



# Memorandum

**TO: DRIVING A STRONG  
ECONOMY COMMITTEE**

**FROM: Leslye Corsiglia and  
Stephen M. Haase**

**SUBJECT: PROPOSED PARAMETERS FOR  
A SECOND UNIT ORDINANCE**

**DATE: March 5, 2004**

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Approved

Date

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**COUNCIL DISTRICT: Citywide  
SNI: All**

## **RECOMMENDATION**

It is recommended that the Driving a Strong Economy Committee recommend that the City Council adopt an ordinance to allow for the construction of new secondary units in San José, incorporating the proposed parameters.

## **BACKGROUND**

At the October 27, 2003 meeting of the Driving a Strong Economy Committee, the Committee heard a presentation from the Department of Housing and the Department of Planning, Building, and Code Enforcement on the issue of secondary residential units. A survey of other jurisdictions' second unit ordinances, along with a description of neighborhood concerns and possible impacts of a proposed second unit ordinance was presented to the Committee.

Committee members voiced concerns about making sure that any proposed second unit ordinance actually results in second units. Members also indicated concern about the quality of second units, both for neighborhood residents and future second unit tenants. Committee members also inquired about the possibility of garages being converted into second units.

The Committee directed the Housing Department and the Department of Planning, Building and Code Enforcement to return to the Committee with draft parameters for a possible second unit ordinance.

## **ANALYSIS**

Per the Committee's direction, draft parameters for a proposed second unit ordinance are outlined below. To provide context, existing Zoning Code regulations are discussed for both single-family lots and for detached accessory structures on single-family lots.

## **Existing Regulations**

### *Code Regulations for Single-Family Lots*

Under the current Zoning Code, one single-family dwelling is allowed on a lot. Second dwelling units are prohibited in all R-1 zoning districts. The development standards for each R-1 district are defined based on the minimum lot area. For example, the setbacks for a typical interior (non-corner) lot in the R-1-8 residence district are:

Front yard: 25 feet  
Side yards: 5 feet  
Rear yard: 20 feet  
Height limit: 35 feet, 2 ½ stories

Single-family residences are required to maintain two independently accessible, covered parking spaces.

Additional dwelling units are allowed in the R-2 two-family residence district, and in the R-M multiple residence district, but in no case can there be more than one single-family residence on a lot. In other words, under the current Zoning Code, detached second units are not allowed.

### *Code Provisions for Accessory Structures on Single-Family Lots*

The Zoning Code also regulates the size, use, and placement of accessory structures on single-family lots. The following discussion focuses on accessory structures other than pools.

Accessory structures, including garages, storage sheds, gazebos, and the like, are limited to 650 square feet in area without a development permit. Out of this 650 square feet, only 200 square feet is allowed for non-garage area. Larger accessory structures can be permitted with a Special Use Permit (SUP), which requires that findings be made that the proposed structure and its use will not negatively impact the surrounding neighborhood.

Accessory structures are limited to covering 30% of the rear yard area. The rear yard area is defined as the area between the rear property line and the rear wall of the primary structure (i.e., the house). Accessory structures are also limited to an average of twelve (12) feet and one story in height, with the ridge of the roof allowed to be as tall as 16 feet in height.

The use of non-garage area in accessory structures is limited to non-habitable, unconditioned space, which means that the space cannot be used for any type of living area. In addition, accessory structures are limited to a total of two plumbing fixtures, which are usually provided in the form of a sink and toilet, or sink and shower. Water heaters are considered a plumbing fixture in this determination.

Accessory structures are also required to maintain a six-foot separation from the primary structure. Accessory structures are required to be set back 60 feet from the front property line, but have no side or rear setback requirements.

### *Current State Law*

In 2002, the Governor signed into law AB 1866 (Wright), which required that an application for a second unit be considered ministerially without discretionary review or a hearing and additionally provided that cities and counties shall not be required, under the provisions of this bill, to adopt or amend an ordinance for the creation of second units. However, if a local agency does not adopt an ordinance allowing secondary units, it must make certain findings to preclude their development. The City of San Jose precluded secondary units in residential districts, via Ordinance No. 21663, adopted on May 15, 1984. In adopting this ordinance, the City noted three primary reasons for the exclusion of second units: 1) concern over potential impacts on City services and infrastructure, 2) concern with potential impacts to existing neighborhoods, and 3) the belief that sufficient land was available in the City to accommodate all housing needs without second units.

### **Proposed Regulations**

Based on discussions within an interdepartmental working group, staff has come up with draft parameters for a proposed second unit ordinance have been prepared. In keeping with State requirements, applying for a second unit would be an administrative, non-discretionary process without a public hearing. The second unit permit provisions would only apply to properties in R-1 districts. Application fees for a second unit permit would be cost recovery, with fees collected for Code Enforcement to make multiple housing inspections, as is done with other types of multi-unit rental housing.

There are three driving ideas behind the parameters of proposed second unit ordinance:

1. Minimize external impacts of new second units, especially parking and privacy;
2. Maximize second units' compatibility with existing neighborhoods;
3. Maximize the number of second units allowed, while maintaining required General Plan densities.

#### *1. Minimize External Impacts.*

Parking is one of the major neighborhood impacts of any proposed second dwelling unit ordinance. The number of additional cars parking in single-family neighborhoods can be controlled to a degree through the requirement of additional on-site parking space(s) for residential units and through a maximum unit size.

The proposed parameters include a provision that each lot with a secondary unit provide one additional open parking space, in addition to the two covered parking spaces required for the primary unit. In order to reduce paving, the parking space for the second unit could be provided in a tandem configuration, meaning that the parking space could be provided in front of the existing garage. The open parking space would have to be provided outside of the front and side setbacks, per current Zoning Code requirements. This requirement would be an appropriate compromise that would provide cost-effective on-site parking for new second units, while maintaining the look and feel of traditional single-family neighborhoods.

The requirement for on-site parking also influences the overall number of units that can be developed in a neighborhood. For example, if additional covered spaces were required, parcels in many existing single-family neighborhoods would not be able to accommodate an additional covered space and therefore would not be eligible for a second unit. The suggested parking requirement (described above) addresses the parking issue in a way that fosters second unit construction.

In an effort to keep second units subordinate to the primary residence, staff is proposing a maximum unit size of 650 square feet and one bedroom.

Setbacks for attached second units are proposed to be identical to those for the primary structure. Units would be required to be within the buildable envelope, which means maintaining the required front, side, and rear setbacks of the zoning district, and conforming to the height limitations of the district.

Detached units would also need to stay within the buildable envelope set out for primary structures in the zoning district. Additionally, detached units would have to maintain a six-foot separation from other buildings on the property. The rationale for requiring detached living units to be within the building envelope is to minimize privacy impacts to adjacent residences.

In addition, the proposed second unit would have to meet the other criteria for accessory structures in the Zoning Code, including height, square footage, and lot coverage. The Zoning Code would be amended to allow habitable space, to allow more than two plumbing fixtures, and to allow up to 650 square feet of non-garage space with a Second Unit Permit.

When developing the parameters, consideration was given to revising the Zoning Code to allow detached second dwelling units over garages, but this would require that the Zoning Code expand the height and square footage limitations for all accessory structures.

In the past, some neighborhood residents have voiced concerns about the possibility of properties with two renter-occupied units on a single property. To prevent the possibility of properties with second units from being entirely renter-occupied, the parameters propose that the second unit ordinance require the property owner to live in one of the two units, which would be recorded against the property as a part of the Second Unit Permit process.

## *2. Maximize Neighborhood Compatibility through Design.*

The proposed second unit ordinance should also maximize the compatibility of new second units with the existing neighborhood through design restrictions. Because State law requires any proposed second unit ordinance to be administrative and non-discretionary, the use of traditional policy documents like design guidelines would not be appropriate.

Instead, it is proposed that a limited number of prescriptive design standards to ensure compatibility of second units with the surrounding neighborhood. The first standard is that the new second unit must use materials that match the main house. Similarly, the parameters would require that the second unit have a matching roof pitch to the main unit. Together, these two standards should help to ensure that new second units complement the existing house and the surrounding neighborhood.

The proposed parameters are designed to ensure that neighborhoods remain fundamentally single-family in character. Second units should be clearly subordinate in size to the main unit, with a total maximum unit size not to exceed 650 square feet. Additionally, the unit should be designed so that the door to the second unit is not visible from the street, which will help to maintain the look and feel of a standard single-family neighborhood.

### 3. Maximize Number of Units Allowed, and Maintain Required GP Densities.

The purpose of this proposal is to maximize the number of second units allowed, while maintaining the maximum densities allowed in San Jose's General Plan. Under the San Jose 2020 General Plan, most single-family neighborhoods are designated as Medium Low Density Residential, and have a maximum density of eight dwelling units per acre (8 DU/AC). Looking at the actual housing density for properties within the Medium Low Density designation, the density of existing housing is: 138,022 dwelling units / 22,638 acres = 6.1 DU/AC. This indicates that existing single-family neighborhoods have significant capacity for second units before reaching the General Plan density maximum, and that the proposed second unit ordinance should be crafted to allow for a significant number of second units.

To maximize the opportunity for second units, the parameters propose a relatively small minimum lot size of 6,000 square feet, which allows the majority of single-family lots in the City of San Jose to consider a second unit. The actual number of second units constructed is still expected to be relatively low, because of cost and the proposed siting criteria. However, the proposed standards are an attempt to balance the need for additional affordable housing in the form of second units while maintaining the integrity of existing single-family neighborhoods.

**Table 1. Summary of proposed Second Unit permit requirements.**

Criteria	
Minimum Lot Size	6,000 square feet
Maximum Unit Size	650 square feet
Maximum # of bedrooms	One
Required parking	One open parking space, outside of front and side setbacks
Siting criteria	<p><i>Attached units</i> Within existing buildable envelope</p> <p><i>Detached units</i> Within existing buildable envelope, minimum six feet from existing building</p>
Exterior Materials	To match existing house
Roof pitch	To match existing house
Door Location	Not visible from street
Ownership	One of the two units on the property to be owner-occupied

## PUBLIC OUTREACH

The Housing Advisory Commission (HAC) heard the topic of secondary residential units on July 10, 2003. Many Commissioners and guests present at the meeting stipulated their desire to see a policy in place, which would make secondary residential units legal in San José. The Commission sent a memorandum to the Mayor and Council in May 2003 expressing support for a policy that would allow secondary units to be phased in over time.

Staff reports from the August and October 2003 DSE meetings have been posted on the Planning Divisions' website. Planning staff has also been compiling an e-mail list of interested members of the public. Should the City Council recommend any further action regarding secondary residential units, a public outreach effort would be incorporated into the working group's schedule, prior to the ordinance's consideration by City Council.

It is proposed that over the next few months, public outreach continue to be sought in order to gather information and comments about these parameters. It is recommended that the forum for holding these future meetings be through the City's Housing Advisory Committee and Strong Neighborhood Initiative's Neighborhood Action Committees (NACs).

## COORDINATION

The preparation of this memorandum was coordinated with the City Attorney's Office.

## CONCLUSION

Development of secondary units would increase the affordable housing stock in the City and could be beneficial in eliminating overcrowded conditions in single-family structures. A policy allowing such units would be consistent with the City's goals of infill development. For these reasons, staff is recommending that the Committee recommend the City Council adopt an ordinance using the suggested parameters.



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