



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** PLANNING AND BUILDING

**File #:** 18-039

Board Meeting Date: 1/23/2018

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**Special Notice / Hearing:** None  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors  
**From:** Steve Monowitz, Community Development Director  
**Subject:** Authorization of a Second Unit Amnesty Program for Unpermitted Second Units in Unincorporated San Mateo County.

### **RECOMMENDATION:**

Introduction of an ordinance adopting the Second Unit Amnesty Program to inspect, rehabilitate, and improve the safety and habitability of unpermitted second units in unincorporated San Mateo County, and waiving the reading of the ordinance in its entirety.

### **BACKGROUND:**

Shortage of Affordable Housing. San Mateo County is experiencing a historic shortage of housing. Home prices and rents have risen at unprecedented rates, and many households across income levels struggle to afford housing. This shortage is driven, in large part, by the gap between jobs created and construction of new housing: in the County, twenty six new jobs are created for each unit of housing built. Consequently, San Mateo County urgently needs new housing of all kinds, serving all income levels.

Second Units. Second units, also called accessory dwelling units, in-law units, and various other names, are built on the same property as a primary residence (or residences). They are usually significantly smaller than a typical primary residence, and may be free-standing, attached, or constructed entirely within a residence.

Advantages of Second Units. Second units are often cheaper to build, more affordable to occupy, and more efficient and less impactful than other types of residential development. Because of their lower construction costs and relative affordability to occupy, these units can play an important role in addressing the County's housing needs. Although data regarding the typical rental costs of second units in San Mateo County is not readily available, a UC Berkeley study of second units in Portland, Seattle, and Vancouver found that the majority of second units rent for below market rate. Fifty-eight percent of the homeowners surveyed by the study reported renting their second unit at below the market rate. ([http://turnercenter.berkeley.edu/uploads/ADU\\_report\\_4.18.pdf](http://turnercenter.berkeley.edu/uploads/ADU_report_4.18.pdf))

The Board of Supervisors affirmed the importance of second units in adopting the County's Housing Element, which contains a number of policies to facilitate the production of second units, and in adopting the recently-updated Second Unit Ordinance, which streamlines the planning process for new second units. During the Board's study session on affordable housing in March 2015, the Board directed staff to explore ways to improve the habitability of existing, unpermitted second units.

Unpermitted Second Units. While most second units in the unincorporated County are built with required inspections and approvals, some units have been built without satisfying these requirements. These unpermitted units may result from conversion of existing structures; they may be built within garages, or within existing accessory structures; or they may be built as new structures, either attached to or detached from the primary residence. There are no definitive estimates of the number of such units, but anecdotal information indicates there may be hundreds throughout the unincorporated County. These unpermitted units provide an important source of housing, in many cases the only housing their inhabitants can afford.

Health, Safety, and Habitability Issues. Despite the role such housing plays in meeting the needs of County residents, these unpermitted units may be unsafe, unhealthy, or in otherwise undesirable conditions. For example, they may lack adequate ventilation, light, water, electricity, seismic safety, or safe ingress and egress, or have other conditions that might make living in these units unsafe to residents, and potentially unsafe to residents of adjacent structures and properties.

Full Rehabilitation and Legalization is Challenging. Ideally, such units would be brought into full compliance with all current standards, including the Building Code, Zoning Regulations, Fire Code, Environmental Health Code, and other relevant regulations. However, many of these structures have been in existence for many years, and in some cases were not built to the applicable standards at the time of construction. Similarly, the placement, design, construction methods, and materials of such units may not comply with current regulations, and renovating them to bring them into full compliance may be difficult or impossible. In many cases, the cost of renovation alone is prohibitive, and the nature of a unit's design or construction may also preclude it from meeting various Building and Planning regulations, regardless of cost.

Typical Response for Unpermitted Units. Under normal circumstances, units not meeting all required standards must either be upgraded to meet such standards, or removed or converted to some other use that can achieve compliance. For units that cannot be brought into full compliance, this would mean displacement: existing residents would be forced to leave the unit when it is removed or converted to a non-residential use. Such displacement is a two-fold exacerbation of the housing shortage, removing units from the market while simultaneously adding to the pool of tenants seeking housing: decreasing housing supply and increasing demand.

Board of Supervisors Direction. The Board of Supervisors has directed staff to consider appropriate adjustments to some existing standards that would allow such second units to remain in use, while also improving safety and habitability, thereby avoiding displacement of residents.

In March 2015, the Board endorsed an Affordable Housing White Paper that proposed a number of policies intended to address the County's housing shortage. Regarding second units, the White Paper acknowledged that these units provide a valuable source of relatively affordable housing, and that the County should facilitate production of new second units, and promote improvement and legalization of existing unpermitted second units. An inspection and renovation program for unpermitted second units was one strategy endorsed by the Board.

Subsequently, the Board allocated funds to promote the improvement of unpermitted second units, and directed the Planning and Building Department (“Department”) and the Housing Department to explore a second unit “amnesty” program, along the lines of similar programs implemented by a number of other jurisdictions. The intent of such programs is to provide an easier and more affordable path to improve the safety and habitability of existing unpermitted second units, including some funding assistance for those units needing rehabilitation, modification of various standards, and modification and exemption from various penalties and enforcement.

Amnesty Program Development. The proposed amnesty program, described below, responds to the Board’s direction, and is the culmination of collaborative work by the Planning and Building Department, Housing Department, County Manager’s Office, County Counsel, Environmental Health Division, Department of Public Works, and Baird & Driskell contractors who work on a variety of County housing initiatives. Staff met throughout 2017 to craft the program, which staff believes meets the Board’s intent to bring the greatest possible number of units into compliance with habitability standards, while minimizing displacement of residents. See Attachment A for a full description of the Amnesty Program.

## **DISCUSSION:**

### Overview.

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

- A time-limited, 24-month amnesty period.
- The opportunity for applicants to explore the feasibility of the program without code enforcement action.
- County assistance in identifying necessary improvements and estimating costs.
- Other incentives for participation, including suspension of otherwise-applicable regulations and reductions in fees.
- Potential financial assistance from Department of Housing loan funding.
- Registration of units successfully completing the program, affirming suspension of code enforcement related to issues identified and addressed through the program.

### Program Details

- a. Pilot Program. In advance of full program launch, the Planning and Building Department and Housing Department will recruit participants for a focused trial of the program. The pilot will run for five months, from May to September 2018.
- b. Program Term. The amnesty “window” or program term, following the pilot, will be 24 months. The full program is intended to commence in September 2018.

- c. One-Year Check-In. While the Planning and Building Department (“Department”) will improve the program throughout its duration, the Department will also provide the Board with a comprehensive report on progress 12 months after program start. At that point, the Board could direct the Department to continue as-is, make substantive changes, or terminate the program, depending on first-year outcomes.
- d. Coastal Zone Applicability. Staff proposes to exclude units in the County’s Coastal Zone during the first year, due to the complexity and ambiguity of issues related to Coastal Commission approval and Coastal Development Permit requirements. Depending on outcomes of the first year, the Board may direct staff to include the Coastal Zone during the second year of the program.
- e. Unit Eligibility. Any second unit created without some or all necessary approvals will potentially be eligible for the program, subject to the following conditions: only one unit per property will be eligible; units must be in “R” (residential zones); and units must have been built and occupied prior to January 2017.
- f. Compliance Standards. 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 full Fire Code and Environmental Health Code, and with all regulations related to seismic safety, ingress and egress, and ventilation. The Director will have the discretion to determine which Planning and/or Building Code standards may be suspended or modified.
- g. Fee Modifications/Waivers. Units participating in the program will be exempt from 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.
- h. No Public Noticing or Hearings. Consistent with the approval process for new second units, no public hearings will be held or public notice provided of any application for inspection, improvement, and registration of second units through the program.
- i. Contract Inspection. Unit inspections, and assistance with program guidance for applicants, will be performed by an external consulting firm retained for this purpose.
- j. Issuance of Second Unit Registration Record. Once a unit has been inspected and found to be in compliance with program standards, a Second Unit Registration Record will be issued, memorializing the improvements and assuring that the County will not pursue subsequent code enforcement action related to issues identified and work completed within the purview of the program.

#### **ENVIRONMENTAL REVIEW:**

As the proposed program contemplates only rehabilitation, repair, and improvement to existing structures, it is categorically exempt from environmental review per Public Resources Code Section 21084 and CEQA Guidelines Section 15301, “Existing Facilities.”

**FISCAL IMPACT:**

The development of the Second Unit Amnesty Program has been partly funded by Measure K funds dedicated for the purpose of encouraging second dwelling units as a valuable source of housing. Remaining funds in this account will be used to cover the cost of inspections (among other things), which will depend on the number of applications received. In the event that the volume of applications exceed the resources available to fund inspections, staff will come back to the Board to report on the status of the program and the resources required for it to continue. The use of Measure K funds for this purpose will increase the safety and security of people who currently reside in illegal units, and minimize the cost to homeowners of participating in the program. The County will also be offering low interest loans to homeowners who need assistance affording the improvements required to make unpermitted units safe and habitable.

**ATTACHMENT**

A. Second Unit Amnesty Program Scope and Description