



Memorandum

**TO: DRIVING A STRONG ECONOMY
COMMITTEE**

FROM: Leslye Krutko and
Stephen M. Haase

SUBJECT: SECONDARY UNITS

DATE: October 7, 2005

Approved

Date

COUNCIL DISTRICT: Citywide
SNI: All

RECOMMENDATION

It is recommended that the City Council approve the parameters for a pilot program for secondary units limited to 100 total permits, or a one-year duration, whichever occurs sooner. An ordinance to implement secondary units will be returned for City Council consideration in November 2005.

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. 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.

A secondary unit is a self-contained independent living area that is typically added to an existing single-family lot by the owner. A secondary unit is generally smaller than the primary unit, and may share a yard. Secondary units are also often referred to as accessory units and granny flats.

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 made a total of 24 presentations throughout the City.

The Building Strong Neighborhoods and the Driving a Strong Economy Committees both heard staff's proposal for a limited pilot program at their April 2005 meetings. At the May 3, 2005 City Council meeting, the Council directed staff to proceed with drafting a limited pilot program for secondary units. The analysis section of the report discusses staff's proposed parameters. The City Attorney's Office will provide the City Council with a draft of the proposed ordinance by early November.

ANALYSIS

The proposed pilot program language is based on staff's original parameters, in combination with feedback from the 2004 community meetings and direction from the Council to: (1) consider using a variation of lot sizes of secondary units within the pilot program to determine which are most successful (i.e. units on 6,000 or 8,000 sq. ft. lots); and, (2) address concerns raised by the Council and the community city-wide, including the issues of parking and the total number of units.

Listed below are the proposed pilot program parameters, augmented with a discussion of each section of the proposed ordinance.

Pilot Program Duration

The pilot program will last for one year from the effective date of the ordinance, or after one hundred (100) secondary unit permits are issued, whichever is sooner.

Rationale: Staff also considered devising a pilot program that was limited to a particular geographic area, or that was a limited duration with no limit on the number of permits issued. Staff is recommending a cap on the number of permits issued, because a cap explicitly specifies the number of units that can be built under a pilot program. A program with a definite ending date also gives a time frame for reevaluation of any positive or negative impacts of secondary units. Finally, a citywide program would help to give staff and decision-makers valuable information as to where secondary units are possible, and gives decision-makers the most information on the compatibility of secondary units with existing neighborhoods.

Secondary Unit – Definition

A secondary unit is an independent living unit that is clearly subordinate and ancillary to a primary dwelling unit. By definition, secondary units include a full kitchen (sink, food storage, and cooking facilities), and a full bathroom. Secondary units can either be attached to or detached from the main unit.

Rationale: This is a refinement of the original definition that was presented in the public outreach meetings. Staff is proposing the requirement for a full kitchen, to ensure that secondary units are fully functional, independent living units. A full kitchen requires that a range be a part of the cooking facilities, instead of a microwave oven or a hotplate.

Applicable Districts

Secondary units are allowed with a secondary unit permit in the R-1 zoning districts and any Planned Development district or cluster subdivision subject to the standards of an R-1 district.

Rationale: This is an expansion of the zoning districts that staff discussed at the public outreach meetings. Staff originally envisioned that the secondary units ordinance would only apply to R-1 zoning districts. Originally, staff did not consider including Planned Development Zoning districts in the secondary units ordinance, because development standards are specific to each project, and trying to devise a ministerial process that could apply to the full range of Single Family Planned Development districts seemed problematic. There is, however, a subset of Planned Developments whose development standards are tied to standard zoning districts. In staff's opinion, these planned developments are appropriate for inclusion in the pilot program, because there is no difference in the development regulations between those properties and properties in standard zoning districts.

Minimum Lot Size

- A. The minimum lot size for an attached secondary unit is 6,000 square feet.
- B. The minimum lot size for a detached secondary unit is 8,000 square feet.

Rationale: Staff is proposing different minimum lot sizes for attached and detached units. For attached units, which will appear to be an integral part of the existing house, staff is proposing a smaller minimum lot size, which would include the majority of single-family lots in the City. Per the Zoning Code, minimum lot size for the R-1-8 Single Family Residence district is 5,445 square feet, so the 6,000 square foot minimum lot size would exclude the smallest single family lots in the City. In terms of appearance from the street, attached secondary units should be nearly indistinguishable from other additions to single-family residences. Because attached units pose the fewest neighborhood compatibility problems, staff was comfortable proposing a lower minimum lot size threshold.

For detached units, staff is recommending an 8,000 square foot minimum lot size, 33% larger than the 6,000 square foot lot size requirement for an attached second unit. This larger lot size should allow for a reasonable amount of separation between the primary and secondary unit, and should allow for reasonably sized-private yards for the two units. Please see Attachment A for details on the number of eligible lots in each zoning district.

Maximum Unit Size

The maximum unit size for a secondary unit is 600 square feet of gross floor area, with a maximum of 400 square feet of space devoted to sleeping rooms.

Rationale: Based on citizens' concerns about density and secondary units changing the character of a neighborhood, staff reduced the maximum unit size from the parameters discussed at the public outreach meetings. Staff is proposing a 600 square foot maximum unit size, which would allow for a small independent living unit that is clearly subordinate to the primary living unit. The sleeping room square footage maximum is one possible way to limit the occupancy of a secondary unit, and to encourage property owners to devote a reasonable amount of floor space to bathroom and kitchen facilities.

Maximum Number of Bedrooms

The maximum number of bedrooms allowed in a secondary unit is one.

Rationale: It is staff's opinion that a one-bedroom unit would allow some design flexibility, while remaining subordinate in size to a typical single-family home.

Parking

One additional on-site parking space is required for a secondary unit, in addition to the two required covered parking spaces for the primary unit. Tandem parking is permitted, provided it complies with the setback and paving requirements for residential districts.

Rationale: The proposed parking requirement is an attempt to strike a balance between concerns about loss of on-street parking and between appropriate regulation of secondary units. The proposed ordinance language would also require that existing non-conforming parking situation to be brought into compliance with the provisions of the current Zoning Ordinance.

Development Standards

Secondary units shall comply with all of the following development standards:

1. The secondary is subject to the setback requirements of the primary dwelling unit.
2. Detached secondary units must be located behind the primary dwelling unit.

3. Detached units must be located at least 6 feet away from the primary unit.
4. Detached units are limited to a maximum of one story and 16 feet in height, with an average roof height of 12 feet. Average roof height is measured halfway up the slope of the roof, and in no case may any portion of the roof height of a detached unit exceed 16 feet.

Rationale: The proposed development standards for attached units are identical to current setback requirements for the primary structures in single-family districts. The proposed additional requirements for detached units would require detached units to be identical in height and separation from the primary structure. Detached secondary units would be slightly smaller in size (600 square feet versus 650 square feet) than permitted accessory structures, and would only be allowed within the buildable envelope.

Design Standards

Secondary units shall comply with the following design standards:

1. Secondary units shall use identical materials, including but not limited to roofing, siding, and windows and doors as the primary dwelling unit.
2. A secondary unit shall match the roof pitch of the primary dwelling unit.
3. The front door of any secondary unit shall not be visible from the street.

Rationale: Staff feels that these design standards achieve the desired goal of compatibility with the single-family look and feel of existing neighborhoods, while remaining ministerial in character.

Application Requirements

The property owner is required to certify that, at the time of application for a secondary unit permit, they reside on the subject property in the primary dwelling unit.

Rationale: This requirement tries to strike a balance between the desire to include an owner occupancy requirement as a part of the secondary unit application process, and the desire to avoid continuing code enforcement problems relating to an owner-occupancy provision. An applicant would have to certify that they live at the subject property at the time of the application. If the property owner later moved, the property would not be subject to an owner-occupancy provision.

Outside of the proposed parameters for a secondary units pilot program, there is also the issue of existing illegal units. Any existing units that could meet the proposed parameters would be eligible for legalization through the secondary unit permit process. Staff strongly recommends that existing units comply with the pilot ordinance, and therefore existing units that could not meet the proposed requirements would still be subject to enforcement, on a complaint-driven basis, by the Code Enforcement Division. Staff continues to evaluate alternatives for addressing illegal second units. A proposal for addressing these units will be provided to the City Council in early 2006.

Applicable Fees

A variety of fees are currently assessed to new development to pay for the processing and infrastructure impacts of projects. In order to encourage the development of secondary units and remove potential financial barriers, staff will evaluate the range of fees applicable to such development. A recommendation will be provided to the City Council for a fee restructure that recovers appropriate City costs and avoids creating a financial burden that would limit the development of this type of affordable housing.

NEXT STEPS

The proposed pilot program will also be heard at the Driving a Strong Economy Committee and the Planning Commission before being heard by the full Council. The proposed ordinance is anticipated to provide for the Program to become effective by January 1, 2006, and run through the 2006 calendar year. Please see the timetable below for specific dates and actions:

Date	Action
October 24, 2005	Hearing at the Driving Strong Economy Committee meeting
October 27, 2005	Hearing at the Building Strong Neighborhoods Committee meeting
November, 2005	Proposed draft ordinance to the City Council
December, 2005	Second hearing by the City Council on the second units ordinance
January, 2006	Implementation of Pilot Program

COORDINATION

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

CEQA

The proposed project is exempt under CEQA Guidelines Section 15305, which allows for minor alterations to land use limitations. The proposed ordinance is a minor change to land use limitations in that it allows for a limited number of secondary units citywide. Given that secondary units would be 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.

LESLYE KRUTKO
Director of Housing

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

Attachments (2)

Attachment B

The following two tables summarize the number of eligible lots in each zoning district.

City of San Jose
Parcels with R-1 or PD Zoning (over 6,000 square feet)
and a Single-Family Residential General Plan Designation,
by City Council District

Council District	Parcel Count	% of Total	Parcel Area (acres)	% of Total
1	11,753	14.4%	1,975	13.9%
2	11,074	13.6%	1,881	13.2%
3	1,327	1.6%	253	1.8%
4	9,525	11.7%	1,601	11.3%
5	4,052	5.0%	732	5.1%
6	9,237	11.3%	1,796	12.6%
7	4,734	5.8%	833	5.9%
8	6,654	8.2%	1,186	8.3%
9	16,356	20.0%	2,803	19.7%
10	6,907	8.5%	1,161	8.2%
Total	81,619	100.0%	14,221	100.0%

Table 1. R-1 parcels over 6,000 square feet in area, by Council District.

City of San Jose
Parcels with R-1 or PD Zoning (over 8,000 square feet)
and a Single-Family Residential General Plan Designation,
by City Council District

Council District	Parcel Count	% of Total	Parcel Area (acres)	% of Total
1	2,427	14.8%	554	12.9%
2	1,633	10.0%	463	10.8%
3	366	2.2%	107	2.5%
4	1,383	8.4%	370	8.6%
5	898	5.5%	250	5.8%
6	3,462	21.1%	891	20.8%
7	782	4.8%	237	5.5%
8	1,237	7.6%	361	8.4%
9	3,148	19.2%	778	18.2%
10	1,037	6.3%	274	6.4%
Total	16,373	100.0%	4,285	100.0%

Table 2. Parcels over 8,000 square feet in area, by Council District.