



**COUNTY OF SAN MATEO**  
Inter-Departmental Correspondence  
Planning and Building



**Date:** December 2, 2016  
**Board Meeting Date:** January 10, 2017  
**Special Notice / Hearing:** Newspaper Notice  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Steve Monowitz, Community Development Director

**Subject:** Adopt an Ordinance amending Chapter 22.5 (Second Unit Ordinance) of Division VI, Part One (Zoning Regulations), to comply with the requirements of California Accessory Dwelling Unit Law (Government Code Section 65852.1, et seq.), and to advance the County's goal of facilitating the production of second units as a valuable source of needed housing.

**RECOMMENDATION FOR THE SECOND READING OF THE ORDINANCE TO:**

1. Adopt an Ordinance amending Chapter 22.5 (Second Unit Ordinance) of Division VI, Part One (Zoning Regulations) of the San Mateo County Ordinance Code, by making the required findings in Attachment A, and waive reading of the ordinance in its entirety; and
2. Adopt a Resolution directing staff to submit the amended Second Unit Ordinance (Chapter 22.5 of the County Zoning Regulations) to the California Coastal Commission for review and certification.

**BACKGROUND:**

**A. KEY ISSUES**

1. Second Units. Second units, also called accessory dwelling units, in-law units, granny units, and various other names, are units built on the same property as an existing or proposed primary residence (or residences). They are usually significantly smaller than a typical primary residence, and may be built as free-standing units, as units attached to the primary residence, or as units constructed entirely within the primary residence. They are not designed to be subdivided or sold separately from the primary residence, but to be occupied by a distinct household which may or may not pay rent for the occupancy.

2. Advantages of Second Units. Second units are a form of housing that is often cheaper to build, more affordable to occupy, and more efficient and less impactful than other types of residential development. The benefits of second units include:
- a. *Reduced Construction Costs.* Because second units are typically small, and because infrastructure to serve the units is usually already in place, they are less expensive to build than other residential options.
  - b. *Affordability.* Because of their reduced size, and their status as subordinate to a primary unit, second units are often more affordable to occupy than other housing types.
  - c. *Limited Impact on Neighborhoods.* Because second units are built on existing properties, they offer a way to create additional housing without adding new multi-family structures, taller buildings, or obtrusive new development in existing neighborhoods.
  - d. *Efficiency and Sustainability.* Because they are built on existing developed properties, rather than undeveloped land, and because they rely on existing infrastructure, second units are a particularly environmentally-friendly form of housing.
  - e. *Additional Income.* For owners of a primary residence, the rent from a second unit may be a valuable source of income, in some cases enabling homeowners to pay mortgages or other ownership costs that might otherwise be unsustainable.
  - f. *Flexibility.* For owners of the primary residence, second units can offer significant flexibility. For example, second units can provide housing options for elderly relatives aging in place; provide a home for adult children not yet able to afford their own housing; or provide space for live-in caregivers.

In San Mateo County, like the entire Bay Area, home prices and rents have risen rapidly over the past decade, and many County residents are unable to afford typical housing costs. At the same time, land prices are high, developable land is in short supply, and much new development occurs on undeveloped “greenfield” land. Second units provide a more affordable, efficient, environmentally-sustainable source of housing that can benefit the occupants of the second unit, the occupants of the primary unit, the surrounding neighborhood, and the community as a whole.

3. Second Unit Ordinance. San Mateo County has had an ordinance regulating second units since 1984. The ordinance, Chapter 22.5 of the County's Zoning Regulations, establishes standards for the placement, design, and construction of second units, as well as the type of review and the process for approval of second units. Since this ordinance was adopted, State law has superseded certain portions of the existing ordinance. The County has not been applying the preempted parts of the ordinance.

## **DISCUSSION:**

4. Reasons for the Update. The County is updating the existing ordinance for three primary reasons. Most significantly, a number of specific changes are directly mandated by new amendments to State law, and the County must update the ordinance accordingly. The update is also intended to advance the County's goal of facilitating the production of second units, as a valuable source of housing in San Mateo County's difficult housing market. Finally, the proposed updates are intended to make the regulations more consistent across County areas, and easier to understand and apply. Each of these factors is discussed in greater detail below.

### **a. Changes to State Law**

The California legislature has adopted various laws governing how local jurisdictions may regulate and permit second units. These laws are codified in Government Code 65852.1, et seq. Most recently, in September 2016, the legislature enacted substantial amendments to State law governing second units; these amendments will take effect January 1, 2017. In addition to the substantive changes described below, State law now refers to second units as "accessory dwelling units." The State's basic statement of intent, as expressed in the newly amended law, is:

*The Legislature finds and declares all of the following:  
(1) Accessory dwelling units are a valuable form of housing in California; (2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods; (3) Homeowners who create second units benefit from added income, and an increased sense of security; (4) Allowing accessory dwelling units in single-family or multi-family residential zones provides additional rental housing stock in California; (5) California faces a severe housing crisis; (6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners;*

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(7) *Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character; and*  
(8) *Accessory dwelling units are, therefore, an essential component of California's housing supply.*

*It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.*

(Government Code Section 65852.150, as amended by Senate Bill No. 1069, approved September 27, 2016.)

The law places various limitations on how local jurisdictions may regulate second units, with the intent of ensuring that jurisdictions do not impose excessive constraints on second unit production, and that the fundamental intent of local ordinances is to allow, rather than restrict, second units. The State's Accessory Dwelling Unit Law has been amended various times since adoption, and in each instance, the amendments imposed additional restrictions on local jurisdictions, and further limited the flexibility jurisdictions have in differing from the State's standards.

The most significant requirements of the existing State law include:

- (1) *Consistency with State standards.* Second unit regulations adopted or enforced by local jurisdictions must be consistent with those promulgated by the State.
- (2) *Ministerial Approval.* Second units that comply with the standards established by local jurisdiction must be approved through a ministerial process, with no discretionary approvals.
- (3) *No Public Hearings.* Second units that comply with regulations may not be considered at public hearings.
- (4) *No Growth Limits or Quotas.* The development of second units cannot be subject to any growth cap or quota establishing a maximum number of units, regardless of whether such a cap applies to second units alone, or second units in combination with other units. If a jurisdiction has a cap on total units of all kinds, second units must be exempted from this limit.

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- (5) *No Blanket Prohibition on Second Units.* There must be areas in a local jurisdiction where second units are permitted, and, as noted above, there must be a ministerial approval process for these units.

The State has also established a number of other standards regarding how jurisdictions may regulate the size, placement, required parking, required infrastructure, permitting fees, and various other factors.

Various portions of the County's adopted second unit ordinance do not comply with these State requirements, and the County's ordinance has not, to date, been updated to achieve compliance. Until now, the County has been applying only those parts of Chapter 22.5 that are consistent with State law, while deferring to the State's regulations in cases where there is inconsistency.

However, on September 27, 2016, the State adopted another set of amendments to the Accessory Dwelling Unit Law. These amended regulations:

- (1) Reinforced the prohibition on discretionary review of any kind.
- (2) Imposed a time limit of 120 days for approval or denial of a second unit application.
- (3) Changed the parking requirements that jurisdictions were allowed to impose, and established a set of mandatory parking exceptions.
- (4) Imposed mandatory regulations regarding where parking for a second unit may be provided.
- (5) Established limits on how jurisdictions may regulate second units built entirely within existing structures.
- (6) Established limits on how jurisdictions may regulate units built on or within existing garages.
- (7) Established limits on the size thresholds that jurisdictions may impose on second units.

Importantly, the State also required that local jurisdictions update their second unit regulations to comply with these new amendments by January 2017, if the local jurisdiction wishes to continue to apply its local ordinance. If the County does not update its regulations, those regulations become null and void in their entirety, and the County must

rely only on the State's regulations until such time that the regulations are updated to comply with State law.

**b. County Housing Goals**

San Mateo County, like the greater Bay Area and California as a whole, is experiencing a historic housing crisis. Home prices and rents have risen at unprecedented rates, and most households at most income levels cannot afford market rate housing. This housing crisis is driven, in large part, by the gap between new jobs created in the Bay Area, and new housing created: in San Mateo County, the former has outpaced the latter on the order of twenty-six new jobs for each one new housing unit built. Consequently, San Mateo County urgently needs new housing of all kinds, serving all income levels, as quickly as possible.

The County Board of Supervisors has recognized this crisis, and has taken a number of steps to address it.

- (1) In March of 2015, the Board endorsed an Affordable Housing White Paper that proposed a number of policies and programs intended to address the County's housing crisis. Regarding second units, the White Paper stated that second units provide a valuable source of more affordable housing, and that the County should take affirmative steps to facilitate production of new second units, and promote legalization of existing, unpermitted second units.
- (2) Subsequently, the Board allocated funds to promote the creation and legalization of second units. The Board directed the County Planning and Building Department and Housing Department to proceed with several programs, including:
  - (a) Completing updates to the County's Second Unit regulations, with the specific goal of streamlining production and approval of second units.
  - (b) Creating a second unit amnesty program, to provide an easier and more affordable path to legalize existing, unpermitted second units, including some funding assistance for those units that might need rehabilitation.
  - (c) Assessing the potential for new second units in various County areas.

- (d) Creating second unit design templates and guidelines to help potential developers of second units navigate the permitting and approval process.
- (3) The County's Housing Element, adopted by the Board of Supervisors in 2014, includes a number of policies that express the County's goal of promoting second units. These include Policy HE 32, which commits the County to update the second unit ordinance to comply with State law, and to streamline permitting, standardize the County's regulations, and overall, to facilitate the development of second units.

The amendments to the second unit ordinance are intended to advance the County's housing goals and the Board of Supervisors' direction, and facilitate the creation of second units as a needed source of housing.

c. **Consistency and Ease of Use**

The update to the second unit ordinance will help establish consistency and clarity in the application of the County's second unit regulations. The County is currently applying a patchwork approach to regulating second units, including components of both State law and the County's own ordinance. The current regulatory framework is difficult for applicants to understand, and difficult for planners to apply. This update consolidates all relevant standards into a single, more usable set of regulations that complies with State law, advances the County's housing goals, and is easier to understand and apply. This clarity will help applicants navigate the process more quickly and easily, ideally directly facilitating the production of second units.

5. **Other Issues**

**Coastal Zone Effectiveness and Coastal Commission Certification.** The updated ordinance, if adopted, will not be effective in the County's Coastal Zone until certified by the California Coastal Commission. In addition, the provisions of the California Coastal Act preempt the State's Accessory Dwelling Unit Law, and some of the requirements of the Accessory Dwelling Unit law will not be valid in the Coastal Zone. For instance, because design review is required by the County's Local Coastal Program, it will continue to apply to second units in relevant areas of the Coastal Zone, regardless of the requirements of State Accessory Dwelling Unit Law. In addition, the only zoning district in the Coastal Zone in which second units are allowed continues to be the R-1 District, in contrast to other areas of the County. However, for the most part, these variations are minor, and are typical of regulations that apply both within the Coastal Zone and in the unincorporated County as a whole. Should the proposed ordinance be

adopted by the Board of Supervisors, the Coastal Commission certification process would follow that adoption.

*Flexibility and Greater Permissiveness Allowed.* While the State establishes limits on how restrictive local jurisdictions may be when regulating second units, State law allows jurisdictions to establish more permissive regulations, if desired. While the County cannot make it harder to build second units than State law requires, and cannot establish standards regarding size, placement, parking requirements, and other requirements that are more stringent than the State's standards, the County is free to establish less stringent restrictions. The County's ordinance largely follows the standards in State law, but in a few cases, the proposed update to Chapter 22.5 is less restrictive. For instance, the County's ordinance allows second units in RM and TPZ zoning districts; while these districts allow residential uses, they are not primarily residential districts, whereas the State's regulations focus only on second units in residential zoning districts.

By the same token, there are several standards imposed by the County's ordinance that address areas that the State does not regulate. For instance, the County's regulations establish maximum heights, and regulate the placement of windows, balconies, and decks, in order to protect the privacy of adjacent properties. State law does not preempt regulation in these areas.

*Conditional Permitting Still Allowed.* While the County must establish a ministerial process for permitting second units, State law does not prohibit the County from establishing a conditional permitting process for those second units that do not meet all of the applicable regulations. The revised regulations retain the possibility of conditionally permitted second units in these instances, as did the prior ordinance.

#### 6. Other Second Unit Efforts

As noted above, at the direction of the Board of Supervisors, the Planning and Building Department, the Housing Department, and other partners are working on multiple other efforts related to second units. These include:

- a. Second Unit Amnesty Program
- b. Second Unit Rehabilitation Funding
- c. Analysis of Second Unit Potential
- d. Second Unit Design Templates

Each of these efforts is intended to further facilitate the production and legalization of second units, and while this work will be completed



subsequent to adoption of the County's revised Second Unit Ordinance, these programs will be designed to be consistent with, and complement, the updated regulations.

7. Changes to the County's Second Unit Ordinance

Attachment B provides a full description of the proposed amendments to Chapter 22.5. These amendments include, in brief:

a. Maximum Floor Area:

- (1) Detached second units may be the greater of 750 square feet, or 35% of the primary residence, but with an absolute maximum of 1,200 square feet.

The prior regulations had a maximum of 35% or 700 square feet, and an absolute maximum of 1,500 square feet. The change to 1,200 square feet is consistent with State law.

- (2) Attached second units may be the greater of 750 square feet, or 50% of the primary residence, but with an absolute maximum of 1,200 square feet.

The 50% allowance (vs. 35% for detached units) and the 1,200 square foot maximum are consistent with State law.

b. Setbacks:

- (1) Detached second units of sixteen (16) feet or less in height:

Side Setback: Five (5) feet

Rear Setback: Five (5) feet

- (2) Detached second units greater than sixteen (16) feet in height:

Side Setback: Five (5) feet

Rear Setback: Ten (10) feet

The greater rear setback for taller second units is intended to protect the privacy of adjacent properties.

- c. Maximum Height: 26 Feet: The prior ordinance did not establish a maximum. Twenty-six feet is slightly below the lowest height allowed in any existing zoning district.

- d. New standards for the placement of windows, balconies, and decks, to protect the privacy of adjacent properties.
- e. Removal of discretionary review for all second units that comply with the updated regulations (except for design review in applicable areas of the Coastal Zone).
- f. A number of new parking exceptions, as required by State law, including exceptions for units located near transit and car-share locations.
- g. A number of alternative means of meeting parking requirements, as required by State law, including tandem parking.
- h. Different, more permissive standards for units built within or atop an existing garage, as required by State law.
- i. Removal of Discretionary Review: As noted, State law prohibits discretionary review of second units that comply with adopted regulations. The existing version of Chapter 22.5 has a number of standards that require discretion in their application, particularly related to design review and findings of impact. In order to comply with State law, the County has not been applying these discretionary standards, and the proposed update would eliminate all discretionary standards from the ordinance, except in cases where the LCP requires such standards.
- j. Removal of Most Legalization Procedures: The prior ordinance contains a number of procedures for legalizing existing unpermitted second units, most of which are related to a legalization amnesty period established by the prior ordinance. The amnesty period has long since expired, and most of these procedures are no longer in effect. Similar procedures for legalizing existing second units will be addressed separately by the forthcoming second unit amnesty program, and are not included in the proposed update.

#### 8. Planning Commission Review and Recommendation

The County Planning Commission reviewed the proposed ordinance on November 30, 2016.

The Planning Commission directed the following changes, which have been incorporated in the proposed ordinance:

In Section 6427, "Locations Permitted," the Planning Commission directed the removal of the RM/CZ and TPZ/CZ districts on the Coastal Zone. Under the existing Second Unit Ordinance, second units were not allowed in these

districts; they were included in the revised ordinance simply for consistency Countywide. Removal of these districts from the revised ordinance does not negatively impact the intent of the regulations. Similarly, the ordinance presented to the Planning Commission also allowed second units in R-2-zoned areas both outside of the Coastal Zone, and within the Coastal Zone. However, as there are no R-2-zoned areas within the County's Coastal Zone, that proposed amendment has also been removed.

The Planning Commission also directed inclusion of the following language in Section 6432, "Coastal Development District:"

In the CD District, all second units shall comply with all of the applicable regulations of the district, *including but not limited to the Sensitive Habitats, Visual Resources, and Hazards policies of the LCP.*

The additional language regarding Sensitive Habitats, Visual Resources, and Hazards policies was included to ensure that nothing in the revised regulations could be construed to supersede existing Coastal Zone protections, as incorporated in the LCP.

With those changes, the Planning Commission recommended that the Board of Supervisors adopt the proposed amendments to the County's Second Unit Ordinance, Chapter 22.5 of the County Zoning Regulations.

## 9. Public Comment

A variety of public comments were received prior to and during the Planning Commission hearing of November 30, 2016.

The majority of the comments expressed concern that the revised regulations would modify the allowed number of second units in the County's Coastal Zone, or would alter or lessen the environmental and other protections in the LCP. The proposed amendments, apart from the inclusion of the RM/CZ and TPZ/CZ zones, which have been removed from the proposed updates, do not change the County's procedures for reviewing second units in the Coastal Zone, or eliminate the cap on second units or total units incorporated in the LCP, or lessen the existing protections in the LCP.

In addition, there was concern expressed regarding how the proposed updates might impact or supersede the County's fire safety regulations, or other parts of the County's building regulations. The updates to the second unit regulations do not amend or in any way alter the County's fire code, building code, health and safety code, or any other regulations other than the specifically described changes to zoning regulations described in the proposed ordinance.

10. Timeline

The amendments to State law adopted on September 27, 2016 require all local jurisdictions to update their second unit regulations by January 2017, if the jurisdictions wish to continue to apply their local regulations.

Prior to the latest amendments to State law, the County was already working on an update to the County's second unit regulations, at the direction of the Board of Supervisors. This process was intended to include more extensive public review, as well as additional informational sessions at the Planning Commission and Board of Supervisors. The unexpectedly short timeline mandated by the new State law necessitates changes to this approach, and has significantly accelerated the process of drafting and adoption.

However, the revised ordinance has been distributed to the public and to various stakeholders for review and comment, both prior to the Planning Commission hearing of November 30, 2016, and between that hearing and the Board of Supervisors' consideration. Circulation to date includes the following:

- a. Public Distribution. The proposed changes have been announced and distributed to various stakeholders, including all local Community Councils, various Realtors' Associations and Building Trades Associations, members of the public who have expressed interest in the updates, and various organizations that work on housing policy issues. The proposed amendments were circulated prior to the Planning Commission hearing, and again prior to the Board of Supervisors' consideration.
- b. Website. The proposed updates have been announced and provided on the County Planning and Building website, and linked from the Housing Department website, as well as cross-posted on the 21 Elements website.
- c. Newspaper Notice. Notice of the updates has been distributed in the San Mateo Times and the Half Moon Bay Review.

11. Conclusion

While the timeline for the proposed amendments to the County regulations has been accelerated due to mandates adopted by the State, the amendments remain consistent with the County's housing goals, with the direction of the County Board of Supervisors, and with the County's intent to adopt second unit regulations that are fully compliant with State law, that promote second units as a source of needed housing, and that are consistent, comprehensive, easy to interpret, and easy to apply.

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### **ENVIRONMENTAL REVIEW**

Per CEQA Section 21080.17 and CEQA Guidelines Section 15282(h), adoption of an ordinance relating to second units (accessory dwelling units) to implement specific Government Code sections (Sections 65852.1 and 65852.2) is exempt from CEQA.

### **FISCAL IMPACT**

There is no foreseeable fiscal impact to the County from adoption of the proposed ordinance.

### **ATTACHMENT**

A. Recommended Findings and Action