

CALIFORNIA COASTAL COMMISSION

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Prepared April 22, 2004 (for May 12, 2004 hearing)

To: Commissioners and Interested Persons

RECORD PACKET COPY

From: Diane Landry, District Manager
Mike Watson, Coastal Planner

Subject: **City of Pismo Beach LCP Major Amendment Number 1-04 Part 1 (Second Units - AB 1866)** Proposed major amendment to the City of Pismo Beach certified Local Coastal Program to be presented for public hearing and Commission action at the California Coastal Commission's May 12, 2004 meeting to take place at the Marin County Board of Supervisors Chambers Room 322, Marin County Civic Center, in San Rafael.

Summary

The City of Pismo Beach is proposing to amend its Local Coastal Program (LCP) Implementation Plan (IP, also known as the LCP zoning ordinance) sections in response to recent legislative changes regarding second units (per AB 1866). AB 1866 amended Government Code Section 65852.2 to change the process for the review of second unit applications. Most significantly, AB 1866 requires that second unit applications in residentially designated areas received after July 1, 2003 be considered by local governments "ministerially without discretionary review or a hearing." The restriction on public hearings does not extend to the Coastal Commission.

The City proposes amending the IP to establish secondary dwelling units as a permitted use in all residential zone districts, define the development standards, amend public hearing requirements, and include parameters for appealable versus non-appealable second units. The proposed amendment also includes amending language to "grandfather" existing secondary dwelling units that meet Uniform Building Code standards.

The changes proposed are straight-forward and narrowly focused in response to AB 1866 requirements. There are a few areas where minor clarification is necessary (making explicit certain implicit requirements and making minor coastal zone-specific clarifications). More substantively, clarification is needed to ensure that essential public services are available to meet demand for such services and that all development pursued under this section is consistent with the City's General Plan/Coastal Land Use Plan and the certified zoning ordinance. In an area where water and sewer facilities are not limitless, and in particular an already over-loaded sewage system threatens to severely curtail additional development, it is appropriate to include this requirement. Second unit development will draw on such services, and it must be demonstrated that such services are available before second units can be approved. To do otherwise would allow a class of development that could: (1) if public service capacity is further curtailed, take services that are directed by the LCP to higher priority uses in times of limited supply; (2) draw on public services even if there aren't adequate services available; (3) be approved, and not built, leading to any number of "stale" approvals not necessarily responsive to current conditions in this and



California Coastal Commission

May 12, 2004 Meeting in San Rafael

Staff: M. Watson Approved by: **DSL**

PSB LCPA 1-04 Part 1 2nd units (AB 1866) stfprt 4.22.04.doc

other respects.

In order to address these public service concerns (and the other minor issues), modifications are suggested to include the public service text and to make small changes designed to ensure that the proposed text is consistent with the certified LUP.

With the identified modifications, staff recommends that the Commission find that the proposed LCP amendment is consistent with and adequate to carry out the policies of the LUP. As so modified, staff recommends that the Commission approve the LCP amendment.

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I. Staff Recommendation – Motions and Resolutions

Staff recommends that the Commission, after public hearing, approve the proposed amendment only if modified. The Commission needs to make 2 motions in order to act on this recommendation.¹

1. Denial of Implementation Plan Major Amendment Number 1-04 Part 1 as Submitted

Staff recommends a YES vote on the motion below. Passage of this motion will result in rejection of the amendment and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion (1 of 2). I move that the Commission **reject** Part 1 of Major Amendment Number 1-04 to the City of Pismo Beach Local Coastal Program Implementation Plan as submitted.

Resolution to Deny. The Commission hereby **denies** certification of Part 1 of Major

¹ Note that the motions and resolutions refer to "Part 1 of Major Amendment Number 1-04." The reason for this is that this amendment request is part 1 of a two part LCP amendment submitted by the City of Pismo Beach. Part 2 of the amendment, regarding a change in the density and development on steep slopes, will be brought before the Commission at its next regularly scheduled hearing.



Amendment Number 1-04 to the City of Pismo Beach Local Coastal Program Implementation Plan as submitted by the City of Pismo Beach and adopts the findings set forth in this staff report on the grounds that, as submitted, the Implementation Plan amendment is not consistent with and not adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse effect which the Implementation Plan Amendment may have on the environment.

2. Approval of Implementation Plan Major Amendment Number 1-04 Part 1 if Modified

Staff recommends a YES vote on the motion below. Passage of this motion will result in certification of the amendment with suggested modifications and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion (2 of 2). I move that the Commission **certify** Part 1 of Major Amendment Number 1-04 to the City of Pismo Beach Local Coastal Program Implementation Plan if it is modified as suggested in this staff report.

Resolution to Certify with Suggested Modifications. The Commission hereby **certifies** Part 1 of Major Amendment Number 1-04 to the City of Pismo Beach Local Coastal Program Implementation Plan if modified as suggested and adopts the findings set forth in this staff report on the grounds that, as modified, the Implementation Plan amendment is consistent with and adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment if modified as suggested complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment; or (2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Implementation Plan Amendment may have on the environment.

II. Suggested Modifications

The Commission hereby suggests the following modifications to the proposed LCP amendment, which are necessary to make the requisite Land Use Plan consistency findings. If the City of Pismo Beach accepts each of the suggested modifications within six months of Commission action (i.e., by November 8, 2004), by formal resolution of the City Council, the corresponding amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Where applicable, text in ~~cross-out~~ format denotes text to be deleted and text in underline format denotes text to be added.

1. Modify Proposed Changes to IP Section 17.117(C).



2. Secondary dwelling units designed in accordance with this section require no discretionary approval, unless as provided for herein.

2. Modify Proposed Changes to IP Section 17.117(D): Applicability.

Secondary dwelling units are permitted in R-1, R-2, R-3, ~~R-R, P-R~~ zones, on lots or parcels where there is only one existing or planned residence, and where the required number of parking spaces for the primary residence is provided. The requirements in this section apply to new secondary dwelling units and to additions to existing secondary dwelling units.

3. Modify Proposed Changes to IP Section 17.117(E).

2. **Projects in Coastal Appeal Zone.** A Coastal Development Permit is required. The public hearing is hereby waived, in accordance with Section 17.124.100, unless the second unit is a part of a larger project that requires a public hearing or if a variance is requested. Notice shall be provided in accordance with Section 17.125.090. Action on project is final, unless appealed to the Coastal Commission within ten (10) days of the Commission's receipt of the Notice of Final Local Action.

4. Modify Proposed Changes to IP Section 17.117(H).

2. **Lot Area.** ~~The lot may be any size.~~ Minimum lot area shall be established by the standards of the primary zone. See Section 17.102.100.
3. **Lot Coverage, yards, height, maximum building area.** All new development, when combined with the existing development, ~~must~~ shall conform to the development standards of the underlying zone, ~~except where specifically modified herein.~~
6. **Services.** The primary and secondary units may be served from the same gas, electricity, and water lines, at the discretion of the property owner. No development shall be approved that would exceed the capacity of the municipal utility systems. Specifically, all applications received for secondary dwelling units shall be accompanied with evidence provided by the municipal utility provider that there are adequate services/capacity to serve the proposed development.
9. **Consistency with codes.** ~~All~~ New development ~~must~~ shall comply with all local, state, or federal regulations that apply to the property, including ~~grading, tree protection, open space ordinances~~ the applicable requirements of the General Plan/Local Coastal Plan and certified zoning ordinance, and the adopted Building Code, ~~except where specifically modified herein.~~

5. Modify Proposed Changes to IP Section 17.117(I): Acceptance of existing secondary dwelling units.

1. **Exemption.** Existing secondary dwelling units that meet requirements of the Uniform Housing Code, as determined by the Building Official, on lots that include the required number of parking spaces for the primary dwelling unit, are exempt from the parking and unit size requirements of



this section. All new development or modification of existing secondary units shall conform to the development standards of the underlying zone and all applicable requirements of the General Plan/Local Coastal Plan and certified zoning ordinance.

6. Modify Proposed Changes to IP Section 17.117(K).

~~Exceptions. Secondary Dwelling Units that do not meet all of the above standards may be allowed, subject to discretionary approval of a Development or Coastal Development Permit by the Planning Commission. To approve a secondary dwelling unit with exceptions, the Planning Commission must make all of the following findings:~~

- ~~1. The project meets the intent of State law and of the secondary dwelling unit regulations.~~
- ~~2. The exception is reasonably necessary for the development of a primary and secondary unit on the site.~~
- ~~3. The project will be compatible with the neighborhood.~~

7. Modify Proposed Changes to IP Section 17.124.100: Public Hearing Procedures.
(Recommended change is denoted in *italic text*).

At least one public hearing shall be held on each application for an appealable or non-appealable coastal development permit application for a project in the R-3, R-4, P-R, R-R, C-R, M-H, C-1, C-2, C-M, OS-1, OS-R, or G zones, except that no hearing is required for the development of a secondary unit consistent with Section 17.117 of this Code, *unless the secondary unit is a part of a larger project that requires a public hearing or if a variance is required.* At least one public hearing shall be held on each application for an appealable coastal development permit application for a project in the R-1 and R-2 zones, except that no hearing is required for the development of a secondary dwelling unit consistent with Section 17.117 of this Code, *unless the secondary unit is a part of a larger project that requires a public hearing or if a variance is required.* Non-appealable coastal developments in the R-1 and R-2 zones may be processed as administrative permits at a staff level pursuant to the noticing standards of this ordinance for non-appealable developments. Such hearings shall occur no earlier than ten (10) calendar days following the mailing of the notices required by this chapter. The public hearing shall be conducted in accordance with existing City procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally, or in writing.

8. Add Proposed Language to IP Section 17.121.200: Application for Permit.

Concurrent with the project application a written commitment from the water purveyor is required that verifies the capability of the system to serve the proposed development. Projects shall not be approved in areas that do not have a proven, adequate water supply. A written



commitment is a letter from the purveyor guaranteeing that the required level of service for the project will be available prior to the issuance of building permits. The City decision making body shall not approve any development project unless it determines that such project has adequate water supply available.

Concurrent with project application, a written commitment from the wastewater service district is required. A written commitment is a letter, with appropriate conditions, from the wastewater service district guaranteeing that the required level of service for the project will be available prior to issuance of building permits. The City decision making body shall not approve any development project unless it determines that such project has adequate sewage treatment plant capacity.

III. Findings and Declarations

The Commission finds and declares as follows:

A. Proposed LCP Amendment

1. Government Code (and AB 1866) Second Unit Requirement Background

Signed by former Governor Davis on September 29, 2002, AB 1866 added three new provisions to Section 65852.2 of the Government Code that are particularly significant for the purposes of reviewing proposed second units in residential zones within the coastal zone. The law now:

- 1) Requires local governments that adopt second unit ordinances to consider second unit applications received on or after July 1, 2003 "ministerially without discretionary review or a hearing." (Government Code Section 65852.2(a)(3))
- 2) Requires local governments that have not adopted second unit ordinances to "approve or disapprove the [second unit] application ministerially without discretionary review." (Government Code Section 65852.2(b)(1))
- 3) Specifies that "nothing in [Section 65852.2] shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act ... except that the local government shall not be required to hold public hearings for coastal development permit applications for second units." (Government Code Section 65852.2(j))

Thus, AB 1866 significantly changes one component of local government procedures regarding coastal development permits for second units in residential zones (public hearings), but does not change the substantive standards that apply to coastal development permits for such second units.



Pursuant to AB 1866, local governments can no longer hold public hearings regarding second units in residential zones. This prohibition applies both to initial local review and any subsequent local appeals that may be allowed by the LCP. The restriction on public hearings, however, does not apply to the Coastal Commission itself. The Commission can continue to conduct public hearings on proposed second units located in areas where the Commission retains permitting jurisdiction and when locally approved coastal development permits are appealed to the Commission.

AB 1866 does not change any other procedures or the development standards that apply to second units in residential zones located within the coastal zone. Rather, it clarifies that all requirements of the Coastal Act apply to second units, aside from requirements to conduct public hearings. Thus, for example, public notice must be provided when second unit applications are filed and members of the public must be given an opportunity to submit comments regarding the proposed development. When a second unit application is appealable, local governments must still file a final local action notice with the Commission and inform interested persons of the procedures for appealing the final local action to the Commission. In addition, all development standards specified in the certified LCP and, where applicable, Chapter 3 of the Coastal Act apply to such second units.

2. Description of Proposed LCP Amendment

Prior to the submittal of the LCP amendment, the City of Pismo Beach General Plan/ Local Coastal Plan did not contain any specific provisions for secondary dwelling units other than general policies that promoted a range of density categories and housing types. As such, the proposed amendment to the certified LCP involves the establishment of a new zoning ordinance element (§ 17.117 Secondary Dwelling Units) that establishes the development standards and rules for construction of secondary dwelling units within the City's residential neighborhoods and identifies the process for noticing and reviewing second unit applications. The City's request also includes an amendment to Section 17.006 of the certified IP ordinance (Definitions) to add the definition of primary and secondary dwelling units, and another amendment to the Public Hearing Procedures ordinance (§ 17.124.100) that eliminates the requirement for a public hearing on secondary units. Specifically, the amendment:

- (1) Modifies Section 17.006 to add the definitions of primary dwelling units, secondary dwelling units, and transient lodging or rental (subsections (.0847), (.0887), and (.0953)).
- (2) Adds new Section 17.117 that establishes the intent and purpose of the secondary dwelling unit element, applicability of the element, identifies the development standards and permit requirements, identifies the process for noticing and reviewing second unit applications, and includes provisions for "grand-fathering" existing secondary dwelling units;
- (3) Modifies Section 17.124.100 to eliminate the public hearing requirement for second unit applications.

See exhibit A for the City Council ordinance, exhibit B for the Council staff report, and exhibit C for the proposed amendment.



3. Effect of Proposed Amendment

Applications for second units, a maximum of 1,200 square feet in size, in the coastal zone will be processed ministerially without public hearings. Curiously, noticing for interested parties and those properties within 100 feet of the second unit property will be required for projects outside the appeal zone, though no notice is required for projects within the Commission's appeal jurisdiction. Approvals of second units in the appeal zone will continue to be appealable to the Coastal Commission, whereas CDP approvals for projects located outside the appeal zone will be final.

The changes will potentially make it easier and quicker (and less costly in permit application fees) for applicants to gain approvals for second units in residential zones. Some of this depends on the manner in which administrative reviews will be undertaken at the City, and the length of time that these will take. The specifics of the City's internal review process in this respect are unknown at this time. Nevertheless, the lack of a hearing requirement should reduce the absolute amount of processing time associated with a second unit application because it removes a major step.

Omission of a requirement that public service commitments be demonstrated would further reduce the number of steps for an applicant. It would also lead to approval of second units for which it is uncertain if there are adequate public services. This in turn could lead to scarce public service supply being directed to second units as a class of development (since they would be the only class of development to which this requirement wouldn't apply). Depending on the amount of second units that were eventually approved, the changes could lead to increased use of public services, hastening the time when capacity, particularly sewer and water, is reached.

B. Consistency Analysis

1. Standard of Review

The standard of review for proposed modifications to the City's IP is that they must be consistent with and adequate to carry out the policies of the Land Use Plan (LUP). In general, Coastal Act policies set broad statewide direction that are generally refined by local government LUP policies giving local guidance as to the kinds, locations, and intensities of coastal development. IP (zoning) standards then typically further refine LUP policies to provide guidance on a parcel-by-parcel level. Because this is an IP (only) LCP amendment, the standard of review is the certified Local Coastal Program LUP.

2. LUP Consistency Requirement

In order to approve an Implementation Plan amendment, it must be consistent with and adequate to carry out the Land Use Plan. The City's LUP protects visual and community character, and requires demonstration of sewer and water capacity to serve proposed development. It also distinguishes between urban and rural development, and directs development to developed areas best able to accommodate it. Quality design, respective of the built and natural environment, is expected. Overall, these LUP requirements reflect and implement similar fundamental goals of the Coastal Act.



3. Consistency Analysis

The proposed amendment is mostly straight-forward and narrowly focused in response to AB 1866 requirements. However, the proposed amendment includes provisions that might result in inappropriate development inconsistent with the LUP if not modified. Fortunately, these portions of the proposed text are easily clarified so that the amendment applies only to the appropriate categories of development and ensures public services are available. Other minor clarifications are necessary to ensure 1) notice is provided, 2) all development standards are met including setbacks and minimum lot area, 3) modification to existing secondary dwellings conform to the development standards, 4) elimination of exceptions to the development standards, and 5) provisions for public hearings when secondary unit proposals are part of a larger project or if a variance is required. Individual issues (and changes that need to be made) are discussed more specifically below.

Applicability

The certified LCP currently prohibits secondary dwelling units (i.e., granny units). The proposed amendment would create a new allowable use in residentially zoned districts including R-1 (low density), R-2 (medium density), R-3 (multi-family), R-R (resort residential), and P-R (planned residential). Since the certified LUP does not currently have any policies related to secondary dwelling units, there is no policy guidance. However, the text of AB 1866 is specific in establishing the applicability for the creation of secondary units in single-family and multi-family residential zones only. The provisions of AB 1866 would therefore not apply to resort-residential and planned residential zones as proposed by the City because they do not allow solely residential uses but rather promote more intensive uses such as Motels/Hotels, etc. As such a modification is proposed that removes the R-R and P-R zoned districts from the City's proposed secondary dwelling unit amendment.

Evidence of Public Services

The certified LUP stipulates that no new development be approved that would individually or cumulatively exceed the capacity of the wastewater treatment and water supply systems (LUP Policies F-29 and F-36). When maximum capacity has nearly been reached, these policies further limit approvals of development to essential public services, public recreation, commercial recreation, and visitor-serving land uses. Land Use Plan Policy GM-1 limits the issuance of building permits for new residential units to 3% per year, based on the number of units estimated to exist within the City as of January 1 of the preceding year. The growth rate is managed to ensure that the amount of new development annually is commensurate with the availability of public services and infrastructure. This policy also requires the city to prepare a Growth Management Status Report every three years that includes the number of residential permits issued and the status of services and infrastructure. . Specifically, LUP Policies F-29, F-36, and GM-1 state, in part:

LUP Policy F-29 Treatment Plan Expansion

The City shall plan for treatment plant expansion when average daily flow reaches 75% of current capacity; expansion shall be completed before the plant reaches 90% of current capacity. When 90% capacity is reached, approval of developments requiring additional



wastewater treatment capacity shall be limited to essential public services, public recreation, commercial recreation, and visitor-serving land uses. No development shall be approved which would individually or cumulatively exceed the capacity of the wastewater treatment system.

LUP Policy F-36 Water Management Program

The City shall prepare and annually review a comprehensive water management program which shall include, but not be limited to:

- 1. Groundwater Depletion Analysis -Since the City relies on groundwater for a significant portion of its potable water, the depletion of the groundwater basin by overdrafting the supply shall be avoided at all times.*
- 2. Additional Water Sources -The City should pursue a variety of alternative additional water sources that will be sufficient to support the General Plan. New development should be allowed only as additional long-term proven water sources become available. When total annual water uses reaches 90% of projected available supplies (based on safe yield levels determined by the Groundwater Depletion Analysis, plus available entitlements from Lake Lopez and the State Water Project), approval of developments requiring increasing water supplies shall be limited to essential public services, public recreation, commercial recreation, and visitor-serving land uses. No development shall have building permits issued which would individually or cumulatively exceed the capacity of the City's water supply systems. Projects which are dependent on the availability of water supplies from the State Water Project shall be paced in accordance with the projected connection schedule, and shall not be approved until a firm delivery date has been established and construction on the delivery line(s) commenced. Interim individual water wells will not be permitted where depletion of the City's existing groundwater resources could result.*

LUP Policy GM-1 Residential Growth Rate

The City's residential growth rate shall be managed to assure that the amount of new development annually is commensurate with the availability of public services and infrastructure and will not result in a deterioration of the quality of service to existing or new residents.

- a. The issuance of building permits for new residential units shall not exceed 3% per year, based on the number of units estimated by the California Department of Finance to exist within the City as of January 1 of the preceding year.*
- b. A Growth management Status Report shall be prepared by the City staff and provided to the City Council at least every three years, commencing in 1995. The report shall include the number of residential permits issued and the status of services and infrastructure.*



As it stands today, the certified zoning ordinance does not contain any implementing measures (ordinances or standards) to ensure that public services are available to serve new development, though there is one growth management standard (17.121.220) that requires residential growth to proceed in accordance with the policies and procedures of the General Plan/Local Coastal Plan.

As reported in the February 2002 Local Agency Formation Commission (LAFCO) study, existing water use (as of October 2001) reached 80% of available supply. In October 2002, it was estimated that the City's wastewater treatment plant had reached 83% of capacity and that its aging infrastructure was at the root of several spills. The City has been working to upgrade these systems and obtain additional capacity to serve its residents, but the wastewater treatment plant upgrade may take several years to complete and additional water supplies have not yet been secured. Thus, in an area where water and sewer facilities are not limitless, and in particular where limited water supply, wastewater capacity, and aged infrastructure threatens to curtail additional development, it is appropriate to require evidence of public service availability. Second unit development will draw on such services, and it must be demonstrated that such services are available before second units can be approved. To do otherwise would allow a class of development that could: (1) if public services are further curtailed, take services that are directed to higher priority uses in times of limited supply by the LCP; (2) draw on public services even if there aren't adequate services available; (3) be approved, but not built, leading to any number of "stale" approvals not necessarily responsive to future conditions in this and other respects. Thus, evidence of public service availability is necessary to carry-out the intent of the certified Land Use Plan policies. Omission of a public service requirement directly conflicts with policies requiring demonstration of service and reserving capacity for priority uses, and cannot be found consistent with the LUP for these reasons. Therefore, the Commission recommends modifications to include proof of sewer and water service when an application is received for secondary dwelling units and all coastal development permits (see suggested Modifications 4.6 and 8).

Lot Area

Proposed Section 17.117 H.2 establishes the lot area criteria for approval of secondary dwelling units. As currently proposed, the City's amendment would allow any lot size, i.e., there is no minimum lot size identified. The text of AB 1866 specifically states that secondary dwelling unit provisions may be implemented as long as second units are a residential use that is consistent with existing general plan and zoning designation for the lot. The City's general plan and zoning ordinance specifically require minimum lot sizes for the various residential zones. Thus, a modification is proposed that limits the approval of secondary dwelling units to lots that meet the minimum lot requirements of the primary zoning. See Modification 4.2.

Lot Coverage

The proposed amending language (17.117 H.3) states that all new development must conform to the development standards of the underlying zone. This text could be read to indicate that the second unit, when evaluated alone, needs to meet these requirements, irrespective of the existing first unit's coverage.



Such an interpretation would allow for much denser development that exceeds maximum mass and scale requirements to the detriment of community character and coastal viewsheds. This is easily corrected by specifying that the coverage standards are cumulative. In other words, the attributes of the second unit must be added to the attributes of the first and together must be less than the maximum coverage standards. See suggested Modification 4.3.

Permit and Notice Requirements

Proposed Section 17.117 E.2 establishes the permit requirements for projects within the coastal appeal zone. It notes that coastal development permits are required for secondary dwelling units and waives the public hearing requirements of the zoning ordinance. The action on the project by the City is final unless an appeal is brought to the Coastal Commission within ten days of the receipt of the City's Notice of Final Local Action. The ordinance is silent on the noticing requirements. Staff has recommended two modifications to the amending language. The first modification includes a public hearing requirement for requests for secondary dwelling units that are a part of a larger project that requires a public hearing or whenever a variance is requested. So, for example, if the proposed development includes a single-family residence and secondary dwelling unit or if the proposal requires a variance, then there must be a public hearing. Otherwise, requests solely for secondary dwelling units that meet all the development standards are waived from the public hearing requirements. Secondly, a modification is recommended that requires noticing of all proposed secondary dwelling units in accordance with the existing notice requirements of the certified zoning (section 17.124.090). Nothing in AB 1866 precludes or exempts a local government from meeting its notice obligations for Coastal Development Permits under the Coastal Act. See Modifications 3 and 9.

Exemption for Existing Secondary Dwelling Units

The proposed amendment (Section 17.117K indicates that certain existing secondary structures may be exempted from the parking and unit size requirements of the secondary dwelling unit element, if the existing secondary unit meets the requirements of the Uniform Building Code and the primary dwelling has the requisite parking. Though the proposed exemption does not appear to conflict with the certified LUP, a modification is needed to clarify that all *new* development of secondary dwelling units and/or modification of existing secondary units must conform to the development standards of the underlying zone and all applicable requirements of the General Plan/Local Coastal Plan and certified zoning ordinance. See suggested Modification 5.

Exceptions

Section 17.117 K of the proposed amendment provides that secondary dwelling units that do not meet all of the identified development standards may be allowed subject to a discretionary approval of a Coastal Development Permit by the Planning Commission. In order to approve the second unit, the PC must make the findings that the project meets the intent of state law with respect to secondary units, the exception is necessary for development of a primary and secondary unit on the site, and the project will be compatible with the neighborhood. This section of the proposed amendment, in and of itself, appears to conflict with the intent of AB1866. The purpose of the bill was to promote additional (i.e., secondary)



housing units within existing residentially zoned neighborhoods, by streamlining the application review and approval process. In order to achieve this and maintain neighborhood character and compatibility, AB 1866 contains provisions that require a local government to impose standards on second units including density requirements, availability of sewer and water, and other development standards such as building height, setbacks, parking, lot coverage, maximum size of unit. The amending language proposed by the City would appear to eliminate these requirements and provide for a class of development that does not conform to the building requirements of the primary zone. The abbreviated review and approval process authorized under AB 1866 are specifically limited to those classes of development that are consistent with the development standards of the primary zone.

Secondly, an exception process is not necessary. Any proposed development that does not meet the standards of the primary zone, may be approved with a variance. Those projects that require a variance, however, are subject to the regular notice and hearing requirements of the LCP.

And lastly, it is difficult to understand how a project that does not meet the development standards of the underlying zoning can be found compatible with the neighborhood. The development standards established for a zoning district are the measuring stick from which to evaluate a project's consistency and compatibility with the existing character of the built environment. By eliminating these requirements, the City eliminates the criteria for which all projects are evaluated. Therefore, staff is recommending a modification that strikes the exception clause from the proposed zoning ordinance amendment. See Modification 6.

Clarifications/Other

In addition to those issues detailed above, there are instances where the language of the proposed amendment needs to be clarified to ensure its clear implementation consistent with the LUP. See suggested Modifications 1 and 4.9.

Conclusion

The Commission must determine whether the zoning code changes proposed are consistent with and adequate to carry out the LUP. There are portions of the proposed IP text where there are inconsistencies and/or other issues that would affect the proposed amendment's ability to carry out LUP policies, and ultimately to ensure that coastal resources are protected as directed by the LUP. Fortunately, there are modifications that can be made to address the identified issues.

In conclusion, if so modified in all of the ways outlined here according to the cited modification texts, then the IP as amended by the proposed amendment, and as further modified as suggested above and in the cited modification texts, is approved as being consistent with and adequate to carry out the certified LUP as amended.

C. California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been



certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Therefore, local governments are not required to undertake environmental analysis of proposed LCP amendments, although the Commission can and does use any environmental information that the local government has developed. CEQA requires that alternatives to the proposed action be reviewed and considered for their potential impact on the environment and that the least damaging feasible alternative be chosen as the alternative to undertake.

The City in this case prepared a negative declaration for the proposed amendment under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate suggested modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).





PISMO BEACH COUNCIL AGENDA REPORT

SUBJECT: CITYWIDE: SECOND READING OF ORDINANCE NO. 03-03, AMENDING CHAPTERS 13, 15, AND 17 AND OF THE MUNICIPAL CODE, TO PERMIT SECONDARY DWELLING UNITS. (Planning File # 02-0288)

RECOMMENDATION: Adopt ordinance no. 03-03, repealing Ordinance 334, adopting a Negative Declaration of environmental impact, and amending the Municipal Code to permit ministerial approval of secondary dwelling units when certain standards are met.

EXECUTIVE SUMMARY:

Background: The City Council introduced Ordinance no. 03-03 on October 7, 2003, a modified version of the draft recommended by the Planning Commission. The ordinance allows secondary dwelling units on any residential lot in the city (when standards can be met). It allows second units up to 1200 s.f. in area, prohibits their use as vacation rentals, and requires one parking space per second unit. The ordinance also includes an exception process. Attachment 1 contains the ordinance as introduced, with some minor word changes that anticipate a Coastal Commission request (changes are indicated by italics; final version will not include the italics).

FISCAL IMPACT: Allowing secondary units in some circumstances is not expected to have a significant impact on the City's finances. The ordinance will allow more efficient use of existing infrastructure. Planning and construction permits should pay for the cost of review.

OPTIONS:

1. Make additional modifications to the ordinance and re-introduce it. The second reading would then be scheduled for November 4, 2003. On November 17, City staff will be required to approve any complete applications already submitted that are consistent with state law.
2. Continue the item. Direction should be given to staff.
3. Take no action. The ordinance will not be passed. The state law provisions would go into effect November 17.

ATTACHMENTS:

1. Ordinance no.03-03, repealing Ordinance 334 and amending the Municipal Code

Prepared by: Judith Lautner, Planning Specialist

Meeting Date: October 21, 2003

Reviewed by: Carolyn Johnson, Planning Manager

Approved by: Randy Bloom, Community Development Director

City Manager Approval: _____

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EXHIBIT NO. *A*

APPLICATION NO.

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ORDINANCE NO. O-03-03

AN ORDINANCE OF THE CITY OF PISMO BEACH REPEALING ORDINANCE 334 AND AMENDING CHAPTERS 13, 15, AND 17 OF THE MUNICIPAL CODE TO PERMIT SECONDARY DWELLING UNITS.

WHEREAS, the City of Pismo Beach ("Applicant") submitted an application to the City of Pismo Beach for ordinance amendments to allow secondary dwelling units ministerially, in accordance with state law; and

WHEREAS, the Planning Commission held duly-noticed public hearings on February 11, 2003, April 8, 2003, and May 13, 2003, at which all interested persons were given the opportunity to be heard; and

WHEREAS, the Planning Commission reviewed the environmental initial study, in accordance with the provisions of the California Environmental Quality Act (CEQA), and found that it is a complete informational environmental document; and

WHEREAS, the City Council held duly-noticed public hearings on July 1, and October 7, 2003, and held a joint public workshop with the Planning Commission on August 26, 2003, at which all interested persons were given the opportunity to be heard; and

WHEREAS, the City Council reviewed the environmental initial study, in accordance with the provisions of the California Environmental Quality Act (CEQA), and finds that it is a complete informational environmental document.

NOW, THEREFORE, THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1. Findings. The City Council makes the following findings:

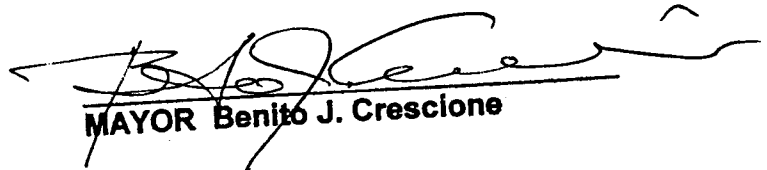
1. The project consists of ordinance amendments to allow secondary dwelling units throughout the city in residential zones, if certain conditions are met.
2. There are no site constraints or other factors that would create the potential for significant environmental impacts as a result of the project.
3. An environmental initial study was completed for the project, and the City Council finds that this document is a complete informational document, prepared in accordance with the California Environmental Quality Act.
4. The amendments to the 1983 Zoning Code are consistent with the Coastal Act.

Section 2. Action. The City Council does hereby repeal Ordinance 334, adopt the Negative Declaration, certify that the amendment to the Local Coastal Program is intended to be implemented in a manner fully in conformity with Division 20 of the Public Resources Code, otherwise known as the Coastal Act, and approve the ordinance amendments, attached as Exhibit B.

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UPON MOTION of Councilmember Rabenaldt, seconded by Councilmember Reiss, the foregoing Ordinance is hereby introduced at a Regular Meeting of the City Council held this 7th day of October, 2003, with the following roll call vote, to wit:

AYES:	Councilmembers Rabenaldt, Reiss, Natoli, and Mayor Crescione
NOES:	None
ABSENT:	Councilmember Gonzalez-Gee
ABSTAIN:	None


MAYOR Benito J. Crescione

ATTEST:

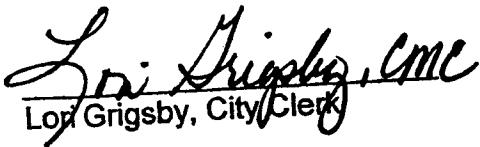

Lori Grigsby, City Clerk

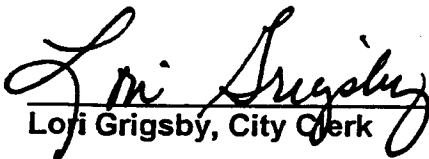
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PASSED AND ADOPTED at a regular meeting of the City Council held this 21st day of October 2003, on motion of Councilmember Rabenaldt, seconded by Mayor Pro Tem Reiss, on the following roll call vote, to wit:

AYES: Councilmembers Rabenaldt, Reiss, Gonzales-Gee, Natoli and Mayor Crescione
NOES: None
ABSTAIN: None
ABSENT: None


MAYOR Benito J. Crescione

ATTEST:


Lori Grigsby, City Clerk



City Attorney

Exhibit A: Negative Declaration
Exhibit B: Ordinance Amendments

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PISMO BEACH COUNCIL AGENDA REPORT

SUBJECT: CITYWIDE: FIRST READING OF ORDINANCE NO. ___, AMENDING CHAPTERS 13, 15, AND 17 AND OF THE MUNICIPAL CODE, TO PERMIT SECONDARY DWELLING UNITS. (Planning File # 02-0288)

RECOMMENDATION: Introduce an ordinance repealing Ordinance 334, adopting a Negative Declaration of environmental impact, and amending the Municipal Code to permit ministerial approval of secondary dwelling units when certain standards are met.

EXECUTIVE SUMMARY:

Background: The City Council considered an ordinance to allow secondary dwelling units on July 1, 2003. The Council continued the hearing, directing staff to set up a public workshop to discuss elements of the proposal. That workshop was held on August 26, 2003, with the Planning Commission and several citizens. At the close of the workshop, staff agreed to provide alternatives to the Council for several provisions of the ordinance. Attachment 1 discusses ordinance provisions and provides alternative language for Councilmembers to consider. Attachment 2 (Exhibit B) contains the actual ordinance language, *along with suggested alternative language*.

Additional resources are available in the Council Reading File.

FISCAL IMPACT: Allowing secondary units in some circumstances is not expected to have a significant impact on the City's finances. The ordinance will allow more efficient use of existing infrastructure. Planning and construction permits should pay for the cost of review.

OPTIONS:

1. Deny the request. As of November 17, City staff will be required to approve any applications that are consistent with state law.
2. Continue the item. Direction should be given to staff.

ATTACHMENTS:

1. Discussion of ordinance and suggested alternatives
2. Ordinance no. ___, repealing Ordinance 334 and amending the Municipal Code, *with alternative language*
3. Environmental Initial Study
4. Minutes: City Council -July 1, 2003; Public Workshop -August 26, 2003

Prepared by: Judith Lautner, Planning Specialist **Meeting Date:** October 7, 2003
Reviewed by: Carolyn Johnson, Planning Manager
Approved by: Randy Bloom, Community Development Director

City Manager Approval: _____

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Secondary Dwelling Units: Alternatives to specific provisions

SUMMARY

The City Council and Planning Commission held a joint public workshop on August 26, 2003. At the close of the workshop, the Council directed staff to develop alternatives for several of the elements of the proposed ordinance. Specifically:

Unit size: The Planning Commission recommendation is to allow units that are 20% of the size of the lot or 600 s.f., whichever is larger, with a maximum size of 1200 s.f. No alternatives are offered. State law only says that "at least an efficiency unit" must be permitted.

Occupancy: The Planning Commission recommendation is to require that the property owner or a relative live in one of the two units, and to prohibit use of either unit as a vacation rental. The alternative suggested is to retain the vacation rental prohibition and remove the occupancy restriction.

Utilities: The Planning Commission recommendation is to require that utilities for the primary and secondary units be shared. Alternatives include 1) requiring the utilities to be split; and 2) allowing the property owner to choose.

Parking: The Planning Commission recommendation is to require one parking space only when the second unit is over 600 s.f. in area, and to require no additional spaces if it is 600 s.f. or smaller. Alternatives include 1) requiring one parking space for units up to 600 s.f. in area, two for units over 600 s.f. in area; 2) requiring one parking space per secondary unit, regardless of size; 3) retaining the requirement as written, but prohibiting tandem parking for the second unit space.

Development impact fees: The Planning Commission recommendation is to exempt second units from these fees. Alternatives include 1) requiring a percentage of the standard SFR fee; 2) requiring the fee charged for an apartment.

Design review: The Planning Commission recommendation is to require second units to be coordinated with the primary unit by using complementary materials and having similar roof pitches and materials. The alternative offered is to delete this requirement.

Exception process: The joint Commission-Council workshop resulted in a consensus that an exception process should be built into the ordinance, to allow citizens to request exceptions to any of the provisions of the ordinance. Requests for secondary units that require such exceptions would be subject to discretionary approval by the Planning Commission, rather than ministerial approval at the staff level.

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PROVISIONS OF THE PROPOSED ORDINANCE
with suggested alternatives

A summary of draft ordinance provisions. The proposed regulations would permit secondary dwelling units in all residential zones, on lots 5,000-s.f. or larger (or on smaller lots when the units can be developed without any exceptions to standards). They would be permitted only on lots that contain or will contain one primary dwelling. As proposed, no additional parking would be required for second units 600 s.f. or smaller in area, and one space would be required for larger units. Any required spaces could be located in tandem with spaces for the primary residence. The owner or a relative of the owner would be required to live in either the primary or the secondary unit, and neither unit may be used as a vacation rental. Second units existing at the time of ordinance adoption (nonconforming units) may be approved through a special two-year amnesty program that provides some exceptions to the above requirements but stipulates that all such units must comply with the Uniform Housing Code.

Copies of the ordinances, articles, and surveys used in the development of the regulations are available for review in the project files. Copies of the Planning Commission minutes, a select group of articles, copies of ordinances from other cities, the state statute on secondary units, the environmental study, the proposed regulations, and results of surveys are in the Council Reading File.

The particulars. The proposed Municipal Code changes are attached as Exhibit B to the draft ordinance, which is Attachment 2. The following paragraphs describe the provisions of the ordinance as written, and provide alternatives where appropriate. *Wording for the alternatives has been inserted into the draft ordinance to make it easier to modify sections.*

1. Permit process:

Secondary dwelling units would be approved through three different processes:

Outside the Coastal Zone: The application would be reviewed and acted upon by staff, without notification to neighbors. If the application meets the standards in the ordinance, it must be approved. No appeals may be filed.

Inside the Coastal Zone but outside the Coastal Appeal Zone: The application would be reviewed and acted upon by staff, and neighbors would be notified. If the application meets the standards in the ordinance, it must be approved. No appeals may be filed.

Inside the Coastal Appeal Zone: The application would be reviewed and acted upon by staff, and neighbors would be notified. If the application meets the standards in the ordinance, it must be approved. Appeals may be filed to the Coastal Commission only (The Coastal Commission may not act on the use itself, but only on the physical qualities of the project).

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Note: AB1866 says that its provisions do not negate any requirements of the Coastal Act. The noticing procedures above incorporate requirements of both in a way that satisfies the Coastal Commission as well as the City's legal staff. Any changes to the above processes should be reviewed by the City Attorney's office.

2. **Lot size:** 5,000 s.f. or larger, except that lot size may be smaller if the unit can be developed without a request for any exceptions or variances. A total of 62% of the residential lots in the city are 5,000 s.f. or larger. Of the R-1 or RSL lots, 72% are 5,000 s.f. or larger¹. This means that a majority of the residential lots in the city are eligible for second units, assuming other development standards can be met.

State law limitations: The state law does not stipulate minimum or maximum lot sizes for secondary units. It does say:

65852.150.

...

It is the intent of the Legislature that any second-unit ordinances adopted by local agencies have the effect of providing for the creation of second units and that provisions in these ordinances 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 second units in zones in which they are authorized by local ordinance.
(emphasis added)

Therefore, a lot size requirement larger than most residential lots in the city would likely be considered "excessive" or "burdensome" in this context. The 5,000-s.f. minimum lot size is reasonable and not overly restrictive.

Alternatives: None proposed.

The lot size could be smaller or larger than the 5,000 s.f. proposed by the Planning Commission.

The draft ordinance allows ministerial approval of second units on smaller lots if the development can be completed without any exceptions to development standards. At the workshop, however, both Planning Commissioners and City Councilmembers supported a requirement for Planning Commission (rather than ministerial) review of any requests on lots smaller than 5,000 s.f.

An alternative requiring lots to be a minimum of 5,000 s.f., with no built-in exception, is included in the draft ordinance. An exception process is recommended below and also included in the draft.

¹ Source: City of Pismo Beach Geographic Information System; calculation from
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3. **Lot development standards:** Except for parking, the secondary unit would be required to be developed under the development standards for the particular zoning district. In other words, the unit must fit within the building envelope and size allowed in the specific district.

State law limitations: State law says an ordinance that requires second units to comply with the standards of the underlying zone is consistent with state law.

Alternatives: none offered

4. **Unit size:** As proposed, the second unit may be no larger than 20% of the area of the lot or 600 s.f., whichever is larger, and in no case larger than 1,200 s.f. in area.

State law limitations: State law only requires that cities allow "at least an efficiency unit":

65852.2.

(d) A local agency may establish minimum and maximum unit size requirements for both attached and detached second units. No minimum or maximum size for a second unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings which does not permit *at least an efficiency unit* to be constructed in compliance with local development standards.
(emphasis added)

Alternatives: none offered. The City Council could change the requirement to allow smaller or larger second units. The unit size could be tied to the size of the primary unit, as it is in some cities. The range recommended is consistent with many of the other ordinances in other cities, perhaps a little more generous on the lower end.

5. **Parking.** The draft regulations would require the primary residence to have its required two parking spaces (this is part of the basic "applicability" standard, section D in the draft). No additional spaces would be required for the second unit unless it exceeds 600 s.f. in area. In that case, one space would be required. This one space could be in any yard or could be in tandem with one of the primary unit spaces.

State law limitation: State law limits parking to one space per unit or per bedroom. Parking is to be allowed in setback areas or in tandem *unless* geographic conditions make these alternatives unsafe or such parking is not allowed in the jurisdiction otherwise.
(Section 65852.2 (e))

Alternatives:

Alternative A: requires the same number of spaces as draft ordinance. Does *not* permit space for the secondary unit to be in tandem with space for the primary unit.

Alternative B: requires *one* parking space for units up to 600 s.f. in area, *two* spaces for units over 600 s.f. in area. Permits the space(s) for the second unit with space(s) for the primary unit.

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Alternative C: Requires one parking space for the secondary unit, regardless of size. Allowed to be in tandem with a space for the primary unit.

These are not the only alternatives possible, of course. Some elements of each could be modified to create a new alternative.

6. **Occupancy.** Either the primary or the secondary unit would be required to be occupied by the property owner or a relative. This requirement is intended to assure adequate oversight and control of the tenant. A deed restriction would be recorded, requiring such occupancy. The restriction would say that if the owner or a relative does not occupy one of the units, then the second unit must be converted to a use allowed in that zone (for example, a guest house without a kitchen).

Neither of the units would be permitted to be used as a transient rental (vacation rental). This provision is intended to assure that the units are used as housing.

State law limitations: State law permits occupancy restrictions such as these (although one bill currently going through the legislature calls for eliminating all occupancy restrictions).

Alternatives: An alternative is offered that eliminates the requirement for property owner or relative occupancy but retains the restriction against vacation rental use.

At the workshop, some councilmembers and citizens expressed concern about the limitations the occupancy restriction would put on property owners. Planning Commissioners explained the basis of their decision – to provide greater control of the property, to prevent low-density zones from becoming higher-density zones. One person characterized the second unit ordinance as creating a new zone: R1-1/2.

Some persons felt enforcement would be impossible. There are two parts to enforcing this provision: 1. determining if a property owner lives on the property, and 2. if not, taking action to get the second unit converted to another purpose.

Determining if the owner occupies the property is not difficult. Assessor's rolls reflect the current address of owners of property. Getting a property owner to convert a second unit to another, legal, use, is more difficult, but no different in kind from other enforcement actions. This difficulty has not kept other jurisdictions from including a similar occupancy restriction in their ordinances.

7. **Compatibility.** The ordinance includes some provisions to assure that secondary units will be compatible with the existing residence and with the neighborhood. Because there are so many possible scenarios and so many different styles of homes in Pismo Beach, the Commission did not want to impose rigid requirements, like requiring all secondary units to be behind primary units or requiring the new units to use exactly the same materials as the existing. The ordinance requires the secondary unit to be limited in size

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with the existing unit in terms of materials, roof pitches, and general style, and the primary unit is to be "visually prominent" over the secondary unit.

These provisions do allow for some interpretation at the staff level. The Commission was not entirely satisfied that the requirements would lead to compatible units in every case, but on balance understood that not everything can be tied down exactly.

State law limitations: The state law permits "design review" but leaves it to the individual jurisdiction to determine how to do this review ministerially.

Alternatives: At the workshop, there was a suggestion that the requirement be deleted altogether. The draft ordinance includes such an alternative.

8. **Services:** The primary and secondary unit would be required to have shared utilities. This provision reinforces the owner-occupant requirement.

State law limitations: State law does not address provision of services.

Alternatives:

Alternative a: The units can be required to have separate utilities.

Alternative b: The property owner can be allowed to choose whether to share the services or not.

9. Amnesty.

The ordinance provides for a two-year amnesty period. During this time, owners of existing nonconforming second units could apply for a special certificate, approving the existing unit. Such units would not be required to meet all development standards, but would have to meet Uniform Housing Code standards. Gaining approval of these units means that owners can sell their property and assure buyers that the extra unit is legal. Otherwise, they must disclose the status of the unit and the buyer accepts the risk.

The two-year period would begin when the ordinance is adopted. Applicants would apply for a special inspection. The Building Division inspector would inspect the units for compliance with the Uniform Housing Code. If deficiencies are found, the applicant would be able to apply for permits to correct these deficiencies. When corrected, a certificate would be issued.

The benefits of the amnesty program are:

Safety: It provides an incentive for owners of existing units to legalize the units, which means that some of these existing units will be made safer than they are now. The requirement that units must meet Uniform Housing Code standards is less restrictive than a requirement to meet Uniform Building Code standards.

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Meeting Housing Element goals: The additional units approved through the amnesty program may be considered to be "new units" from the standpoint of the City's housing allocation, according to the consultant that is preparing the update of the Housing Element.

The two-year period gives property owners some time to apply for a certificate, but does not extend this period indefinitely. The limit also encourages owners to come in soon to apply, which can lead to the upgrading of unsafe units shortly after the ordinance is adopted. If the program were permitted to go on forever, it would become increasingly difficult to determine exactly when a nonconforming unit was created, and some owners may be tempted to create such units illegally and then apply for the certificate to gain relaxation of some standards.

If the Council adopts this provision as recommended, the Community Development Department will send out letters, shortly after the ordinance adoption, to owners of all property that has or could have nonconforming second units (owners of property containing single residences), inviting them to apply for an acceptance certificate.

State law limitations: State law does not address amnesty.

Alternatives: None offered. The council may choose to eliminate the provision or modify aspects.

10. Fee exemptions.

The ordinance revisions would exempt secondary units from development impact fees. These fees average about \$11,000 for a single unit. Staff research indicates that these fees are not justified by the additional use of services, and the exemption may provide the added incentive needed to encourage development of such units.

State law limitations: State law does not address development fees. It does encourage the removal of obstacles to the provision of second units.

Alternatives:

Alternative a: Require the full fee.

Alternative b: Require a percentage of the standard fee (20% of the standard fee is shown in the draft).

Alternative c: Require the fee charged for apartments

Persons at the workshop stated preferences ranging from requiring full payment of impact fees to requiring a percentage of the usual fee to finding a formula for the fee based on the size of the primary or secondary unit, to exempting the units.

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The easiest formula would be some direct percentage of the typical fee paid for a single-family home. For the following reasons, staff continues to recommend that second units be exempt from water and development impact fees:

- The same fee is charged for a residence, whatever the size of the dwelling.
- A new fee is not charged when an older, smaller residence is replaced by a larger one.
- The biggest water use is landscaping. This use will either not change with the addition of a second unit or it will decrease.
- The total amount of physical development allowed on a lot is the same with or without a second unit.
- Fixture fees will still be charged, to assist with wastewater system improvements.

AN EXCEPTION PROCESS

Councilmembers, Planning Commissioners, and members of the public agreed that some kind of exception process would be desirable. The majority preferred that the Planning Commission act on exceptions. This means that the exception process would be discretionary rather than ministerial.

A new section has therefore been added to the draft regulations (section K in Attachment 2, Exhibit B). The new wording would allow secondary units that do not meet all of the standards to be reviewed by the Planning Commission. To approve the unit, the Commission would have to make three findings:

1. *The project meets the intent of State law and of the secondary dwelling unit regulations.*
2. *The exception is reasonably necessary for the development of a primary and secondary unit on the site.*
3. *The project will be compatible with the neighborhood.*

The Council may wish to modify the findings.

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Secondary Dwelling Unit Regulations

Amendments to the 1983 and 1998 Zoning Codes, Chapter 17 of the Municipal Code
1983 code sections (or words) are listed first; 1998 code sections (or words) are in (*italicized parentheses*).

Amendments to definitions:

Additions to definitions:

Section 17.006 (17.62.020) Definitions

17.006.0847 (P) Primary dwelling unit: A single dwelling on a lot that contains no other dwellings, other than a secondary dwelling unit as defined in this section.

17.006.0887 (S) Secondary dwelling unit: A subordinate dwelling unit added to, or created within, or detached from a single-family dwelling, but on the same parcel, that provides basic requirements for independent living, sleeping, eating, cooking, and sanitation.

17.006.0953 (T) Transient lodging or rental: any structure, or any portion of any structure, that is occupied or intended or designed for occupancy by persons for periods of fewer than 30 days or one month, whichever is shorter.

New Code Section:

Section 17.117 (17.08.155) Secondary Dwelling Units

A. **Intent and purpose.** These regulations are intended to:

1. Provide additional opportunities for developing housing that would otherwise not be possible under the current density standards;
2. Provide a means for purchasers of homes to assist in making payments on home loans;
3. Provide security for homeowners who fear criminal intrusion and personal accidents while living alone;
4. Provide separate but close living quarters for homeowners' relatives who are in need;
5. Provide for greater occupational, household type, and income-level diversity within neighborhoods;

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6. Make more efficient use of existing infrastructure.
7. Provide an opportunity for property owners to create housing that is affordable to lower- and moderate-income renters.

B. Consistency with adopted plans. Secondary dwelling units developed in accordance with this section are a residential use that is consistent with the existing general plan and zoning designation for the lot.

C. Findings.

1. Secondary dwelling units designed in accordance with this section are consistent with the certified Local Coastal Program.
2. Secondary dwelling units designed in accordance with this section require no discretionary approval.
3. Secondary dwelling units designed in accordance with this section will have no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.
4. Secondary dwelling units larger than 600 s.f. in area are likely to house more than one adult resident who owns a vehicle. Therefore, additional parking is needed for units that exceed 600 s.f. in area.

D. Applicability. Secondary dwelling units are permitted in [R-1, R-2, R-3, R-R, P-R (1983 code)] [RSL, RSM, RR (1998 code)] zones, on lots or parcels where there is only one existing or planned residence, and where the required number of parking spaces for the primary residence is provided. The requirements in this section apply to new secondary dwelling units and to additions to existing secondary dwelling units.

E. Permit required. Secondary dwelling units are permitted with approval of either a Zoning Clearance, consistent with Section 17.121.100 (17.42.020), or a Coastal Development Permit, consistent with Section 17.124.030 (17.03.020) and as otherwise provided in this section.

1. **Projects outside Coastal Zone.** A Zoning Clearance is required. Action on the permit is final.
2. **Projects in Coastal Appeal Zone.** A Coastal Development Permit (*Zoning Clearance*) is required. The public hearing is hereby waived, in accordance with Section 17.124.100 (17.58.030). Action on project is final, unless appealed to the Coastal Commission within ten days of the Commission's receipt of the Notice of Final Action.

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3. **Projects in Coastal Zone, non-appealable.** A Coastal Development Permit (*Zoning Clearance*) is required. Notice is required, in accordance with Section 17.124.090 (17.58.040). Action on the Coastal Development Permit (*Zoning Clearance*) is final.

F. Density. For purposes of calculating the density on a lot, the primary and secondary dwelling units together shall be considered to be one density unit. Secondary dwelling units do not exceed the allowable density for the lot upon which the unit is located. Only one primary and one secondary unit are permitted per legal lot or parcel.

G. State Law Applicability. The provisions of this section shall be subordinate to and superceded by the controlling provisions of any applicable state law or laws.

H. Development standards. The following standards are intended to ensure that second dwelling units do not adversely affect either adjacent residential parcels or the surrounding neighborhood, and are developed in a manner that protects the integrity of the residential district while providing for needed housing opportunities.

1. **Occupancy.** Neither unit may be used as a transient rental (see definition, Section 17.006.0953 (T)).

A deed restriction shall be recorded against the title of the property that contains the second dwelling unit, prior to issuance of a building permit. Such deed restriction shall stipulate that the second dwelling unit cannot be sold separately or used as a transient rental.

2. **Lot area.** The lot may be any size.

3. **Lot coverage, yards, height, maximum building area.** All new development must conform to the development standards of the underlying zone, except where specifically modified herein.

4. **Parking.** One additional parking space is required for the secondary unit. Parking spaces may be covered or uncovered, must be paved, and must be at least 9' wide and 18' deep. Spaces may be located within a required setback (see Sections 17.102.020, 17.102.030, 17.102.040 (Table 2-3, Table 2-4)) but if located in the front yard additional paving shall be porous, permitting planting, or decorative. The space required for the secondary unit may be in tandem with any parking spaces required for the primary residence.

5. **Unit size.** The primary and secondary dwelling units together may not exceed the building area or lot coverage allowed for a single dwelling in the underlying zone. Within this maximum building envelope and building area, the maximum building area of a secondary dwelling unit, not including any garage, may not exceed 1200 square feet in area.

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6. **Services.** The primary and secondary units may be served from the same gas, electricity, and water lines, at the discretion of the property owner.
7. **Water conservation.** All plumbing fixtures in both the primary and the secondary dwelling units must meet current Title 24 requirements for water conservation.
9. **Consistency with codes.** All new development must comply with all local, state, or federal regulations that apply to the property, including grading, tree protection, open space ordinances, and the adopted Building Code, except where specifically modified herein.

I. Acceptance of existing secondary dwelling units.

1. **Exemption.** Existing secondary dwelling units that meet requirements of the Uniform Housing Code, as determined by the Building Official, on lots that include the required number of parking spaces for the primary dwelling unit, are exempt from the parking and unit size requirements of this section.
2. **Acceptance Certificate required.** To obtain an Acceptance Certificate, owners of units existing at the time of adoption of this ordinance must file an application with the Community Development Department for acceptance of the unit.
 - a. **Within one year of adoption.** An application for a certificate filed within one year of adoption of this ordinance (by DATE), must include a site and floor plan, documentation of ownership, and a fee as established by City Council resolution.
 - b. **After one year, but within two years of adoption.** An application for a certificate filed within two years of adoption of this ordinance (by DATE), but filed more than one year after adoption, must include a site and floor plan, documentation of ownership, additional materials as required to establish the approximate date the unit was built, and a fee as established by City Council resolution.

Upon receipt of the application, the building inspector will schedule an inspection. If the unit meets basic health and safety standards as identified in the Uniform Housing Code, an Acceptance Certificate will be issued and the address of the unit will be entered into the City's database, indicating that the secondary unit is legal.

J. Fire sprinkler requirements. Primary and secondary dwelling units will not be required to include fire sprinklers except when the units are in a building that is over 4,000 s.f. in area, three stories tall, or over 35' in height.

K. Exceptions. Secondary Dwelling Units that do not meet all of the above standards may be allowed, subject to discretionary approval of a Development or Coastal Development

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by the Planning Commission. To approve a secondary dwelling unit with exceptions, the Planning Commission must make all of the following findings:

1. The project meets the intent of State law and of the secondary dwelling unit regulations.
2. The exception is reasonably necessary for the development of a primary and secondary unit on the site.
3. The project will be compatible with the neighborhood.

L. Illegal secondary dwelling units. The establishment of a secondary dwelling unit without a Zoning Clearance, Coastal Development Permit, or Acceptance Certificate is declared to be unlawful and shall constitute a misdemeanor and a public nuisance.

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Amendments to other sections of the zoning codes

Key: Additions are indicated by underlined italics. Deletions are indicated by ~~strikethroughs~~.

Amendments to other sections of 1983 Zoning Code:

17.124.100 Public Hearing Procedures At least one public hearing shall be held on each application for an appealable or non-appealable coastal development permit application for a project in the R-3, R-4, P-R, R-R, C-R, M-H, C-1, C-2, C-M, OS-1, OS-R or G zones, except that no hearing is required for the development of a secondary dwelling unit consistent with Section 17.117 of this Code. At least one public hearing shall be held on each application for an appealable coastal development permit application for a project in the R-1 and R-2 zones, except that no hearing is required for the development of a secondary dwelling unit consistent with Section 17.117 of this Code. Non-appealable coastal developments in the R-1 and R-2 zones may be processed as administrative permits at a staff level pursuant to the noticing standards of this ordinance for non-appealable developments. Such hearings shall occur no earlier than ten (10) calendar days following the mailing of the notices required by this chapter. The public hearing shall be conducted in accordance with existing City procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.

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