

CALIFORNIA COASTAL COMMISSION

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April 18, 2013

W16a

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
MELANIE FAUST, COASTAL PROGRAM ANALYST, NORTH COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR LCP
AMENDMENT No. CAR-MAJ-3-11 (Second Dwelling Unit Rent Restrictions)
for Commission Meeting of May 8 - 9, 2013**

SYNOPSIS

The subject Local Coastal Program (LCP) implementation plan amendment request was filed as complete on March 20, 2012. The amendment request involves one item only. A one-year extension of time to review the pending request was granted on May 9, 2012; therefore, the Commission must act on the amendment request by May 19, 2013.

SUMMARY OF AMENDMENT REQUEST

The City of Carlsbad seeks to revise certain provisions of the City's Municipal Code, specifically Chapter 21.10.030 (R-1 One-Family Residential Zone, Second dwelling units), pertaining to the construction of Second Dwelling Units (SDUs) on residentially-zoned properties. Currently, as part of the City's efforts to encourage and provide affordable housing, second dwelling units that are constructed to meet the City's inclusionary housing requirement have rent restrictions. The applicable rental limits are based on each housing proposal as established in the City's inclusionary ordinance. In addition to that program, at present, other second dwelling units that are rented also have rent restrictions. The existing ordinance provides that if the second dwelling unit is rented, the monthly rental rate shall not exceed the allowable housing expense of a low income household as defined elsewhere in the code. Specifically, in this amendment, the City proposes to eliminate existing rent restrictions that property owners may charge for SDUs that are built independently and not part of the City's inclusionary program. The proposed ordinance change would retain the low-income restriction for SDUs constructed as part of the City's inclusionary (affordable) housing program. The proposed amendment consists of text changes only; the revisions will apply citywide, as well as affect development in all segments of the City's LCP.

SUMMARY OF STAFF RECOMMENDATION

The Commission can only reject Implementation Plan amendments where it can be shown that the amendment would be inconsistent with the certified Land Use Plan (LUP) and/or render the Implementation Program (IP) inadequate to carry out the LUP. Based on the subject analysis, the proposed revisions to the City's Zoning Ordinance provisions pertinent to Second Dwelling Units conform with and are adequate to carry out the certified land use plans for the City's various segments.

In 2002, AB 1866 (Wright) was adopted and the legislation essentially required local governments to act on and consider second units ministerially without discretionary review or a hearing. The legislation did not curtail the ability of local governments to establish standards, such as availability of public services, or consider potential traffic impacts from second dwelling units but it did mandate a streamlined process for local review. Based on City records, as of January 2013, the total number of existing dwelling units in the City is 45,566. At that same date, there have been only 219 second dwelling units constructed, representing 0.5% of the total number of dwelling units. The 219 SDUs includes both inclusionary units and those separately constructed by individuals. Therefore, while such units have contributed to the City's overall affordable housing efforts, second dwelling units are a small component. The City has determined that, for individual homeowners who elect to construct a second unit, it is overly burdensome to impose a requirement that the unit be rent restricted to low-income households and has forwarded the subject amendment to delete that provision. Second units constructed to fulfill and comply with the City's inclusionary housing ordinance will continue to be rent restricted.

Given the relatively small number of second dwelling units presently constructed and the City's projection of a long term average of only 12 SDUs per year citywide to be constructed, even with the rent limitations lifted on individually constructed second units, no adverse impacts to coastal access or coastal resources are anticipated. The proposed amendment does not modify any of the existing development standards for second units which include the provision of adequate water and sewer service and additional off-street parking.

Staff is therefore recommending that the amendment be approved as submitted by the City. The appropriate resolution and motion may be found on Page 5. The findings for approval of the Implementation Plan Amendment as submitted also begin on Page 5.

BACKGROUND

There are six geographic segments in the City's LCP. The City's LCP has a unique history in that special legislation directed the Commission to draft the initial LCP. One segment, the Village Redevelopment Area LCP, was certified in 1988 and the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all

of the remaining segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred certification area until an implementation plan for that segment is certified. This amendment again affects only the certified Implementation Plan but is a citywide amendment in scope.

ADDITIONAL INFORMATION

Further information on the City of Carlsbad's LCP Amendment #3-11 may be obtained from Deborah Lee, District Manager, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of Carlsbad's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties, and Village Redevelopment. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred certification area until an implementation plan for that segment is certified. This amendment modifies the City's Implementation Plan (IP) only.

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of the LCP amendment prior to its submittal to the Commission for review. The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided.

- I. MOTION I:** *I move that the Commission reject the Implementation Program Amendment No. 3-11 for City of Carlsbad LCP as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby certifies the Implementation Program Amendment for the City of Carlsbad certified LCP as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plans, and certification of the Implementation Program Amendment will meet the requirements of 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 Implementation Program Amendment on the environment; or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

PART III. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

This request involves a city-initiated LCP amendment to the City's Zoning Ordinance (Municipal Code), which is certified as part of its LCP implementation plan. No changes to land use or the certified LCP land use plans are proposed herein.

The City's amendment would specifically revise certain provisions of the City's Zoning Ordinance pertaining to Second Dwelling Units (SDUs). These units may presently be constructed on most residentially-zoned parcels where single family residences exist throughout the city and this option for supplemental housing development would not change. The proposed amendment would revise existing provisions that establish rent restrictions for certain second dwelling units. The existing requirements limit rental

amounts for all second units to a maximum amount that is calculated by the City as affordable for a low-income family's housing budget or as established through its inclusionary housing ordinance. As proposed for amendment, the restriction on rental rates would remain in place for second units constructed pursuant to the City's inclusionary (affordable) housing program, but rental rate restrictions for other second units (non-inclusionary units) would be eliminated. The City has determined that, for individual homeowners who elect to construct a second unit, it is overly burdensome to impose a requirement that the unit be rent restricted to low-income households and has forwarded the subject amendment to delete that provision. Second units constructed to fulfill and comply with the City's inclusionary housing ordinance will continue to be rent restricted.

B. FINDINGS FOR APPROVAL

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

a) Purpose and Intent of the Ordinance. The primary purpose of this proposed Zoning Ordinance amendment is to revise the existing provisions that govern the construction of second dwelling units citywide.

b) Major Provisions of the Ordinance. The major provisions of the proposed Zoning Ordinance amendment would eliminate existing restrictions on the amount of rent that landowners can charge for SDUs that are not constructed as part of the City's inclusionary (affordable) housing program. No changes are otherwise proposed to development standards for second dwelling units or where they may be allowed.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments.

As noted above, the standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. The proposed amendment consists of text changes to the existing code section governing second dwelling units. For purposes of this analysis, second dwelling units can be divided into two categories: those that are built to satisfy the City's inclusionary housing ordinance (inclusionary SDUs) and those that are not (non-inclusionary SDUs). Non-inclusionary SDUs are typically either added to an existing home by the homeowner or built by the developer/builder along with a new residence as an amenity. The proposed changes alter the rent restrictions pertinent to second dwelling units based on whether the units are constructed pursuant to the City's affordable housing programs (rental rate restrictions would remain) or whether the units are constructed solely at the discretion of the landowner (rental rate restrictions that presently apply would be eliminated). By removing the rental restrictions on non-inclusionary SDUs, the amendment request could potentially encourage the construction of market-rate SDUs but it would not change the existing development standards or regulations for such units.

Based on City records, as of January 2013, the total number of existing dwelling units in the City is 45,566. At that same date, there have been only 219 second dwelling units

constructed, representing 0.5% of the total number of dwelling units. The 219 SDUs includes both inclusionary units and those separately constructed by individuals with 80% of the current supply being inclusionary SDUs that will continue to be restricted and managed as part of the City's inclusionary program. In addition, out of the 219 existing second dwelling units, the total number of SDUs in the coastal zone is only 42 or 19% of the total. The City's Housing and Neighborhood Services Department completes an annual survey of SDUs and the last available report indicates that 28% of second units are rented; 44% of second units are used as housing for extended family and the remaining 28% were used for other purposes, such as a home office. Therefore, while such units have contributed to the City's overall affordable housing efforts, second dwelling units are not a substantial component. The City has determined that, for individual homeowners who elect to construct a second unit, it is overly burdensome to impose a requirement that the unit be rent restricted to low-income households.

Given the relatively small number of second dwelling units presently constructed and the City's projection of a long term average of only 12 SDUs per year citywide (with only one-third of those expected in the coastal zone) to be constructed, even with the rent limitations lifted on individually constructed second units, no adverse impacts to coastal access or coastal resources are anticipated. The elimination of rental restrictions on non-inclusionary second units can be found in conformance with the certified land use plans.

The City's LCP includes five different segments, including the Agua Hedionda Lagoon segment which remains uncertified. For the other four effectively certified segments, there are a number of LCP provisions that encourage visitor use priorities, provision of public access and scenic resource protection. Within the Mello II segment, which comprises the majority of the City's coastal zone, the following LUP policies would be most pertinent:

POLICY 5-1 REGIONAL SEWAGE TRANSPORTATION SYSTEM

The planned improvements to the regional sewage transportation system should be undertaken and completed. These improvements are necessitated by development beyond the coastal zone.

POLICY 5-2 FUTURE SEWAGE TREATMENT

Future treatment demands can be met by the combined effects of enlarging the Encina Water Pollution Control Facility and implementing the City of Carlsbad Wastewater Reclamation Master Plan. The City must participate in meeting growth demands beyond the coastal zone.

POLICY 7-10 PARKING

Parking standards set forth within the City of Carlsbad Zoning Ordinance are appropriate for the future development of various land uses.

POLICY 7-13 VISUAL ACCESS

Visual access over more than 80% of the Carlsbad coastline is unobstructed because of public ownership. No future public improvements which would obstruct this visual access shall be permitted.

In general, the development of second dwelling units are not expected to generate significant land use issues. However, the Commission must be cognizant of coastal communities where serious public infrastructure limitations may exist or inadequate off-street parking supplies may create competition for public parking reservoirs and thus conflict with coastal access. In this instance, the numbers of second dwelling units in the City, and specifically in the coastal zone, are small and no adverse impacts to coastal resources are reasonably expected. As noted above, the proposed amendment does not modify any of the existing development standards for second units which include provisions that adequate water and sewer capacity be available and one additional paved off-street parking space is required for all second units. Garage conversions are prohibited unless replacement off-street garage parking is provided concurrently and in compliance with the City's parking regulations. In addition, much of the City's coastline is in public ownership, including the Carlsbad State Campgrounds, and other nearshore residential neighborhoods are largely built out and they would be unlikely areas for second dwelling units to be constructed. Therefore, the Commission finds the proposed amendment conforms with, and is adequate to carry out, the certified LUP.

In terms of the City's affordable housing efforts, the majority of second dwelling units constructed in the City are inclusionary SDUs and they will continue to have rent restrictions and be managed in the City's inclusionary program. Inclusionary SDUs will be secured and managed through the recordation of housing agreements with the City against the affected property. While the City has determined that the existing rental restrictions for non-inclusionary SDUs function as a disincentive and thus seeks to encourage broader development of second dwelling units in the City, future non-inclusionary units are still expected to serve as affordable housing. Given the size limits for second dwelling units (640 sf. or less), if rented out, they will still likely be moderately priced even in the coastal zone and the City expects many of these units will be credited to meet the City's housing mandate from the State Department of Housing and Community Development. In summary, the Commission finds that the proposed amendment can be found in conformance with the certified land use plans, protects affordable housing and will not adversely impact any coastal resources.

PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. The Commission's Local Coastal Program (LCP) review and approval program has been found by the Resources Agency to be functionally equivalent

to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Pursuant to the City's own obligations under CEQA, the City determined that the subject LCP amendment was exempt from the requirements of the CEQA. Nevertheless, and the City's own determination of CEQA exemption notwithstanding, the Commission is required in an LCP submittal or, as in this case, a LCP amendment submittal, to find that the approval of the proposed LCP, or LCP, as amended, does conform with CEQA provisions. In its action, as noted above, the City found that the proposed amendment is exempt from environmental review pursuant to CEQA Section 15061(b)(3), which exempts projects "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." The proposed amendments herein are primarily procedural in nature, are not substantial and the Commission finds there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect on the environment. Furthermore, the Commission finds that the proposed amendment is unlikely to have any significant adverse effect on the environment. Therefore, the Commission finds that the subject LCP implementation plan, as amended, conforms with CEQA provisions.

ORDINANCE NO. CS-166

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A ZONE CODE AMENDMENT TO AMEND THE SECOND DWELLING UNIT RENT RESTRICTIONS LOCATED WITHIN CHAPTER 21.10 OF THE ZONING ORDINANCE.

CASE NAME: SDU RENT RESTRICTIONS

CASE NO.: ZCA 11-04/LCPA 11-05

The City Council of the City of Carlsbad, California, does ordain as follows:

SECTION 1: That sub-section 21.10.030.D.7 (R-1 One Family Residential Zone, Second dwelling units) is amended to read as follows:

7. An owner signed and notarized a Notice of Restriction, to be recorded against the property, declaring that:

- a. The property owner(s) shall reside in either the main dwelling unit or the second dwelling unit, unless a lessee leases both the main dwelling and the second dwelling unit;
- b. The obligations and restrictions imposed on the second dwelling unit per this Chapter are binding on all present and future property owners.

SECTION 2: That sub-section 21.10.030.E.15 (R-1 One Family Residential Zone, Second dwelling units) is hereby repealed.

SECTION 3: That second dwelling units approved under section 21.10.030 prior to the effective date of this ordinance shall be released from rental rate and/or tenant income restrictions imposed as a condition of their approval; except however, that unit rental rate and/or tenant income restrictions imposed on second dwelling units in accordance with chapter 21.85 (Inclusionary Housing) or other affordable housing assistance program, shall continue to be in force and effect according to the terms of said program.

EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be published at least once in a publication of general circulation in the City of Carlsbad within fifteen days after its adoption. *(Notwithstanding the preceding, this ordinance shall not be effective until LCPA 11-05 is approved by the California Coastal Commission.)*

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1 INTRODUCTION AND FIRST READ at a regular meeting of the Carlsbad City
2 Council on the 6th day of December 2011, and thereafter.

3 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
4 Carlsbad on the 13th day of December, 2011, by the following vote, to wit:

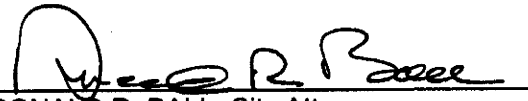
5 AYES: Council Members Hall, Kulchin, Blackburn and Packard.

6 NOES: None.

7 ABSENT: Council Member Douglas.

8 ABSTAIN: None.

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10 APPROVED AS TO FORM AND LEGALITY

11 
12 RONALD R. BALL, City Attorney
13 12/14/11

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15 MATT HALL, Mayor

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17 ATTEST:

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19 
20 LORRAINE M. WOOD, City Clerk

21 (SEAL)



**ZCA 11-04/LCPA 11-05
SDU RENT RESTRICTIONS**

STRIKE-OUT/UNDERLINE¹

Section 21.10.030 (R-1 One Family Residential Zone, Second dwelling units) is proposed to be amended as follows:

21.10.030 Second dwelling units.

A. The public good is served when there exists in a city housing which is appropriate for the needs of and affordable to all members of the public who reside within that city. Among other needs, there is in Carlsbad a need for affordable rental housing. Therefore, it is in the public interest for the city to promote a range of housing alternatives in order to meet the affordable rental housing needs of its citizens. This section is intended to provide a rental housing alternative by establishing a procedure to create new second dwelling units.

B. The provisions of this section shall apply to single-family zones R-A, R-E and R-1, areas designated by a master plan for single-family detached dwellings in P-C zones and lots within multifamily zones R-2, R-3, R-P, R-T, R-W and RD-M, which are developed with single-family residences.

C. Second dwelling units developed within the coastal zone require a minor coastal development permit issued according to the provisions of Section 21.201.085 and a building permit. Second dwelling units outside of the coastal zone require a building permit.

D. The completed minor coastal development permit and/or building permit application for a second dwelling unit shall include the following information:

1. The name(s) of the owner(s);
2. The address of the dwelling units;
3. The assessor's parcel number;
4. Building elevations and a general floor plan of the second dwelling unit;
5. A scaled drawing showing the lot dimensions, the location of the primary and second dwelling unit, location of all vehicular parking and the total square footage of both units;
6. Description and location of water and sanitary (sewer) services; and
7. An owner signed and notarized a Notice of Restriction, to be recorded against the

property, ~~declaring that: in conformance with 21.10.030.E.15 of this Chapter.~~

a. The property owner(s) shall reside in either the main dwelling unit or the second dwelling unit, unless a lessee leases both the main dwelling and the second dwelling unit;

b. The obligations and restrictions imposed on the second dwelling unit per this Chapter are binding on all present and future property owners.

¹ The version of Section 21.10.030 shown in this exhibit was adopted by the City Council on 7/27/10 as part of ZCA 07-02/ LCPA 07-03, but is still pending approval by the California Coastal Commission and is not yet effective. To view the version of Section 21.10.030 currently in effect, please see Agenda Bill No. 20,329 for ZCA 07-02/ LCPA 07-03 or view the Carlsbad Municipal Code at www.carlsbadca.gov.

- E. Second dwelling units shall comply with the following:
1. The second dwelling unit shall either be attached to the main dwelling unit and located within the habitable area of the main dwelling unit or detached from the main dwelling unit and located on the same lot as the main dwelling unit;
 2. The second dwelling unit shall have a separate entrance;
 3. The second dwelling unit must meet the setback, lot coverage and other development standards applicable to the zone which are not addressed within this subsection. In the coastal zone, any housing development processed pursuant to this chapter shall be consistent with all certified local coastal program provisions, with the exception of density, or as otherwise specified within this subsection;
 4. Attached second dwelling units shall conform to the height limits applicable to the zone and detached second dwelling units shall be limited to one story, except that second dwelling units constructed above detached garages shall be permitted and shall conform to the height limits applicable to the zone;
 5. Garage conversions are prohibited unless replacement off-street garage parking is provided concurrently and in compliance with the requirements of Chapter 21.44;
 6. Second dwelling units shall not be permitted on a lot or parcel having guest or accessory living quarters, or a residential care facility. Existing guest or accessory living quarters may be converted into a second dwelling unit provided that all zoning and structural requirements are met;
 7. One additional paved off-street (covered or uncovered) parking space shall be provided for the second dwelling unit and shall comply with the requirements of Chapter 21.44. The additional parking space may be provided through tandem parking (provided that the garage is set back a minimum of twenty feet from the property line) or in the front yard setback;
 8. Adequate water and sewer capacity and facilities for the second dwelling unit must be available or made available;
 9. All necessary public facilities and services must be available or made available;
 10. The second unit may be rented and shall not be sold separately from the main dwelling unit unless the lot on which such units are located is subdivided. The lot upon which the second unit is located shall not be subdivided unless each lot which would be created by the subdivision will comply with the requirements of this title and Title 20; and further provided, that all structures existing on each proposed lot will comply with the development standards applicable to each lot;
 11. The total area of floor space for an attached or detached second unit shall not exceed six hundred forty square feet;
 12. The second dwelling unit shall be architecturally compatible with the main dwelling unit, in terms of appearance, materials and finished quality;
 13. A second dwelling unit which conforms to the requirements of this section shall be allowed to exceed the permitted density for the lot upon which it is located and shall be deemed to be a residential use consistent with the density requirements of the general plan and the zoning designation for the lot;
 14. Second dwelling units intended to satisfy an inclusionary requirement shall comply with the requirements of Chapter 21.85, including but not limited to the applicable rental rates and income limit standards.
 - ~~15. The owner shall sign and notarize a Notice of Restriction, to be recorded against~~

the property, declaring that:

a. ~~If the second dwelling unit is rented, the monthly rental rate shall not exceed the allowable housing expense of a low-income household (defined: Section 21.85.020).~~

b. ~~The property owner(s) shall reside in either the main dwelling unit or the second dwelling unit, unless a lessee leases both the main dwelling and the second dwelling unit;~~

c. ~~The obligations and restrictions imposed on the second dwelling unit per this Chapter are binding on all present and future property owners.~~