



# Memorandum

**TO: BUILDING STRONG  
NEIGHBORHOODS COMMITTEE**

**FROM: Leslye Krutko and  
Joseph Horwedel**

**SUBJECT: ILLEGAL SECONDARY  
RESIDENTIAL UNITS**

**DATE: November 13, 2006**

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Approved

Date

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**COUNCIL DISTRICT:** Citywide  
**SNI:** All

## **RECOMMENDATION**

It is recommended that the Building Strong Neighborhoods Committee accept staff's report and provide direction and feedback to the Administration regarding the policy alternatives identified in this report.

## **OUTCOME**

The following information should help the Mayor and City Council to understand potential policy alternatives that may help to bring a number of existing illegal secondary residential units up to code, thereby increasing health and safety and legal housing units in the City of San José.

## **BACKGROUND**

In November 2005, the City Council approved a pilot program allowing the limited development of secondary residential units. Under the pilot program, secondary units are ancillary to the primary unit and located on the same parcel. Secondary units are allowed only in the R-1 Zoning District or Planned Development (PD) Zoning District that are subject to the standards of the R-1 Zoning District. The secondary unit pilot program currently allows for either the development of up to 100 new units or the termination of the program on December 31, 2006, whichever comes first. Existing illegal secondary units (i.e., those secondary units that were built without permits) that meet the pilot parameters are eligible to become legal by obtaining the necessary permits, and do not count toward the 100-unit limit of the pilot. With the pilot program approval, staff was asked to report back policy options for addressing the problem of illegal secondary units. This report outlines a number of suggested policy options for City Council consideration.

As of the beginning of November 2006, 37 applications for permits for secondary units have been accepted, 26 permits have been issued and two units have undergone final inspection. Only one of the 37 permit applications was for an existing unpermitted secondary unit.

Approximately 10 to 15 owners of existing unpermitted units met with staff through the preliminary review process. In approximately half of these cases, the properties were unable to meet the Zoning Code setback and parking requirements. Lot size did not present a problem, presumably because this criterion was fairly easy for property owners to assess on their own before deciding to enter the preliminary review process. Based on conversations with the property owners, the cost of upgrading units to meet Title 24 energy and other Building Code requirements appeared to be a major factor in the decision-making of the property owners who decided not to proceed to obtain permits even though they could meet all of the zoning requirements.

One of the fundamental roles of local government is to protect the health and safety of its residents. Illegal secondary units are a concern because these homes do not have the necessary permits and associated inspections to ensure that they are safe and meet basic housing requirements. If a homeowner of an unpermitted unit cannot meet the parameters, then they are not eligible to obtain permits and inspections. This memorandum explores some possible future changes to the parameters with a permanent secondary unit ordinance that may result in legalizing more of these unpermitted secondary units.

Furthermore, it should be noted that staff will be bringing forward a recommendation to the Mayor and City Council to extend the City's current pilot program. The purpose of this extension is to provide continuity of the program after December 31<sup>st</sup>, enabling staff time to evaluate the outcome of the secondary unit pilot program. Ultimately, this data will be used to assess whether to recommend a permanent secondary units program next year.

## **ANALYSIS**

On January 9, 2006, the City first began accepting appointments and applications for the development of secondary units. As part of the pilot program, the City Council has approved the following parameters for the program:

- Only allowed in R-1 zones;
- Minimum 6,000 sq. ft. for attached unit and 8,000 for detached unit;
- Maximum 600 sq. ft. secondary unit;
- Maximum of one bedroom;
- Required one additional parking space (in addition to the two provided for the main dwelling unit);
- Required owner-occupied residency in either the primary or secondary dwelling unit; and
- Other design and siting criteria to ensure the least adverse impact on neighborhoods.

As noted above, in addition to reporting about the progress of the pilot program, the City Council has also directed staff to provide follow-up regarding potential approaches to address the illegal secondary units in San José.

In January, graduate students from the UC Berkeley Goldman School for Public Policy began a project for the City of San José to evaluate and make recommendations regarding possible options for dealing with the illegal secondary units. This report was finalized in May 2006 and has been discussed among staff from several departments.

While there is not an accurate count of existing illegal units in San Jose, the Berkeley students estimated that San José may have between 2,271 and 12,957 illegal units (excluding garage conversions). This estimate was arrived at by extrapolating data collected from a 1999 windshield survey by the City's Redevelopment Agency and Code Enforcement Division. The 1999 Strong Neighborhood Initiative (SNI) blight survey contained 2,721 possible illegal secondary units and over 3,000 garage conversions. The authors of the report acknowledge that this is a very wide range, but due to the complexity of finding these units, this was the best estimate they could calculate from available information. Staff believes that the Berkeley numbers represents a very high estimate given that there have been only 126 verified complaints from the community about illegal units.

The 1999 SNI survey was conducted over about 1/5 of the geographic area of San José and targeted in redevelopment project areas, which are assumed to have higher density of illegal units than the City as a whole. The assumption is based on the fact that these neighborhoods tend to have higher percentage of overcrowding and lower-income households. These households are taking steps to build illegal secondary units, primarily through garage conversions, in order to attain affordable housing.

The report summarized the literature on secondary units, which finds that "secondary units provide affordable housing options to the City's residents, promote infill development, and can increase City tax revenues." The study also acknowledges that there are certain impacts on neighborhoods (i.e., parking) with the addition of houses not contemplated with the original subdivision.

From their work, the Berkeley students identified three policy objectives: (1) minimize parking congestion, (2) increase overall housing stock, particularly affordable housing, and (3) minimize displacement of affordable housing. Based on these objectives, the Berkeley study provided two recommendations, described in more detail below.

1. Expand and reform the Residential Permit Parking (RPP) program.

The Berkeley students found that parking congestion was the primary concern associated with secondary units. This is consistent with the City's observations based on community input received prior to the initiation of the pilot secondary unit program. The students found that there was a significant difference between parking density in areas with high levels of illegal unit complaints and areas with low levels of complaints. Therefore, one of their primary

recommendations is to lessen the parking impacts in congested neighborhoods. One way they suggest doing this is to implement a Residential Permit Parking program. The students' study finds that by creating or expanding a program that would charge people to use on-street parking, would in turn encourage them to use garages and driveways. The Berkeley study further recommends establishing a maximum number of permits allowed per housing unit and charging residents a moderate fee for parking permits that could be higher for each subsequent permit.

2. Relax provisions of the pilot program regarding minimum lot size and parking requirements for existing secondary units.

The Berkeley students looked at complaint records filed with the Code Enforcement Division. Current analysis of these most recent data finds that almost 72% of these illegal units might be eligible under the pilot program to receive a legal permit if either the minimum lot size was lowered and the parking requirements were removed.

## **POLICY ALTERNATIVES**

### *City Staff Recommended Policy Alternatives*

The UC Berkeley study was a very thoughtful and well-written report. It provided the City staff with a foundation for understanding and building policy recommendations and became the basis for discussions among staff for how to adequately address the issue of illegal secondary units.

After serious consideration, the City administration does not believe that expanding and reforming the RPP program is a good policy recommendation, largely because illegal units are already in the neighborhoods, along with the people and the cars. Therefore, it isn't likely that parking in these impacted neighborhoods will be reduced by charging more money or capping the number of permits allowed in a neighborhood. There was also concern raised by City staff that this would be more of a burden on lower-income families. Additionally, it could be relatively expensive to enforce and may create more neighborhood opposition to secondary units if a permanent legal program was adopted by the City at a future date. Finally, it is difficult to assume that the parking pressures are due to illegal secondary units. There may be other reasons that certain San Jose streets are "overparked" than others.

The staff did find, however, that there was merit in the other suggestions raised by the Berkeley report to consider modifying the minimum lot size and parking requirements for existing secondary units as part of a possible ordinance to make the pilot program a permanent feature of the Municipal Code. This ordinance would come forward during the first or second quarter of 2007 after additional outreach is conducted. For this reason, the City Administration is seeking approval of staff's recommendation for the extension of the pilot program through June 30, 2007.

Specifically, City staff has identified five mechanisms that might help to address and correct some of the problems with illegal units. This should not be seen as a way to eliminate all the

problems associated with illegal secondary units, but may help to mitigate a substantial number of concerns.

1. Consider a permanent residential secondary unit program in San José – By allowing an avenue for residents to build secondary units, it would encourage the safe and legal development of these types of housing units. The goal would be to increase compliance and better integrate these units into our neighborhoods.
2. Lot Size - Should a permanent secondary unit program be considered by the Mayor and City Council, the parameters related to lot size may need to be reconsidered. The 8,000 square foot lot size for detached units disqualified 52% of the second units in the Code data, while 38% of the attached units could not meet the 6,000 square foot minimum. Code data also suggests that a number of illegal units (29% of all units not meeting lot size criteria) are not zoned for single-family residences. These lots are situated in older neighborhoods near downtown and are zoned to develop a duplex but are not large enough to meet the zoning density. Relaxing the requirements for lot size will not result in allowing these units to become legal
3. Parking Requirements – Parking requirements are another area that may need to be revised under a permanent program, allowing for more options for homeowners. Code Enforcement data shows that 45% of known illegal second units cannot provide for the additional required off street parking space outside of the front or side setback. The data is inconclusive as to whether allowing parking in the side set back, such as parking on a driveway in a side yard, would allow a significant number of additional units to qualify to be legalized. Any significant increase in the number of units that could qualify would require either eliminating off street parking requirements, or allowing parking within the front set back. Additional illegal units could be legalized within the existing building if tandem parking would be allowed on the driveway in the front set back. Available data suggests that a significant percentage of illegal second units in the City are garage conversions. In order to allow these units to be legalized, the criteria for providing off street parking spaces would have to be removed. Allowing parking on the driveway in the front set back would double the number of existing illegal second units that could be permitted.
4. Loan Program for Affordable Secondary Units – Staff is exploring the possibility of offering a very low interest rate loan to low-income eligible homeowners to perform minor construction and repairs that would bring an illegal unit up to code with a permanent secondary unit program.
5. Targeted Marketing Campaign – If the City Council should approve a permanent secondary unit program, staff should consider developing a targeted marketing campaign to inform residents about the new program and specifically target homeowners with illegal units.

## **PUBLIC OUTREACH**

Public outreach will be conducted on a possible permanent secondary unit ordinance to obtain input prior to Council action.

## **NEXT STEPS**

The pilot program will end on December 31, 2006. Given that the City has only approved 26 permits to date, staff is proposing to extend the pilot program for an additional six months. This would allow interested applicants to have time to file for a secondary unit. During the extended pilot, staff would work on a proposed permanent ordinance and other mechanisms to address new secondary units as well as further study of the recommendations made in this memorandum for legalizing existing illegal secondary units. The permanent ordinance would also be informed by an evaluation and assessment of the pilot program.

## **COORDINATION**

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

## **CEQA**

Not a project.

LESLEYE KRUTKO  
Director of Housing

JOSEPH HORWEDEL  
Acting Director of Planning,  
Building and Code Enforcement