

**San Mateo County Second Unit Amnesty Program**  
**Attachment: Program Scope and Description**

1. Program Overview

The Second Unit Amnesty Program (“program”) will provide inspection, rehabilitation guidance, rehabilitation assistance, and registration of program completion for certain second units built without required permits. The goal of the program is to improve as many unpermitted second units as possible to basic standards of habitability, without displacing residents or removing units from the housing stock.

Key components of the program include:

- a. A 24-month amnesty period during which applicants may participate in the program and improve their units without incurring fines, penalties, or code enforcement action that typically results from unpermitted construction.
- b. The opportunity for applicants to explore the feasibility of meeting program requirements, in the initial application stages, without facing code enforcement action.
- c. County assistance in identifying necessary improvements and estimating the cost of such improvements, and in assessing the overall feasibility of rehabilitation for potential applicants.
- d. Other incentives for participation, including suspension of otherwise-applicable Planning and Building regulations and standards, and reductions in typical Planning and Building fees.
- e. Other potential financial assistance for eligible second units from Housing Department funding.
- f. Registration of units that successfully complete the program. The Planning and Building Department (“Department”) will issue a Second Unit Registration Record to such units, memorializing completion of the program and affirming the suspension of code enforcement related to issues identified and addressed through the program.

The program will provide multiple possible paths to program completion:

- a. If units can be feasibly brought into full compliance with all current standards, these units will be legalized and issued certificates of occupancy.
- b. If units can be brought into compliance with the standards in effect at the time they were built, such units will be considered “grandfathered” and inspected pursuant to the standards in effect at that time (except that such units will be required to meet those current standards that the Community Development Director (“Director”) determines are necessary to ensure health and safety).
- c. If units cannot feasibly achieve compliance with current standards or the standards in effect at the time they were built, the Director will have discretion to suspend application of certain Planning regulations and Building Code standards to the extent that the Director determines that such adjustments are consistent with appropriately maintaining health and life safety.

Second units that are renovated to meet these reduced compliance standards will receive a Second Unit Registration Record, which will provide a proof of final inspection and program completion. This record will include an inventory of the issues identified and improvements made within the parameters of the program. This record will assure participants that the Planning and Building Department will not pursue subsequent code enforcement action for issues identified or improvements made in relation to the program. However, issues arising after issuance of the Second Unit Registration Record, or issues related to other areas of the property, will not be exempt from potential code enforcement action.

- d. Unit inspections, and assistance with program guidance for applicants, will be performed by an external consulting firm retained for this purpose (“Amnesty Inspector”), rather than County inspectors. This approach is intended to separate the program from the County’s normal inspection and code enforcement processes, to reassure potential program participants that they will not face code enforcement action based on participation in the program, and to avoid potential conflicts for County inspectors.

Because the total number of unpermitted second units and the condition of those units is unknown, staff is unable to precisely identify the number and nature of units that may be included in the program, the nature of repairs required, and the specific incentives that may be most effective in encouraging participation. Therefore, staff proposes vesting the Director with a degree of flexibility in administering and making adjustments to the program as it proceeds.

## 2. Program Details

- a. Pilot Program. In advance of full program launch, the Planning and Building Department and the Housing Department will recruit 4 or 5 participants for a focused trial of the program. Program participation will be incentivized with a small cash grant (around \$1,000), which can be used however the applicants wish. The pilot program is intended to mirror, as closely as possible, the anticipated process and experience of full program participants, but with the applicants' understanding that they are participating in a test, and may experience unanticipated difficulties, delays, and challenges. The pilot will run for approximately five months, from May 2018 to September 2018.
- b. Program Term. The amnesty eligibility "window" or program term, following the pilot phase, will be 24 months. The program is intended to formally commence in September 2018.
- c. One-Year Check-In. While the Department will adjust and improve the program throughout its duration, the Department will also provide the Board of Supervisors a comprehensive report on progress approximately twelve months after the program begins. At that point, the Board of Supervisors could direct the Department to continue the program with no changes, make substantive changes, or terminate the program, depending on the outcomes of the first year.

If participants apply to the program prior to the end of the program term, they will be eligible to participate until completion of the Amnesty process (i.e., applications pending at the time of program termination will be processed to completion). This means that inspection, rehabilitation, and registration of units may continue for some time after the end of the eligibility window.

- d. Coastal Zone Applicability. Staff proposes to exclude units in the County's Coastal Zone from participation during the first year of the program, due to the complexity and ambiguity of issues related to potential Coastal Commission review or approval, Coastal Development Permit requirements, and other complications typical of development or redevelopment in the Coastal Zone. Depending on the outcomes of the first year of the program, the Board of Supervisors may direct staff to include the Coastal Zone during the second year.

- e. Unit Eligibility. Any second dwelling unit created without some or all necessary approvals will potentially be eligible for inclusion in the program, subject to the following conditions:
- One Unit Only. Only one unpermitted unit per property will be eligible for the program.
  - Residential Zoning. Units must be located in an “R” (Residential) Zoning District (R-1, R-2, R-3, R-E, R-H, etc.). Units in other zoning districts will not be eligible. As currently proposed, units in the Coastal Zone will not be eligible during the first 12 months of the program, regardless of zoning district, but may be eligible during the second year.
  - In-Service Date of Units. To be eligible for the program, units must have been built before January 1, 2017 and occupied prior to adoption of the authorizing ordinance.
  - Proof of Residential Use. Applicants must demonstrate, to the satisfaction of the Director, that the unit has at some point been used as a residence. Possible methods of proof include, but are not limited to:
    - o Utility bills or other bills and/or records, in the name of a tenant or resident other than the primary homeowner(s).
    - o Written lease agreements with current or former occupants.
    - o If the unit is currently occupied, current residents of the unpermitted unit may provide an affidavit attesting to residency.
    - o If the unit is not currently occupied, the owner of the unpermitted unit may provide an affidavit attesting to prior residential use, along with a supplemental affidavit confirming prior residential use from a third party, such as a neighbor or former resident.
    - o Other evidence demonstrating residential use, to the satisfaction of the Director.
- f. Compliance Standards. As described above, there are multiple paths to program completion, either in the form of full legalization, or issuance of a Second Unit Registration Record. Safety and compliance standards for units that cannot be fully legalized will be based on San Mateo County’s adopted Building Code and other standards, with modifications.

All units will be required to comply with the Fire Code and Environmental Health Code without modification (including standards for and proof of

availability of water, wastewater, plumbing, and septic service, and required fireproofing and defensible space clearance, among others). Building regulations related to seismic safety, ingress and egress, and ventilation will also apply without modification.

The Director will have the discretion to determine the Planning standards and/or Building Code standards that may be suspended or modified.

Examples of the type of Planning and Building standards that the Director may modify or suspend include:

- Zoning Regulations (such as unit placement, size, design, setbacks, height, and other standards).
- Energy efficiency standards.
- Insulation and heating requirements (to allow alternative means of meeting these standards).
- Window size requirements.
- Ceiling height requirements.
- Outlet placement requirements.
- Lighting fixture requirements.
- Other standards that can be modified without impacting the safety of the unit.

Upon the Director's determination of Planning and Building standards that may be modified or suspended for a given unit, the Planning and Building Department will identify the program standards applicable to the unit in a written form provided to the applicant, and will implement the standards throughout the application and inspection process.

- g. Fee Modifications/Waivers. Units participating in the program will be exempt from fees and penalties for unpermitted construction. At the discretion of the Director, applicants may also be eligible for reductions or waivers from normally applicable Planning and Building fees. All other standard fees will apply, including fees from the Environmental Health Division, the Department of Public Works, and any non-San Mateo County entities, such as water and sewer service providers.
- h. Code Enforcement/Inspection Limitations. The purpose of the program is to ensure the habitability of the second unit only. Inspections will not address or pursue other issues that might be identified on the property or in the

primary unit of an applicant, with the exception of issues that pose an immediate danger to life safety of the occupants or the surrounding community. The primary unit and surrounding property will not be inspected, except to the extent that such inspections are necessary to adequately evaluate the second unit. Information identified during the initial pre-application phases will also not be used for code enforcement purposes.

- i. Inspections. There will be a minimum of two inspections by the Amnesty Inspector for each participating second unit:
  - The first inspection will be an initial feasibility assessment, before the applicant formally commits to the program. This inspection will help identify those improvements that would be required to successfully complete the program. The Amnesty Inspector will provide a document that will help the applicant estimate necessary work and costs.
  - After the unit is renovated, the Amnesty Inspector will complete at least one additional inspection, to ensure that required work has been satisfactorily completed. At this point, a Second Unit Registration Record may be issued.
- j. Planning/Zoning Compliance; Second Unit Regulations Apply. The primary objective of the program is to achieve an appropriate level of habitability of the units; however, units will still be reviewed for compliance with Zoning Regulations. The County's revised regulations for second units (Chapter 22.5 of the County Zoning Regulations) will apply to all participating unpermitted second units in any "R" (residential) Zoning District.
- k. No Public Noticing or Hearings. Consistent with the approval process for new second units in the Second Unit Ordinance, the Planning and Building Department will not hold public hearings or provide public notice of any application for inspection, improvement, and registration of second units through the program.
- l. Application Tracking. Applications will be tracked as a new "Second Unit Registration" permit type in the Planning and Building Department permit system. Other normally required permits will be issued and tracked in the usual manner.
- m. Application Process.
  1. Self-Assessment. Applicants will be required to complete a unit self-assessment, using a tool provided by the Planning and Building Department, to help determine the potential work and cost required, feasibility of the improvements, and eligibility for the program.

2. Pre-Application Review. Applicants will be required to confer in person with the Planning and Building Department to further determine eligibility for the program, and refine the assessment of necessary work and cost. Applicants will be required to provide their completed self-assessment, as well as all information regarding the unit and the property required to effectively assess its eligibility.
3. Pre-Application Inspection. The Amnesty Inspector will inspect the unit and create a detailed assessment of work required to achieve compliance with applicable standards. The applicant will be provided with this guidance, which they may use to obtain cost estimates for the required work.

Steps 1, 2, and 3 are pre-application stages. During these stages, applicants may withdraw from the program without penalty, and information collected to that point will not be used for code enforcement purposes. However, if applicants choose to proceed to formal application (Step 4), they must commit to all necessary improvements, and may not withdraw without facing penalties for unpermitted construction, and normal requirements to fully upgrade, remove, or convert the unit. The pre-application stage is the last chance to withdraw from the program without penalty.

4. Formal Application. At this stage the applicant must formally apply for the program, complete all application materials, and pay any required application fee. Formal application commits applicants to the program, and they may not subsequently withdraw without penalty. After application, permitting and inspection will follow the typical path for a normal project, subject to the program standards determined by the Director, and with all inspections completed by the Amnesty Inspector. The Department will also establish a timeline for completion of improvements, and the applicant must adhere to the timeline or be subject to resumption of code enforcement activities.
5. Final Inspections. After improvements are complete, the Amnesty Inspector will conduct one or more inspections of the unit, to determine if the work has been satisfactorily completed.
6. Issuance of Second Unit Registration Record. Once the unit has been inspected and determined to be in compliance with program standards, a Second Unit Registration Record will be issued, memorializing the improvements and assuring that the Department will not pursue subsequent code enforcement actions related to issues identified or work completed within the purview of the program.
7. Program Outreach and Publicity. The Planning and Building Department and the Housing Department will create and distribute

materials publicizing and describing the program. Initial distribution will be to those areas of the unincorporated County that have been identified as most likely to have the largest numbers of unpermitted units, with possible expansion to broader areas as the program proceeds.

8. Materials and Resources; Policies and Procedures. The Planning and Building Department, in collaboration with the Housing Department, the County Manager's Office, the County Counsel's Office, and Baird & Driskell (consultants), will create and promulgate all necessary materials to implement the program, including self-assessment tools, application forms, program guidance documents, inspection forms, explanatory materials, forms and affidavits certifying eligibility, internal guidance documents, and all other necessary materials.
9. Management. The program will be managed by the Planning and Building Department, in collaboration with the Housing Department.
10. Staffing. Staffing needs are estimated at:
  - a. One part-time contract inspector (Amnesty Inspector) and program administrator, hired and managed by the Planning and Building Department.
  - b. One loan program administrator, hired and managed by the Housing Department, from funds already approved and allocated.
  - c. Existing Planning, Building, and Housing staff time to implement and manage the program: assumed to be no more than 1 FTE.
11. Program Reporting. The Planning and Building Department will report to the Board of Supervisors periodically, in writing, on the progress of the program, and will provide a comprehensive assessment at the 12-month check-in point.
12. Existing Notices of Violation. For second units eligible for the program that have existing notices of violation, the Director will have the discretion to temporarily suspend or wholly rescind the notice(s) of violation, and to waive any outstanding fines or liens that may be levied on the property related to such violations.
13. Rehabilitation Loans. The program will be administered in coordination with a Rehabilitation Loan Program provided by the Housing Department for eligible applicants, from an initial \$500,000 fund already dedicated and approved for this purpose.