issued or the date of expiration of this Ordinance, unless the City Council takes further action by ordinance to amend or repeal this Ordinance.”

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk