

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: November 10, 2016

SUBJECT: FILE NO. PP16-115: AMENDMENTS TO TITLE 20 (ZONING CODE) OF THE SAN JOSÉ MUNICIPAL CODE

- **TO AMEND VARIOUS SECTIONS OF CHAPTER 20.30 “RESIDENTIAL ZONING DISTRICTS” ALL TO ADD MIXED RESIDENTIAL-COMMERCIAL USE AS AN ALLOWABLE USE, TO ALLOW SECONDARY DWELLINGS IN THE R-2 TWO FAMILY RESIDENCE DISTRICT, TO MODIFY DEVELOPMENT STANDARDS FOR RESIDENTIAL USES INCLUDING REDUCING MINIMUM REQUIRED SETBACKS, TO DELETE MAXIMUM NUMBER OF STORIES IN THE R-M MULTIPLE RESIDENCE ZONING DISTRICT WHILE MAINTAINING MAXIMUM ALLOWABLE HEIGHT, TO MODIFY THE PERMIT TYPE FOR EXCEEDANCE OF DECIBEL LEVELS INDICATED IN TABLE 20-85, AND TO AMEND SECTION 20.30.150 “SECONDARY UNITS” IN COMPLIANCE WITH NEWLY ADOPTED STATE LAW;**
- **TO AMEND SECTION 20.90.220 “REDUCTION IN REQUIRED OFF-STREET PARKING SPACES” IN CHAPTER 20.90, “PARKING AND LOADING” TO ALLOW REDUCTIONS IN PARKING SPACES FOR RESIDENTIAL USES IN COMPLIANCE WITH NEWLY ADOPTED STATE LAW;**
- **TO AMEND SECTION 20.200.325 - DWELLING, SECONDARY IN COMPLIANCE WITH NEWLY ADOPTED STATE LAW; TO RE-NUMBER VARIOUS SECTIONS WITHIN CHAPTER 20.200 SO THAT THE SECTIONS ARE LISTED IN ALPHABETICAL ORDER; AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 20**

RECOMMENDATION

The Planning Commission voted 5-0-2 (Abelite and Pham absent) to recommend that the City Council:

- i) Consider the Determination of Consistency with Envision San José 2040 General Plan EIR, Resolution No. 76041, and Supplemental EIR to Envision San José General Plan EIR, Resolution No. 77617, and Addenda thereto; Downtown Strategy 2000 EIR, Resolution No. 72767, and Addenda thereto; North San José Development Policies EIR, Resolution No. 72768, and Addenda thereto; and Diridon Station Area Plan EIR, Resolution No. 77096 and Addenda thereto (collectively, the “Final Program EIRs”), in accordance with CEQA; and
- ii) Recommend to the City Council the approval of an Ordinance amending Title 20 of the Municipal Code as described above.

OUTCOME

If adopted by the City Council, the proposed ordinance would amend the Zoning Code provisions pertaining to land uses in conventional Residential Zoning Districts to implement: 1) City Council direction to staff on secondary dwellings as discussed at the Council priority-setting session during a public hearing with the City Council held on December 15, 2015; 2) State law pertaining to “accessory dwelling units” (also referred to as ADUs, second units or secondary dwellings) adopted in September 2016, which becomes effective on January 1, 2017; and 3) other updates to better align the Code with the Envision San José 2040 General Plan (General Plan) Goals, Policies, and Actions.

BACKGROUND

On November 2, 2016, the Planning Commission conducted a public hearing on the proposed amendments to the Zoning Code. The attached Staff Report to the Planning Commission provides a full analysis, description of public outreach, and coordination conducted on the proposed item.

ANALYSIS

At the Planning Commission public hearing, City staff summarized the proposed amendments to the Zoning Code and explained the context of Council direction for the recommended changes. Additionally, staff distributed to the Commission public correspondence received after the Staff Report had been sent to the Commissioners (see attached public correspondence).

Public Testimony

At the Planning Commission hearing, three members of the public spoke on the proposed Zoning Code amendments.

The first speaker, who identified herself as representing Silicon Valley @Home stated that she was glad that the Commission was taking up the issues of secondary dwellings because they are an important source of naturally occurring affordable housing, and that even though they will not solve the affordable housing crisis on their own, they are key. She expressed support for the proposed changes. She stated, however, that the changes would not go far enough. She asked the Commission to consider additional changes to make sure that San José's policies make the option of building a secondary dwelling easier, cheaper, and more accessible to users, and said that the letter her organization sent to the Commission detailed her recommendations (see attached public correspondence). She recommended making the regulations as simple and flexible as possible, by excluding criteria for minimum required lot size, maximum floor area, rear yard coverage, and minimum required open space, and by eradicating steep penalties for illegal secondary dwellings.

Commissioner Yesney asked the speaker whether she was also advocating to other cities to facilitate secondary dwellings. The speaker responded affirmatively, and said that her organization was pleased that San José was updating its Zoning Code before the new State law goes into effect.

Another speaker, identifying himself as a resident of San José, said that he lived in a single-family residence on a 10,000 square-foot lot, that he had asked Planning staff if he could add a secondary dwelling on top of his garage, and staff had said that his proposal wasn't allowed under the City's Zoning Code. Instead, staff suggested placing a secondary dwelling next to the garage. He explained that he did not want to tear down trees or use up land for a secondary dwelling, and said a developer is constructing a six-story building in his neighborhood behind single-story houses along Opal Drive. He then gave the Commission documents that illustrated his comments (see attached public correspondence).

A third speaker, who also identified himself as a resident, said that he was trying to get clear information to see what he could do to legalize a garage conversion done approximately 20 years ago, and that the information that staff had provided to him was confusing.

Planning Commission Discussion

In response to comments from the public, staff stated that it had received specific Council direction for the proposed changes, and had tried to draft an ordinance that met State law, was consistent with the General Plan, would not unduly impact the City fiscally, and would balance concerns expressed from a variety of stakeholders such as homeowners who want to maintain existing neighborhood character, others who wanted to build secondary dwellings, affordable housing advocates, developers, and realtors.

Commissioner Yesney asked staff to clarify several provisions in the proposed ordinance including:

- Reconciling reductions in minimum required front setbacks for the R-2 and R-M zoning districts with garage setbacks that could not accommodate required parking for the secondary dwelling on the driveway apron, if 10 or 15 feet is the minimum required front setback.
- Clarifying which State provisions require that the City reduce the minimum required rear and side setbacks to zero.
- Noting that although the City was not changing the single-event noise level and just changing the procedure for exceeding it, which she agreed was a good idea, she requested that if the issue ever comes up about changing that level, that whatever it is changed to be measured in the bedroom of the residence that is on the applicable parcel.
- Explaining the difference between an attached secondary dwelling versus a duplex in the R-2 Zoning District.
- Asking under what circumstances the City would consider a secondary dwelling eligible for a parking permit, given the State requirement that the City cannot ask for parking for a secondary dwelling where there is a permit parking program and the secondary dwelling is not deemed by the City to be eligible to participate in that program.
- Clarifying why, if a secondary dwelling is situated on a lot that is greater than or equal to a half acre, the secondary dwelling has to be at least 100 feet from the riparian setback versus at least as far back as the primary dwelling.
- Explaining why the private open space has to be no to more than two feet above ground level.

Staff responded that:

- The intent of the proposed ordinance is to require a minimum driveway length of at least 18 feet, and that staff would add clarifying language to that effect in the draft ordinance (see attached draft ordinance).

- The State provisions that require that the City reduce the minimum required rear and side setbacks to zero pertain to conversion of a legally-built detached garage to a detached secondary dwelling, where the setbacks of the detached garage might have been zero.
- The basic difference between an attached secondary dwelling versus a duplex in the R-2 Two-Family Residence Zoning District is that if a duplex also meets the specific criteria of an attached secondary dwelling, including, size limitations, then the attached secondary dwelling does not require approval of a Site Development Permit by the Planning Director, whereas a duplex that doesn't meet the criteria of an attached secondary dwelling requires approval of a Site Development Permit.
- Staff is unaware of secondary dwellings being ineligible to participate in permit parking programs that the City has established in some areas of the City, but that could change in the future [staff contacted the City's Department of Transportation and confirmed that, currently, secondary dwellings are eligible to participate in permit parking programs in the City in areas where the programs are established].
- Staff's intent in requiring a minimum 100-foot setback from a riparian corridor for a secondary dwelling on a single-family residential lot that is at least a half-acre in size is to meet the criteria of the Santa Clara Valley Habitat Conservation Plan and protect riparian corridors.
- Requiring that the private open space for a secondary dwelling be no more than two feet above ground level is intended to avoid roof-top decks being used for private open space, thereby maintaining one-story for the secondary dwelling.

Commissioner Allen asked staff to comment on some of the suggestions from the recently received public correspondence, such as eliminating minimum lot size requirements and maximum allowable floor area, providing guidance manual similar to the City of Santa Cruz's, and an ombudsman program to make the process easier for developing a secondary dwelling.

Staff responded that when the City initially adopted a secondary dwelling ordinance, it created a "checklist" of requirements in the Zoning Code that applicants would need to meet to apply for a Building permit for a secondary dwelling in R-1 Zoning Districts. By not requiring a Planning Development Permit for a secondary dwelling in the R-1 Zoning Districts, the City saves the applicant time and money. By comparison, the City Santa Cruz's Zoning Code has a two-tiered approach, where smaller secondary dwellings are allowed by right, and larger ones require approval of a Planning Permit. The City of Santa Cruz does not have the full range of affordable housing that San José has, and San José's housing must be multifamily high-density for the City to grow in a fiscally sustainable manner. Although a guidance manual and a dedicated ambassador to provide free advice to homeowners for adding secondary dwellings would be helpful, even if 10 percent of the eligible lots in San José had secondary dwellings, fiscal studies

have shown that development at that lower density does not help the City fiscally, which is why the General Plan encourages much higher densities in focused-growth areas.

Adam Marcus, representing the Housing Department, confirmed that the Housing Director is interested in exploring to create a manual for secondary dwellings if the Council allocates funding for such an endeavor.

Commissioner Allen asked Planning staff about exploring a potential amnesty program, and if there was any thought given to how the units could be brought up to Code to be usable.

Staff responded that, in general, Code Enforcement is complaint-driven, rather than pro-active, and when staff investigates Code complaints, it often sees very substandard electrical wiring, or other fire hazards because construction does not meet the Building Code, so the City would be sending a mixed message with an amnesty program, versus emphasizing that construction should be done legally in the first place.

Commissioner Ballard asked Planning staff to comment on the public correspondence and whether the minimum required setbacks prevent or allow a garage from being converted into a secondary dwelling. She also asked how many parcels become eligible for secondary dwellings with staff's proposed reduction of the minimum required lot size to 5,445 square feet for both attached and detached secondary dwellings.

Staff responded that the City has a variety of conventional Residential Zoning Districts listed in the Zoning Code, and the minimum lot size for any development in both the R-1-8 Single-Family Residence Zoning District and the R-2 Two-Family Residence Zoning District is 5,445 square feet with exceptions for legal nonconforming lots. If the City were to reduce the minimum lot size from 5,445 square feet to a smaller lot size for secondary dwellings, the result would effectively be to increase the allowable density in existing residential neighborhoods, which could result in General Plan inconsistency. By reducing the minimum required lot size from 8,000 square feet to 5,445 square feet for detached secondary dwellings, as proposed by staff, the ordinance would allow thousands of lots to become eligible units.

Staff added that another big hurdle is the current Code requirement of a minimum rear-yard setback of 15 feet for detached secondary dwellings. A third hurdle is meeting the current Code requirements for locating an uncovered parking space for a secondary dwelling, which is why staff proposed that the space could be located on a garage driveway apron in the front setback where the driveway apron is at least 18 feet in length. State law adds criteria that waive the parking requirement for a secondary dwelling that meets proximity requirements to transit or car share.

Commissioner Yesney commended staff for taking an incremental approach and seeing how well it works before expanding options further.

Commissioners Bit-Badal, Ballard, and Allen expressed support for many of the suggestions provided in the public correspondence received by the Planning Commission to liberalize the

requirements for secondary dwellings to provide ways for the City to help address the housing crisis with dwellings that allow residents to have privacy.

Commissioner Ballard made a motion, seconded by Commissioner Allen, to recommend to the City Council to consider the Determination of Consistency with the Final EIRs and approval of the amendments to the Zoning Code as recommended by staff. The motion passed 5-0-2 (Commissioners Abelite and Pham absent).

EVALUATION AND FOLLOW UP

Approving the proposed amendments to the Zoning Code would modify provisions pertaining to uses in conventional Residential Zoning Districts and would complete Housing Element Work Plan items pertaining to facilitating secondary dwellings and emergency residential shelters in the City.

POLICY ALTERNATIVES

Alternative 1: Do not approve the recommended changes to the Zoning Code.

Pros: Not approving the changes to the Zoning Code would maintain the status quo.

Cons: Not approving changes to the Zoning Code would not implement Council direction or State law that becomes effective on January 1, 2017 pertaining to secondary dwellings/accessory dwelling units.

Reason for not recommending: Staff was directed by Council to propose changes to the Zoning Code to facilitate secondary dwellings in San José in compliance with State law. Additionally, the changes implement action items identified in the General Plan.

PUBLIC OUTREACH

During the past two years, staff has facilitated numerous community and stakeholder meetings on the topic of Zoning Code amendments to facilitate land uses and development in conventional Residential Zoning Districts to implement the General Plan. Most recently, staff facilitated a community meeting during the evening of August 22, 2016, at City Hall, and discussed the proposed amendments at the PBCE Developers and Construction Roundtable held on September 16, 2016. Public comments and staff responses are summarized in the Staff Report to the Planning Commission.

COORDINATION

The preparation of the proposed ordinance and this memorandum were coordinated with the City Attorney's Office and the Housing Department. This item was referred to the City's Housing and Community Development Commission (HCDC) and the Santa Clara County Airport Land Use Commission (ALUC). HCDC has scheduled this item for a public hearing on November 10, 2016. The ALUC has scheduled this item for a public hearing on November 16, 2016, for a determination on whether the proposed amendments to the Zoning Code are consistent with the policies contained within the San José International Airport (SJC) and Reid-Hillview Airport (RHV) Comprehensive Land Use Plans (CLUPs).

CEQA

Determination of Consistency with Envision San José 2040 General Plan EIR, Resolution No. 76041, and Supplemental EIR to Envision San José General Plan EIR, Resolution No. 77617, and Addenda thereto; Downtown Strategy 2000 EIR, Resolution No. 72767, and Addenda thereto; North San José Development Policies EIR, Resolution No. 72768, and Addenda thereto; and Diridon Station Area Plan EIR, Resolution No. 77096 and Addenda thereto (collectively, the "Final Program EIRs"). Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs.

/s/

HARRY FREITAS, SECRETARY
Planning Commission

For questions, please contact Jenny Nusbaum, Supervising Planner, Ordinance and Policy Team, Planning Division at (408) 535-7872.

Attachments:

Staff Report

Public correspondence submitted at the Planning Commission hearing by a speaker



Memorandum

TO: PLANNING COMMISSION

FROM: Harry Freitas

SUBJECT: See Below

DATE: October 24, 2016

SUBJECT: File No. PP16-115. AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE (ZONING ORDINANCE OR ZONING CODE) TO AMEND VARIOUS SECTIONS OF CHAPTER 20.30 “RESIDENTIAL ZONING DISTRICTS” ALL TO ADD MIXED RESIDENTIAL-COMMERCIAL USE AS AN ALLOWABLE USE, TO ALLOW SECONDARY DWELLINGS IN THE R-2 TWO FAMILY RESIDENCE DISTRICT, TO MODIFY DEVELOPMENT STANDARDS FOR RESIDENTIAL USES INCLUDING REDUCING MINIMUM REQUIRED SETBACKS, TO DELETE MAXIMUM NUMBER OF STORIES IN THE R-M MULTIPLE RESIDENCE ZONING DISTRICT WHILE MAINTAINING MAXIMUM ALLOWABLE HEIGHT, TO MODIFY THE PERMIT TYPE FOR EXCEEDANCE OF DECIBEL LEVELS INDICATED IN TABLE 20-85, AND TO AMEND SECTION 20.30.150 “SECONDARY UNITS” IN COMPLIANCE WITH NEWLY ADOPTED STATE LAW; TO AMEND SECTION 20.90.220 “REDUCTION IN REQUIRED OFF-STREET PARKING SPACES” IN CHAPTER 20.90, “PARKING AND LOADING” TO ALLOW REDUCTIONS IN PARKING SPACES FOR RESIDENTIAL USES IN COMPLIANCE WITH NEWLY ADOPTED STATE LAW; TO AMEND SECTION 20.200.325 - DWELLING, SECONDARY IN COMPLIANCE WITH NEWLY ADOPTED STATE LAW; TO RE-NUMBER VARIOUS SECTIONS WITHIN CHAPTER 20.200 SO THAT THE SECTIONS ARE LISTED IN ALPHABETICAL ORDER; AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 20

RECOMMENDATION

Recommend that the Planning Commission consider the Determination of Consistency with the “Final Program EIRs” and recommend to the City Council the approval of an ordinance amending Title 20 of the San José Municipal Code (the Zoning Code) to revise provisions for land uses in conventional Residential Zoning Districts as described above.

OUTCOME

If adopted by the City Council, the proposed ordinance would amend the Zoning Code provisions pertaining to land uses in conventional Residential Zoning Districts to implement: 1) City Council direction to staff on secondary dwelling units as discussed at the Council priority-setting session during a public hearing with the City Council held on December 15, 2015; 2) State law pertaining to accessory dwelling units (formerly referred to as second units or secondary units) adopted in September 2016, which becomes effective on January 1, 2017; and 3) other updates to better align the Code with the Envision San José 2040 General Plan (General Plan) Goals, Policies, and Actions.

BACKGROUND

At the Council priority-setting session held last December, the City Council adopted Priority Item No. 9 “to modify the Municipal Code to allow and facilitate the building of secondary detached residential units on residential parcels.” Additionally, the City Council maintained as Priority Item No. 26 the processing of quarterly amendments of the Zoning Code to implement the General Plan. More recently, in September 2016, the State adopted Senate Bill (SB) 1069 and Assembly Bill (AB) 2299 that mandate jurisdictions to allow, with approval of a ministerial permit (i.e., a building permit), “accessory dwelling units,” which is the State’s new term for “secondary dwellings” as defined in the Zoning Code. Accessory dwelling units must comply with certain criteria in the State’s newly adopted legislation. The City may also specify requirements for accessory dwellings, but such requirements must be consistent with the State criteria.

Current Zoning Code Provisions

Chapter 20.30 “Residential Zoning Districts” of the Zoning Code has not been updated comprehensively since the current General Plan was adopted in 2011. Without updating this Chapter to align more closely with the General Plan, the limitations in this Chapter can preclude fully implementing the General Plan in conventional Residential Zoning Districts as summarized below:

- **Multi-family Zoning Districts**

The “Residential Zoning Districts” Chapter 20.30 of the Zoning Code lacks provisions to facilitate mixed residential-commercial uses, and mid-rise to high-rise development on sites in the R-M Multiple Residence Zoning District that are designated Mixed Use Neighborhood (up to 30 DU/AC; FAR 0.25 to 2.0 (1 to 3.5 stories)), Urban Residential (30-95 DU/AC; FAR 1.0 to 4.0 (3 to 12 stories)) or Transit Residential (50-250 DU/AC; FAR 2.0 to 12.0 (5 to 25 stories)) in the General Plan. Specifically, there is no enumerated use in Section 20.30.100, in Table 20-50 in this Chapter for mixed-use.

Additionally, three (3) stories is listed in the Development Standards in Section 20.30.200 of this Chapter as the maximum allowable number of stories for development in the R-M Multiple Residence Zoning District. Consequently, most multi-family residential development on sites designated Urban or Transit Residential in the General Plan currently occurs through rezoning to a Planned Development (PD) Zoning District.

In the R-2 Two-Family Residence Zoning District, the Zoning Code does not allow more than one detached dwelling unit on a single lot. Therefore, detached secondary dwellings are not allowed in this zoning district.

- **Front and Rear Setbacks**

Currently, minimum required front and rear setbacks in the conventional Residential Zoning Districts range from 15 to 50 feet, depending on the specific zoning district. Particularly on smaller lots, these setbacks can limit available space on-site for the placement of dwelling units and parking spaces. In the R-M Multiple Residence Zoning District, development potential can, therefore, be limited to the lower end of the General Plan’s allowable density range on sites designated Urban Residential or Transit Residential in the General Plan. In R-1 Single-Family Residence Zoning Districts, the viability of secondary dwellings and parking spaces can also be limited by the current minimum required front and rear setbacks in these conventional zoning districts.

- Minimum Required Lot Sizes

The Zoning Code requires a minimum lot size of 5,445 s.f. for lots in the R-1-8 Single-family Residence Zoning District. However, the minimum required lot size for an attached secondary dwelling is 6,000 s.f., and for a detached secondary dwelling the minimum required lot size is 8,000 s.f. To increase the potential number of viable sites for secondary dwellings, many stakeholders have recommended reducing the minimum required lot sizes for attached and detached secondary dwellings in conventional Residential Districts from the current Zoning Code requirements to align with the minimum required lot size for lots in the R-1-8 Zoning District.

- Maximum Allowable Noise Level

Currently, Section 20.30.700 “Performance Standards” of the Zoning Code requires approval of a Conditional Use Permit for land uses in the conventional Residential Zoning Districts to exceed the maximum allowable noise level of 55 decibels at the property line of a residentially zoned parcel. This is a relatively low noise level for a single noise event.

- Parking Requirements

In response to feedback from the State’s Department of Housing and Community Development prior to certification of the City’s Housing Element, the Housing Element work plan now includes task-items for proposing Zoning Code amendments for reductions to minimum parking requirements for emergency residential shelters. Additionally, the recently adopted State law and stakeholder input indicate that the City should amend the minimum parking requirements that are currently in Chapters 20.30 and 20.90 of the Zoning Code for primary and secondary dwellings in conventional Residential Zoning Districts.

ANALYSIS AND GENERAL PLAN CONFORMANCE

The proposed changes to the Zoning Code are intended to facilitate development in conventional Residential Zoning Districts and address work plan items in the General Plan’s Housing Element in compliance with State law and in response to Council direction.

The following analysis considers how the proposed amendments will achieve these key objectives consistent with relevant General Plan Major Strategies, Goals, Policies, and Actions.

- ***Add mixed residential-commercial use as Conditional Use in the R-M Multiple Residence Zoning District.***

The addition of this enumerated use as a Conditional Use would allow consideration of mixed residential-commercial development proposals on sites that have an Urban Residential, Transit Residential, or Mixed Use Neighborhood land use designation in the General Plan, without the need to rezone such sites to a Planned Development Zoning District.

- ***Modify development standards for residential uses including reducing minimum required setbacks, and delete maximum allowable number of stories in the R-M Multiple Residence Zoning District while maintaining maximum allowable height.***

Staff proposes to reduce minimum required setbacks for primary residences by up to 5 feet, and for secondary dwellings by up to 15 feet to facilitate secondary dwellings in compliance with newly adopted State legislation.

While maintaining existing maximum allowable height, staff proposes to delete a provision for maximum allowable number of stories for development in the R-M Multiple Residence Zoning District to facilitate more urban-scale development in this conventional zoning district as opposed to Planned Development Zoning Districts. As discussed above, the General Plan land use designations of Mixed Use Neighborhood, Urban Residential, and Transit Residential allow development ranging from 3.5 up to 25 stories. Maximum allowable height for development in conventional Residential Zoning Districts is specified in Chapters 20.30 and 20.85 in the Zoning Code, and can range from 35 feet to more than 200 feet depending upon type of development and location within specified areas in the City.

Proposed changes to front setbacks and stories are shown in strike-out and underlined text in the following table:

Table 20-60 Residential Zoning Districts Development Standards								
Regulations	Zoning District							
	R-1-8	R-1-5	R-1-2	R-1-1	R-1-RR	R-2	R-M	R-MH
Minimum Lot Area (square feet or acreage)	5,445	8,000	20,000	43,560	5 acres	5,445	6,000	6,000
Minimum Setback (feet)								
Front	25 <u>20</u>	25 <u>20</u>	30	30	50	20 <u>15</u>	15 <u>10</u>	15
Side, Interior	5	5	15	20	20	5	5	5
Side, Corner	12.5	12.5	15	20	30	10	7.5	7.5
Rear, Interior	20	20	25	25	30	25	25	25
Rear, Corner	20	20	25	25	30	25	15	15
Minimum Driveway Length (feet) <u>measured from Lot Line.(Note 5)</u>	23 <u>18</u>	<u>0</u>	<u>0</u>	<u>0</u>				
Maximum Height (feet) (Notes 1, 2 and 4)	35	35	35	35	35	35	45 or established in Chapter 20.85	45

Maximum Number of Stories (Note 3)	2.5	2.5	2.5	2.5	2.5	2.5	3 Not Applicable.	3
Parking	See Chapter 20.90							
Floor area ratio	See Part 9 of Chapter 20.100 for Single-Family House Permit criteria that may apply							

Notes:

1. Refer to Part 9 of Chapter 20.100 regarding Single Family House Permit requirements and Section 20.200.510 regarding the definition of "Height."
2. An alternative Maximum Height may be established as described in Chapter 20.85. Where an alternative Maximum Height restriction has been established as described Chapter 20.85, that regulation described in Chapter 20.85 shall govern and control over the provisions in this Section.
3. Refer to Section 20.200.120 regarding the definition of "Basement"; refer to Section 20.200.1210 regarding the definition of "Story"; and refer to Section 20.200.1220 regarding the definition of "Half Story".
4. An alternative Maximum Height may be established as described in Chapter 20.85. Where an alternative Maximum Height restriction has been established as described in Chapter 20.85, that regulation described in Chapter 20.85 shall govern and control over the provisions of this Section.
5. The minimum driveway length shall comply with the minimum Setback requirements for the Zoning District in which the Lot is situated.

- ***Change the requirement from a Conditional Use Permit to a Special Use Permit for noise exceedance of decibel levels in conventional Residential Zoning Districts.***

As a streamlining measure for uses in conventional Residential Zoning Districts, the proposed amendments would change the type of permit requirement for exceedance of peak-level single-event noise standards from a Conditional Use Permit to a Special Use Permit. This change is consistent with recently approved changes to the Zoning Code for land uses in conventional Commercial, Public/Quasi-Public, Industrial, Agricultural, and Open Space zoning districts for projects that involve uses that would not otherwise trigger a Conditional Use Permit. The proposed changes would further establish a more consistent approach to noise regulation throughout the Zoning Ordinance and General Plan.

The single-event noise standard in the Zoning Ordinance is a very conservative performance standard, which is not proposed for modification at this time. The noise standard in the Zoning Ordinance that is permitted without a Use Permit identifies a peak allowable noise level for a single event, which can include any noise generated from the site for a momentary time, such as equipment being tested at peak capacity, or brief shouting.

The Use Permit application process allows consideration of maximum noise levels averaged through a 24-hour period, so that momentary peak noise events don't skew the average maximum noise level. This method of measuring noise conforms to the method used for identifying the General Plan standards for maximum recommended noise levels.

The change in process from a Conditional to a Special Use Permit application changes the initial decision-making body from the Planning Commission with appeal to City Council, to the Planning Director with appeal to the Planning Commission. The process for consideration of approval is still discretionary requiring compliance with CEQA, with the decision for project approval or denial being made through a public hearing. Therefore, this amendment on permitting processes would not result in foreseeable environmental impacts.

- ***Amend Section 20.30.150 “Secondary Units” to conform to newly adopted State law***

Changes would facilitate development of secondary dwellings in response to stakeholder input, including:

- Allowing secondary dwellings in the R-2 Two-Family Residence Zoning District
- Reducing the minimum required lot size to 5,445 s.f. for secondary dwellings
- Increasing the maximum allowable secondary dwelling floor area up to 800 s.f.
- Allowing a secondary dwelling to be a studio unit
- Allowing the required parking for the secondary dwelling to be on the driveway apron in the front setback of the lot
- Requiring for the secondary dwelling a minimum area of 80 s.f. of private open space with a minimum width of 8 feet
- Requiring a minimum 100-foot setback from riparian corridors for secondary dwellings on lots that are ½ acre or larger in size
- Allowing the secondary dwelling to be constructed with materials similar in, rather than being identical in texture and appearance to the primary one-family dwelling.

The proposed ordinance would also implement changes to conform to State criteria, including:

- Limiting the increased floor area of an attached secondary dwelling to no more than 50% of the existing living area of the primary dwelling
- Eliminating additional required parking for secondary dwellings that meet certain State-specified criteria
- Eliminating minimum required rear and side setbacks for secondary dwellings that meet certain State-specified criteria
- Requiring as part of the Building permit application process for a secondary dwelling that the owner of record submit certification that the secondary dwelling is not intended for sale separate from the primary residence, but may be rented.

- ***Amend Section 20.90.220 “Reduction in Required Off-Street Parking Spaces” in Chapter 20.90, “Parking and Loading” to allow reductions in parking spaces for residential uses in compliance with newly adopted State law and in conformance with the General Plan’s Housing Element.***

- Per newly adopted State law, the proposed amendments include allowing replacement of required covered parking spaces with uncovered or tandem spaces when existing covered spaces are demolished in conjunction with the construction of a secondary dwelling that meets certain State-mandated criteria.

- In conformance with work-plan item no. 21 in the Housing Element, the changes proposed include a provision to allow up to a 100 percent reduction in the required parking for emergency residential shelters with a discretionary Planning approval.
- ***Amend Section 20.200.325 - “Dwelling, Secondary” in compliance with newly adopted State law, and re-number various sections within Chapter 20.200 so that the sections are listed in alphabetical order; and to make other technical, non-substantive, or formatting changes within those sections of Title 20.***

The proposed ordinance includes referencing the State legislation’s terminology of “accessory dwelling unit” in the Zoning Code’s definition of “secondary dwelling” and re-numbering various sections in Chapter 20.200 “Definitions” to arrange some existing definitions in alphabetical order. Additionally, minor technical and clarifying changes are proposed in the sections listed above in this staff report.

General Plan Consistency

The General Plan’s Goals and Policies acknowledge the value of streamlining land use entitlement processes for commercial uses and affordable housing. The proposed amendments would potentially allow newly enumerated mixed residential-commercial use on sites in the R-M Multiple Residence Zoning District that have land use designations in the General Plan that support these uses and allow a wider range of residential densities that can facilitate affordable housing. These amendments are intended to implement the respective land use designations in the General Plan.

Currently, many individual sites in the R-M Multiple Residence Zoning District must be re-zoned to Planned Development Zoning Districts to allow for mixed residential-commercial uses and development greater than three stories, as proposed in this Ordinance. Adoption of the proposed amendments would potentially allow these types of development in the R-M Multiple Residence Zoning District, thereby reducing the need for applying for Planned Development Zoning Districts that often involve time-consuming and costly land use entitlement processes.

For these reasons, the proposed changes further the following Goals, Policies, and Actions by facilitating the development of land uses that conform to the General Plan in conventional zoning districts:

- City Operations Policy FS-1.5 – Provide speed, consistency, and predictability for land use entitlement processes while using these processes to add value and improve the quality of development.
- General Land Use Goal LU-1 – Establish a land use pattern that fosters a more fiscally and environmentally sustainable, safe, and livable city.
- Land Use/Transportation Diagram Policy IP-1.5 – Maintain a Zoning Ordinance and Subdivision Ordinance that align with and support the Land Use/Transportation Diagram and *Envision General Plan* goals and policies. Develop new zoning districts that enumerate uses and establish development standards, including heights, to achieve vital mixed-use complete communities and facilitate their implementation.
- Land Use/Transportation Diagram Policy IP-1.7 – Use standard zoning districts to promote consistent development patterns when implementing new land use entitlements. Limit use of the Planned Development Zoning process to unique types of development or land uses which cannot be implemented through standard zoning districts, or to sites with unusual physical characteristics that require special consideration due to those constraints.

- Zoning Policy IP-8.2 – Use the City’s conventional zoning districts, contained in its Zoning Ordinance, to implement the *Envision General Plan* Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective *Envision General Plan* land use designations, while providing greater detail as to the appropriate land uses and form of development.
- General Land Use Action LU-1.9 – Review criteria in the Zoning Ordinance and update it as appropriate to reflect Land Use Goals, Policies and implementation Actions in this Plan.

The proposed amendments are consistent with Housing Goals, Policies, and Actions in the General Plan including but not limited to the following:

- Goal H-1 Housing – Social Equity and Diversity – Provide housing throughout our City in a range of residential densities, especially at higher densities, and product types, including rental and for-sale housing, to address the needs of an economically, demographically, and culturally diverse population.

The proposed amendments would facilitate secondary dwellings and affordable housing in the City to address underserved populations in need of housing.

- Housing – Social Equity and Diversity Policy H-1.2 – Facilitate the provision of housing sites and structures across location, type, price, and status as rental or ownership that respond to the needs of all economic and demographic segments of the community including seniors, families, the homeless, and individuals with special needs.

The proposed amendments would facilitate the provision of housing sites and structures in various locations as rentals or ownership that respond to the needs of a variety of economic and demographic segments of the community, and could facilitate aging in place.

Conclusion

The proposed amendments support Goals, Policies, and Actions in the General Plan by providing increased flexibility for the development of residential uses, and mixed residential/commercial uses within the City’s conventional Residential Zoning Districts, while also complying with the State’s new mandates for secondary dwelling units/accessory dwelling units.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

During the past two years, numerous community and stakeholder meetings have occurred on the topic of Zoning Code amendments to facilitate land uses and development in conventional Residential Zoning Districts to implement the General Plan. For the most recent specific proposed Zoning Code changes, including the pending Zoning Code amendments discussed in this staff report, staff facilitated a community meeting during the evening of August 22, 2016 at City Hall and discussed the proposed amendments at the PBCE Developers and Construction Roundtable held on September 16, 2016.

Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice including the Planning Commission and City Council hearing dates was published in the San José Post-Record and emailed to a list of interested groups and individuals. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public.

Staff incorporated most suggestions from the public into the proposed amendments. Some stakeholder suggestions that have not been included in the recommended Zoning Code changes include the following:

- *Allow 2 stories for secondary dwellings.* Some stakeholders wanted this additional flexibility while others wanted to maintain a maximum of 1 story due to concerns about preserving neighborhood character and privacy.
- *Allow 2 bedrooms for secondary dwellings.* Some stakeholders wanted this additional flexibility. Staff concluded that allowing up to 2 bedrooms instead of up to 1 bedroom in dwellings that can be up to 800 s.f. in size could result in larger average households than have currently been estimated in terms of potential impacts to City infrastructure and services, such as parks and sewers, and could result in units that are no longer accessory to the primary one-family dwelling. Many of the City's current fees for secondary dwellings are based on an average household size of 0.4 persons per secondary dwelling (as a net addition of persons on-site). Some fees would likely need to be increased if 2 bedrooms for a secondary dwelling were allowed.
- *Eliminate covered parking requirements entirely, and do not require any additional parking for secondary dwellings.* Some stakeholders wanted to go farther than the State requirements for parking reductions, whereas others wanted to maintain the City's existing parking requirements. The proposed ordinance complies with the State requirements, which is a compromise between the two extremes of stakeholder opinions.
- *Do not allow short-term rentals of secondary dwellings.* Staff does not recommend this provision because it contradicts Council direction that resulted in a recently-adopted City ordinance that allows short-term rentals if certain criteria in the Zoning Code are met. Short-term rentals can provide income to an owner or primary tenant of a residence, and can also provide transient occupancy tax to the City.
- *Require owner-occupancy of the primary residence.* The City has not required this to-date, and has allowed secondary dwellings for more than a decade. Staff sees no compelling reason to impose this limitation at this time, and sees challenges with implementing such a provision.
- *Create an amnesty program for all illegally built secondary dwellings.* Staff has determined that this would be a very costly program for the City to implement effectively, with uncertainty of success and with many life-safety risks. Such an approach could also send a mixed message to the public about the importance of code compliance. For these reasons, staff does not recommend this approach to facilitating secondary dwellings.

PLANNING COMMISSION

October 24, 2016

Subject: Zoning Code amendments for Medical Marijuana Collectives

Page 10 of 10

- *Reduce or eliminate fees for secondary dwellings.* The City would need to identify funds to subsidize such an action, because secondary dwellings fees are based on cost-recovery for the City. This suggestion is beyond the scope of amending the San José Municipal Code, and beyond the purview of any single City department. Staff has compared the City's development related fees with neighboring jurisdictions, and in relation to the total costs associated with secondary dwellings, and does not recommend implementing this suggestion.
- *Create a guidance manual and designate a staff person to answer all questions from the public on proposals for secondary dwellings.* The City would need to fund and staff these endeavors. This suggestion is also beyond the scope of amending the Municipal Code, and beyond the purview of a single City department.

COORDINATION

The preparation of the proposed ordinance and this staff report were coordinated with the City Attorney's Office and the Housing Department. The proposed ordinance was referred to the Santa Clara County Airport Land Use Commission (ALUC) and is scheduled for a public hearing with the ALUC on November 16, 2016.

CEQA

Determination of Consistency with Envision San José 2040 General Plan EIR, Resolution No. 76041, and Supplemental EIR to Envision San José General Plan EIR, Resolution No. 77617, and Addenda thereto; Downtown Strategy 2000 EIR, Resolution No. 72767, and Addenda thereto; North San José Development Policies EIR, Resolution No. 72768, and Addenda thereto; and Diridon Station Area Plan EIR, Resolution No. 77096 and Addenda thereto (collectively, the "Final Program EIRs"). Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs.


HARRY FREITAS, DIRECTOR
Planning, Building and Code Enforcement

Attachments:

- 1) Draft marked-up text amending Zoning Code
- 2) Public Correspondence

Chapter 20.30 RESIDENTIAL ZONING DISTRICTS

Part 1 GENERAL

20.30.010 Residential Zoning Districts.

- A. This Chapter sets forth the land use and development regulations applicable to the Residential Zoning Districts established by Section 20.10.060.
- B. No Building, Structure, or land shall be used, and no Building or Structure shall be erected, enlarged, or structurally altered, in the R-1, R-2, R-M, and R-MH Residential Districts except as set forth in this Chapter.
- C. The purposes of the Residential Districts are as follows:
 - 1. R-1 Single-Family Residence District. The purpose of the Single-family Residence District is to reserve land for the construction, use and occupancy of single-family subdivisions. The allowable density range for the R-1 districts is one (1) to eight (8) dwelling units per acre.
 - 2. R-2 Two-Family Residence District. The purpose of the Two-family Residence District is to reserve land for the construction, use and occupancy of single-family and two-family subdivisions. The allowable density range for the R-2 District is eight (8) to ~~fourteen and one-half sixteen~~ (16) dwelling units per acre.
 - 3. R-M Multiple Residence District. The purpose of the Multiple Residence District is to reserve land for the construction, use and occupancy of higher density residential development and higher density residential-commercial Mixed Use development.
 - 4. R-MH Mobilehome Park District. The purpose of the Mobilehome Park District is to reserve land for the construction, use and occupancy of Mobilehome development.

Part 2 USES ALLOWED

20.30.100 Allowed Uses and Permit Requirements.

- A. "Permitted" land uses are indicated by a "P" on Table 20-50.
- B. "Conditional" uses are indicated by a "C" on Table 20-50. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit as set forth in Chapter 20.100.
- C. "Special" uses are indicated by a "S" on Table 20-50. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Special Use Permit as set forth in Chapter 20.100.

- D. "Restricted" land uses are indicated by an "R" on Table 20-50. These uses may occur in such designated districts, as an independent use, but only upon issuance of and in full compliance with a valid and effective Zoning Code Verification Certificate as set forth in Chapter 20.100.
- E. Land uses not Permitted are indicated by a "-" on Table 20-50. Land uses not listed on Table 20-50 are not Permitted.
- F. When the right column of Table 20-50 includes a reference to a section number or a footnote, the regulations cited in the section number or footnote apply to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other title of the San José Municipal Code.

Table 20-50 Residential Districts Land Use Regulations					
Use	Zoning District				Applicable Sections & Notes
	R-1	R-2	R-M	R-MH	
Residential Uses					
One-Family Dwelling	P	P	P	C	Note 1, Section 20.30.110
Secondary Dwelling	P	P	-	-	Note 2 , Section 20.30.150
Two-Family Dwelling	-	P	P	-	Note 2, Section 20.30.110
Multiple Dwelling	-	-	P	-	
Guesthouse	-	-	C	-	Section 20.30.120
Mobilehome Parks	-	-	-	P	
Travel Trailer Parks	-	-	-	C	
Residential Care Facility, six (6) or fewer persons	P	P	P	P	
Residential Care Facility, seven (7) or more persons	-	-	C	C	
Residential Service Facility, six (6) or fewer persons	P	P	P	P	
Residential Service Facility, seven (7) or more persons	-	-	C	C	
Servants quarters attached to a One-Family Dwelling or attached to a garage Structure	P	-	-	-	Note 3
Sororities, fraternities and dormitories occupied exclusively (except for administrators thereof) by	-	-	C	-	

students attending college or other educational institutions					
Single Room Occupancy Living Unit <u>Facility</u>	-	-	C	-	Part 15, Chapter 20.80
Residential Accessory Uses and Improvements					
Accessory Buildings and Structures	P	P	P	P	Note 4; Section 20.80.200
Home Occupations	P	P	P	P	Part 9, Chapter 20.80
<u>Mixed Use, residential/commercial</u>	=	=	C	=	<u>Note 10</u>
Entertainment and Recreation Related					
Equestrian and riding club	C	-	-	-	
Golf course	C	C	C	-	Note 5
Private club or lodge	-	-	C	-	
Swim <u>and/or</u> tennis club	C	C	C	C	
Education and Training					
Child Day Care Center located on an existing School Site or as an incident to an on-site church/religious assembly use involving no Building additions or changes to the Site	P	P	P	P	
Day care center	C	C	C	C	
School- elementary and secondary (Public)	P	P	P	-	
School- elementary and secondary (Private)	C	C	C	-	
Public, Quasi-Public and Assembly Uses					
Cemetery	C	C	C	C	
Church/religious assembly	C	C	C	C	
Museums, libraries, parks, playgrounds, or community centers (privately operated)	C	C	C	C	
Museums, libraries, parks, playgrounds, or community centers (publicly operated)	P	P	P	P	
Health and Veterinary Services					

Emergency ambulance service	C	C	C	C	
General Services					
Certified Farmers' Market	S	S	S	S	Part 3.5, Chapter 20.80; Note 7
Certified Farmers' Market - Small	P	P	P	P	Part 3.5, Chapter 20.80; Note 7
Neighborhood Agriculture	P	P	P	P	Part 9, Chapter 20.80
Outdoor Vending - Fresh Fruits and Vegetables	P	P	P	P	Part 10, Chapter 20.80; Notes 7 and 8
Bed and Breakfast Inn	C	C	C	-	Section 20.80.110
Transportation and Utilities					
Community television antenna systems	C	C	C	C	
Off-site, alternating use and alternative use parking arrangements	S	S	S	S	Section 20.90.200
Parking Establishment, Off-street	C	C	C	C	Section 20.90.150
Utility Facilities, excluding corporation yards, storage or repair yards and warehouses	C	C	C	C	
Wireless Communication Antenna	C	C	C	C	Note 9, Sections 20.30.130, 20.30.140, 20.80.1900, 20.100.1300 and 20.80.1915
Wireless Communication Antenna, Slimline MonopPole	S	S	S	S	Note 9, Sections 20.30.130, 20.30.140, 20.80.1900, 20.100.1300 and 20.80.1915
Wireless Communication Antenna, Building Mounted	P	P	P	P	Note 9, Sections 20.30.130, 20.30.140, 20.80.1910, 20.100.1300 and 20.80.1915
Electrical Power Generation					
Stand-by/Backup					
Facilities that do not exceed noise or air standards	S	S	S	S	Note 6
Facilities that do exceed noise or air standards	-	-	-	-	

Solar Photovoltaic Power System	P	P	P	P	Sections 20.100.610 C.7. and 20.100.1030 A.6.
Historic Reuse					
Historic Landmark Structure Reuse	C	C	C	C	Part 8.5, Chapter 20.80

Notes:

1. Only one One-Family Dwelling unit per Lot in the R-1, R-2, R-M and R-MH Districts.
2. A maximum of two (2) Living Units per Lot in the R-2 District. A Secondary Dwelling on a Lot in the R-2 District may be Permitted without a Development Permit in accordance with the provisions of Section 20.30.150 if there is only one (1) primary Living Unit on the Lot and that primary Living Unit is a One-Family Dwelling.
3. Only Permitted in the R-1-1 Estate Residential District.
4. No Lot may be used solely for an Accessory Structure or an Accessory Building.
5. No driving ranges or miniature golf facilities.
6. Stand-by or backup generators that would not otherwise require some permit from the City (including but not limited to Building, electrical, or mechanical), and do meet the applicable noise and air standards are not subject to the Special Use Permit requirement.
7. Allowed on School Sites, library Sites, community center Sites, church/religious assembly Sites, and other publicly accessible Sites that contain government operations including but not limited to United States Post Offices or State of California Department of Motor Vehicles offices.
8. The activity must conform with the location and operational requirements in Section 20.80.820 of Part 10, Chapter 20.80. Allowed for up to eight (8) hours per day for each Vending Facility, but not to exceed eight hours (8) per day per Lot.
9. Certain modifications of existing wireless facilities may be permitted with an Administrative Permit in accordance with Section 20.80.1915 of Chapter 20.80.
10. Permitted or Special Uses allowed in the CP-Commercial Pedestrian Zoning District may be allowed with a Special Use Permit for a Residential-Commercial Mixed Use Project, except that 24-Hour non-residential uses or Conditional Uses allowed in the CP-Commercial Pedestrian Zoning District require a Conditional Use Permit.

20.30.150 Secondary UnitsDwellings.

Notwithstanding any other provision of this Title to the contrary, Secondary Dwellings that meet all of the following criteria shall be allowed pursuant to the provisions of this Chapter:

- A. Zoning District.** A Secondary Dwelling that is attached to or detached from a One-Family Dwelling shall be Permitted only in the R-1 Zoning Districts, the R-2 Zoning District in accordance with the provisions of Section 20.30.100, or in Planned Development Zoning Districts that are authorized in accordance with Chapter 20.60 of this Title and that are subject

to the standards and allowed uses of an R-1 Zoning District.

- B. Minimum Lot Size.** The minimum Lot size on which a Secondary Dwelling ~~that is attached to a One-Family Dwelling~~ shall be allowed is ~~six thousand (6,000)~~ five thousand four hundred and forty five (5,445) square feet. ~~The minimum lot size on which a secondary dwelling that is detached from a one-family dwelling shall be allowed is eight thousand (8,000) square feet.~~
- C. Density.** A Secondary Dwelling shall not be included in calculation of residential density for the purpose of determining General Plan conformance.
- D. Maximum Secondary Dwelling Floor Area.** The increased floor area of an attached Secondary Dwelling shall not exceed fifty (50) percent of the existing living area of the primary dwelling. A Secondary Dwelling shall not exceed the following maximum gross floor area:
1. Six hundred (600) square feet for a Secondary Dwelling on a Lot with an area of nine thousand (9,000) square feet or less;
 2. Six hundred fifty (650) square feet for a Secondary Dwelling on a Lot with an area of greater than between nine thousand (9,000) ~~one (9,001)~~ and up to ten thousand (10,000) square feet; ~~and~~
 3. Seven Eight hundred (~~8700~~) square feet for a Secondary Dwelling ~~unit~~ on a Lot with an area greater than ~~ten thousand~~ one (10,001) square feet.
- E. Required Facilities.** A Secondary Dwelling shall include all of the following facilities:
1. A ~~full~~ kitchen (including a sink, food storage, and permanent cooking facilities such as an oven and range or cooktop); and
 2. A full bathroom.
- F. Bedroom Requirement and Maximum Bedroom Area.** A Secondary Dwelling is required to contain a combined sleeping and living area or one (1) bedroom and shall include no more than one (1) bedroom. The floor area of the bedroom shall not exceed four hundred (400) square feet.
- G. Bathroom Limit.** A Secondary Dwelling shall contain no more than one (1) bathroom.
- H. Maximum Accessory Storage Area.** The total size of any closet or other enclosed storage area within the Secondary Dwelling shall not exceed sixty (60) square feet of floor area.
- I. Required Secondary Dwelling Parking.** One (1) additional on-site parking space, in addition to the ~~two (2)~~ required on-site parking spaces for the ~~single~~One-Family Dwelling, is required for a Secondary Dwelling. Tandem parking that otherwise complies with Setback and paving requirements set forth in Sections 20.90.120 and 20.90.140 of the Municipal Code, shall be allowed. The required on-site parking space for a Secondary Dwelling may be located on a garage driveway-apron in the Front Setback Area of the Lot on which a Secondary Dwelling is situated. No additional parking shall be required for a Secondary Dwelling that meets any of the following criteria:
1. The Secondary Dwelling is located within one-half (1/2) mile of, and has a path of travel that is always publicly accessible to a Site containing an existing public rail-transit station or at least one (1) public bus route with a frequency-of-service interval of fifteen (15) minutes or less during the morning and afternoon peak commute periods.

2. The Secondary Dwelling is located within a Historic District identified in the City's Historic Resources Inventory as defined in Chapter 13.48 of Title 13 this Municipal Code.
3. The Secondary Dwelling is part of the existing primary residence or part of an existing Accessory Structure.
4. When on-Street parking permits are required but not offered to the occupant of the Secondary Dwelling.
5. When there is a motor vehicle that is operated as part of a regional fleet by a public agency or publicly-leased motor-vehicle-sharing organization and provides hourly and daily service located within one (1) block of the Secondary Dwelling.

J. Development Standards. Secondary Dwellings shall comply with all of the following development standards:

1. The Secondary Dwelling shall be subject to the Setback requirements of the zoning district in which the One-Family Dwelling is located, as set forth in this Chapter except that a Secondary Dwelling which does not exceed one (1) Story above grade shall have a minimum Rear Setback of ~~fifteen (15)~~five (5) feet, provided that such Secondary Dwelling shall not occupy more than fifty (50) percent of the area between the Rear Setback otherwise required and said ~~fifteen (15)~~five (5)-foot Rear Setback.
 - a. No setback shall be required for an existing garage that is converted to a Secondary Dwelling, and a minimum setback of five (5) feet from the side and rear lot lines shall be required for an attached Secondary Dwelling that is constructed above a garage.
 - b. Additional setback requirements may apply as a result of that "no-build" easements.
2. An attached Secondary Dwelling shall share a common wall with the One-Family Dwelling, or shall share an integral roof Structure having the same framing system and roof covering as the One-Family Dwelling and shall be separated from the One-Family Dwelling by no more than ten (10) feet at any given point.
3. A detached Secondary Dwelling shall be located ~~behind~~in the Rear Yard of the Lot of the One-Family Dwelling.
4. A detached Secondary Dwelling shall be located at least six (6) feet away from the One-Family Dwelling.
5. A detached Secondary Dwelling shall be limited to a maximum of one (1) Story and eighteen (18) feet in Height, with an average roof Height of no greater than fourteen (14) feet. Average roof Height is measured halfway up the slope of the roof, and in no case shall any portion of the roof Height of a detached Secondary Dwelling exceed eighteen (18) feet. Roof Height shall be determined in accordance with San José Municipal Code Section 20.200.510.
6. A detached Secondary Dwelling may not be attached to an Accessory Building, except that a detached Secondary Dwelling may be attached to a detached garage ~~provided~~the detached garage conforms to the Setbacks required for the Secondary Dwelling so long as applicable Building Code requirements and requirements to address fire or safety hazards are met.

7. In the Rear Yard, a detached Secondary Dwelling shall have a minimum area of eighty (80) square feet of Private Open Space located at a height of no more than two (2) feet above ground level, and with a minimum width of eight (8) feet and a minimum length of eight (8) feet.
8. The cumulative total of the Rear Yard covered by the Secondary Dwelling, Accessory Buildings, and Accessory Structures, except pools, ~~cannot~~shall not exceed forty (40) percent of the Rear Yard.
9. If situated on a Lot that is equal to or greater than one-half (1/2) an acre in size, a Secondary Dwelling shall be located more than one-hundred (100) feet from a Riparian Corridor as measured from top of bank or vegetative edge, whichever is greater.
10. A Secondary Dwelling shall be subject to provisions in this Municipal Code that prevent adverse impacts on a real property that is listed in the California Register of Historic Places.

JK. Design Standards. Secondary Dwellings shall comply with the following design standards:

1. The Secondary Dwelling shall be constructed with facade materials ~~identical in color, and similar~~ in texture and appearance to the One-Family Dwelling, including but not limited to roofing, siding, and windows and doors.
2. The Secondary Dwelling shall match the roof pitch and roof form of the One-Family Dwelling in order to blend with the architecture of the One-Family Dwelling.
3. The front door of any attached Secondary Dwelling shall not be located on the same facade as the front door of the One-Family Dwelling if that facade fronts onto a Street, unless all other locations for placement of the Secondary Dwelling front door would require a passageway as defined in Government Code Section 65852.2(h)(5).
4. ~~The windows of any Secondary Dwelling shall be placed on the Secondary Dwelling in locations that do not allow a direct view into the interiors of adjacent residential Structures, or into the back Yards of adjacent residences.~~

KL. Application - Owner ~~Residence~~Certification. As part of the Building permit application process for a Secondary Dwelling, the owner of record shall submit a declaration, under penalty of perjury, stating that the ~~Secondary~~One-Family Dwelling is not intended for sale separate from the primary residence, but may be rented. ~~existing on the property is the owner's primary residence and that the owner occupies that primary residence. Sufficient documentation of such ownership and occupancy during the Building permit application process and at the time of Building permit issuance and finalization shall be provided to the satisfaction of the Director.~~ Nothing in this Section 4(A) shall be deemed to affect the legal status of a Secondary Dwelling built with a lawfully issued permit if the property is subsequently transferred or sold, or if the One-Family Dwelling or Secondary Dwelling is subsequently rented or leased.

LM. Code Compliance - One-Family Dwelling. An application for a Secondary Dwelling Building permit shall not be deemed complete, and a Building permit shall not be issued, if the City determines that the One-Family Dwelling will continue to have uncorrected violations involving applicable Zoning and Building Code requirements, or fire or safety hazards.

MN. Other Permits Required. Nothing in this Section supersedes requirements for obtaining Development Permits pursuant to this Title, or for properties subject to the Historic Preservation Permit requirements set forth in Chapter 13.48 of Title 13 of the San José Municipal Code.

NO. Compliance with Building and Zoning Codes. A Secondary Dwelling shall be built in accordance with the Building Code set forth in Title 24 of the San José Municipal Code ("Municipal Code") and in conformance with Title 20 of the San José Municipal Code.

OP. Located on One (1) Lot. A Secondary Dwelling shall be located within the same subdivision unit and on the same legal Parcel as the One-Family Dwelling to which it is ancillary.

**Part 3
DEVELOPMENT REGULATIONS**

20.30.200 Development Standards.

All development in the Residential Zoning Districts shall conform to the development regulations set forth below in Table 20-60.

Table 20-60 Residential Zoning Districts Development Standards								
Regulations	Zoning District							
	R-1-8	R-1-5	R-1-2	R-1-1	R-1-RR	R-2	R-M	R-MH
Minimum Lot Area (square feet or acreage)	5,445	8,000	20,000	43,560	5 acres	5,445	6,000	6,000
Minimum Setback (feet)								
Front	25 <u>20</u>	25 <u>20</u>	30	30	50	20 <u>15</u>	15 <u>10</u>	15
Side, Interior	5	5	15	20	20	5	5	5
Side, Corner	12.5	12.5	15	20	30	10	7.5	7.5
Rear, Interior	20	20	25	25	30	25	25	25
Rear, Corner	20	20	25	25	30	25	15	15
Minimum Driveway Length (feet) <u>measured from Lot</u>	23 <u>18</u>	<u>0</u>	<u>0</u>	<u>0</u>				

<u>Line.(Note 5)</u>								
Maximum Height (feet) (Notes 1, 2 and 4)	35	35	35	35	35	35	45 or established in Chapter 20.85	45
Maximum Number of Stories (Note 3)	2.5	2.5	2.5	2.5	2.5	2.5	3 Not Applicable.	3
Parking	See Chapter 20.90							
Floor area ratio	See Part 9 of Chapter 20.100 for Single-Family House Permit criteria that may apply							

Notes:

1. Refer to Part 9 of Chapter 20.100 regarding Single Family House Permit requirements and Section 20.200.510 regarding the definition of "Height."
2. An alternative Maximum Height may be established as described in Chapter 20.85. Where an alternative Maximum Height restriction has been established as described Chapter 20.85, that regulation described in Chapter 20.85 shall govern and control over the provisions in this Section.
3. Refer to Section 20.200.120 regarding the definition of "Basement"; refer to Section 20.200.1210 regarding the definition of "Story"; and refer to Section 20.200.1220 regarding the definition of "Half Story".
4. An alternative Maximum Height may be established as described in Chapter 20.85. Where an alternative Maximum Height restriction has been established as described in Chapter 20.85, that regulation described in Chapter 20.85 shall govern and control over the provisions of this Section.
5. The minimum driveway length shall comply with the minimum Setback requirements for the Zoning District in which the Lot is situated.

20.30.250 - Side Setback - Exception, R-1 and R-2 Residence Districts.

Notwithstanding the provisions of Section 20.30.200, where an Interior Lot is situate in a R-1 or R-2 residence district, and such Lot has been of record since prior to July 1, 1929, and such Lot is and has been since said date less than fifty (50) feet in width, the Side Setback requirements for such Lot, if it is an Interior Lot, shall be:

1. For One-family or Two-family Dwellings or uses accessory thereto, ten (10) percent of the width of such Lot in lieu of the Setback established by Section 20.30.200, provided that in no case shall the Side Setback requirement be less than four (4) feet; and

2. For Buildings used or intended to be used for any purpose other than a one-family or two-family use or uses accessory thereto shall have a Side Setback of not less than ~~twenty~~ five (5) feet.

20.30.270 Corner Lot – Rear Setback - Exception For Corner Lot – Attached Garage.

Notwithstanding the provisions of Section 20.30.200, the Rear Setback for the portion of a dwelling that contains an attached garage and no other garage on a Corner Lot in a R-1 ~~and or~~ R-2 Residence District, and having asaid garage as an integral part of the Building in which the dwelling and attached garage are located, may be reduced to five (5) feet where all of the following provisions are met:

- A. The portion of said Building which is situated within twenty (20) feet of the ~~r~~Rear ~~property-Lot L~~line of said Corner Lot does not extend in front of the Building Setback line required of the Lots situated within the same block and to the rear of said Corner Lot; and
- B. Where, in addition, the portion of said ~~dwelling~~Building which is situated within twenty (20) feet of the ~~r~~Rear ~~property-Lot L~~line of said Corner Lot does not occupy more than thirty (30) percent of the required Rear ~~twenty feet~~ Setback Area ~~twenty feet~~ of said Corner Lot; and
- C. Where the portion of said Building which is situated within twenty (20) feet of the Rear Lot Line of said Corner Lot does not exceed one (1) Story in Height and does not exceed sixteen (16) feet in Height.

20.30.280 Rear Setback - Exception - Additions to Single-Family Residences.

In the R-1 Residence Districts, an addition, added to an existing One-Family Dwelling, ~~which that~~ is a single Story or an open or enclosed patio, where the maximum Height of said addition with a sloped roof as measured halfway up any slope of the roof does not exceed twelve (12) feet, and no portion of said addition exceeds a maximum Height of sixteen (16) feet~~and which does not exceed one (1) Story~~ above grade, shall have a minimum Rear Setback of fifteen (15) feet, provided that such addition shall not occupy more than fifty (50) percent of the area between the minimum required Rear Setback as designated in Section 20.30.200 and said fifteen-foot Rear Setback.

20.30.300 Maximum Height - Exception for Chimneys or Architectural Embellishments.

In the R-1, ~~and~~ R-2 ~~and R-M~~ Residence Districts, the maximum Height of a chimney, weather vane or other similar architectural embellishment mounted on a Building and having a horizontal cross section of no more than twenty (20) square feet may be increased to forty (40) feet, provided that it does not exceed the Height of the Building on which it is mounted by more than five (5) feet.

20.30.310 Minor One-Story Addition – Exception for Same Side Setback as Existing Structure.

One-Story additions may be erected with the same Side Setback as an existing Structure subject to the following restrictions:

- A. No such addition shall reduce, or further diminish a nonconforming Setback.
- B. The total square footage of such addition shall be no more than the square footage of the existing areas encroaching within the nonconforming Side Setback Area or one hundred fifty (150) square feet in area, whichever is less.
- C. Said addition is a single-Story addition and shall not exceed twenty (20) feet in Height.
- D. Only one such addition shall be Permitted.

Part 4 SETBACK REGULATIONS

20.30.400 Setback areas - Setback Area to be kept Open, Unobstructed, and Unoccupied.

Except as otherwise expressly and specifically provided in other sections of this Title, every part of every Setback Area shall be kept open, unobstructed, and unoccupied on the surface of the ground, above the surface of the ground, and below the surface of the ground by all Buildings or Structures except as follows:

- A. Sills, eaves, belt courses, cornices, canopies, and other similar architectural features may project horizontally for a distance of not more than two (2) feet into the air space above the surface of the ground in any Setback Area;
- B. In the R-1-2, R-1-1 and R-1-RR Districts only, sills, eaves, belt courses, cornices, canopies, and other similar architectural features may project horizontally for a distance of not more than four (4) feet into the air space above the surface of the ground in any Setback Area;
- C. Any portion of a Building ~~(including but not limited to bay windows, chimneys, and bump-outs or architectural elements that project out from the primary surface of the Building Facade,~~ whether on a foundation or cantilevered, not occupying in the aggregate more than twenty (20) percent of the length of the side of the Building, may project horizontally for a distance of not more than two (2) feet into any Setback area, provided that such extensions maintain a minimum Side Setback of at least three (3) feet and a minimum Rear Setback of at least fifteen (10) feet, and a minimum Rear Setback of at least five (5) feet for a Secondary Dwelling;
- D. Tankless water heaters and power inverters may project horizontally for a distance of not more than two (2) feet into any Setback area;
- E. Wells for basement windows or stairs of up to ten (10) feet in length each, not occupying in the aggregate more than twenty (20) percent of the length of the side of the Building on which they are located, may project horizontally for a distance of not more than two (2) feet into the Side and Rear Setback Areas, provided that such extensions maintain a minimum Side Setback of three (3) feet and a Rear Setback of fifteen (15) feet;
- F. Overhead wires necessary for utility service to a Building on the Lot;

- G. Underground lines necessary for the sewerage, drainage, plumbing, water, gas, and electrical and other utility needs of the Lot or of a Building on the Lot;
- H. Walks and driveways for vehicular or pedestrian access to the Lot that are situated in any Setback area which abuts upon a public Street shall be no more than two (2) feet above nor more than one (1) foot below grade; and
- I. Mechanical equipment, including but not limited to, pool equipment and HVAC equipment, may be placed in the Rear Setback and must shall maintain a five (5)-foot Setback from the rear property line, maintain a Setback from the side property line a distance equal to that of the Side Setback requirements of the respective zoning district, and adhere to the required Front Setback of the respective zoning district.

Stairs and Porches.

Unenclosed porches and stairways, if they do not extend more than three (3) feet above surface grade may extend into a Front Setback Area not more than five (5) feet. Porches and stairs can may be covered.

**Part 5
ACCESSORY BUILDINGS AND STRUCTURES**

20.30.500 Development Standards.

- A. All Accessory Buildings and Accessory Structures in the Residential Zoning Districts shall conform to the development regulations set forth below in Table 20-70.
- B. When the right column of Table 20-70 includes a reference to a section number or a footnote, the regulations cited in the section number or footnote apply.

Table 20-70 Accessory Buildings and <u>Accessory</u> Structures Development Regulations		
Front Setback (feet)		
Retaining walls	None	
Swimming Pool, built-in	30	
Detached garage on a Lot with two intersecting front property lines	25	Note 1
<u>Detached garage with a maximum length of twenty (20) feet that maintains a minimum Side Setback of five (5) feet</u>	<u>45</u>	
All other Accessory Buildings and Structures	60	
Side Setback (feet)		

Swimming Pools, built-in		
Interior Lot	5	
Corner Lot	9	
All other Accessory Buildings and Structures	None	Notes 2, 3, <u>9</u>
Rear Setback (feet)		
Swimming Pools, built-in	5	
All other Accessory Buildings and Structures	None	Notes 2, 3, <u>9</u>
Height (feet)		
Retaining wall	2	Note 4
All other Accessory Buildings and Structures	12	Note 5
Maximum number of Stories	1	
<u>Area (square feet)</u>		
Maximum size (cumulative square feet)	650	Notes 6, 7, 8

Notes:

1. Measured from front property line which is opposite the designated side property line.
2. On a Corner Lot, no Accessory Buildings shall be built within ten (10) feet of the side property line of the Street side.
3. With respect to Accessory Buildings or Accessory Structures, where any such Building or Structure is proposed to be constructed on a Corner Lot which abuts upon a Key Lot which is for residential use, such Building or Structure shall be set back not less than four (4) feet from the rear Lot Line of such Lot, provided that the Setback for Swimming Pools shall not, in any event, be reduced to less than five (5) feet.
4. Maximum Height of two (2) feet measured from existing grade, unless a greater Height is otherwise approved with a Development Permit.
5. No Accessory Building or Structure shall exceed twelve (12) feet in Height except that for an Accessory Building with a sloped roof, the Height halfway up any slope of a pitched, gable or hip roof may not exceed twelve (12) feet and, ~~in no case, may any~~ portion of the roof shall exceed a Height of sixteen (16) feet except that a roof with a Solar Photovoltaic System on top of an Accessory Building shall not exceed a Height of twenty-one (21) feet above grade, and the roof of a Secondary Unit on top of a detached garage shall not exceed a Height of (twenty) 20 feet above grade.
6. The ~~maximum size of an individual Accessory Building or Accessory Structure or the total aggregate~~ square footage of all Accessory Buildings and Accessory Structures built on any property may be increased to exceed six hundred fifty (650) square feet only pursuant to a Special

Use Permit, as provided for in Chapter 20.100 of this Title.

7. ~~The total aggregate square footage of all Accessory Buildings and Structures built on any property in any R-1 or R-2 Residence Zoning Districts shall not exceed six hundred fifty square feet unless the owner has obtained a Special Use Permit, as provided for in Chapter 20.100 of this Title.~~ For purposes of this Section, the calculation of square footage shall not include any square footage of an Accessory Building or Accessory Structure that is entirely below grade.
8. Per Section 20.200.020, an Accessory Building shall not contain living space or sleeping quarters, and shall be limited to two (2) plumbing connections to serve an appliance or fixture, and unconditioned space as defined in Title 24 of the San José Municipal Code.
9. Increased setbacks may be required based upon fire and life safety requirements in this Code.

20.30.530 Height Exceptions – Accessory Buildings.

- A. Notwithstanding Section 20.30.500, in the R-1, R-2 and R-M Residence Districts, the maximum Height of an Accessory Building with a sloped roof may exceed twelve (12) feet provided the Height halfway up any slope of a pitched, gable or hip roof does not exceed twelve (12) feet and no portion of the accessory building exceeds a maximum height of sixteen (16) feet.
- B. Notwithstanding any other provision of this Part, the maximum Height of a Solar Photovoltaic System mounted on an Accessory Building may exceed the maximum Height allowed by Section 20.30.500 and Section 20.30.530A. if the Solar Photovoltaic System conforms to the following criteria:
 1. The Solar Photovoltaic System is mounted on an Accessory Building in a manner that conforms to the Height requirements of a roof on that Structure; or
 2. The Solar Photovoltaic System is mounted on an Accessory Building and no portion of the Solar Photovoltaic System extends more than two-five (5) feet above the Height of the existing roof and no portion of the Solar Photovoltaic System exceeds a maximum Height of sixteentwenty-one (21) feet.

Part 7 PERFORMANCE STANDARDS

20.30.700 Performance Standards.

- A. In the R-1, R-2, R-M, and R-MH Residential Districts, no primary, secondary, incidental or Conditional Use or activity related thereto shall be conducted or Permitted:
 1. In a manner that causes or results in the harmful discharge of any waste materials into or upon the ground, into or within any sanitary or storm sewer system, into or within any water system or water, or into the atmosphere; or
 2. In a manner that constitutes a menace to persons or property or in a manner that is dangerous, obnoxious, or offensive by reason of the creation of a fire, explosion, or

other physical hazard, or by reason of air pollution, odor, smoke, noise, dust vibration, radiation, or fumes; or

3. In a manner that creates a public or private nuisance.

B. Without limiting the generality of the preceding subsection, the following specific standards shall apply in the Residential Zoning Districts:

1. Air Pollution

Total emissions from any use or combination of uses on a Site shall not exceed the emissions and health risk thresholds as established by the Director of Planning.

2. Noise

The sound pressure level generated by any use or combination of uses on a property shall not exceed the decibel levels indicated in Table 20-85 at any property line, except upon issuance and in compliance with a Conditional-Special Use Permit as provided in Chapter 20.100.

Table 20-85 Noise Standards	
	Maximum Noise Level in Decibels at Property Line
Any residential or non-residential use	55

Vibration

There shall be no activity on any Site that causes ground vibration that is perceptible without instruments at the property line of the Site.

**Chapter 20.90
PARKING AND LOADING**

**Part 3
EXCEPTIONS**

20.90.220 Reduction in Required Off-Street Parking Spaces.

A. Alternative Transportation.

1. A reduction in the required Off-Street Vehicle Parking Spaces of up to fifty (50) percent may be authorized with a Development Permit or a development exception if no Development Permit is required, for Structures or uses that conform to all of the following and implement a total of at least three (3) transportation demand management (TDM) measures as specified in the following provisions:

- a. The Structure or use is located within two thousand (2,000) feet of a proposed or an existing rail station or bus rapid transit station, or an area designated as a Neighborhood Business District, or as an Urban Village, or as an area subject to an Area Development Policy in the City's General Plan or the use is listed in Section 20.90.220G.; and
- b. The Structure or use provides bicycle parking spaces in conformance with the requirements of Table 20-90.
- c. For any reduction in the required off-street parking spaces that is more than twenty (20) percent, the project shall be required to implement a transportation demand management (TDM) program that contains but is not limited to at least one of the following measures:
 - i. Implement a carpool/vanpool or Car-share program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool or Car-share vehicles, etc., and assign car pool, van pool and Car-share parking at the most desirable onsite locations at the ratio set forth in the Development Permit or development exception considering type of use; or
 - ii. Develop a transit use incentive program for employees and tenants, such as on-Site distribution of passes or subsidized transit passes for local transit system (participation in the regionwide Clipper Card or VTA EcoPass system will satisfy this requirement).
- d. In addition to the requirements above in Section 20.90.220.A.1.c. for any reduction in the required off-street parking spaces that is more than twenty (20) percent, the project shall be required to implement a transportation demand management (TDM) program that contains but is not limited to at least two (2) of the following measures:
 - i. Implement a carpool/vanpool or Car-share program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool or Car-share vehicles, etc. and assign car pool, van pool and Car-share parking at the most desirable on-Site locations; or
 - ii. Develop a transit use incentive program for employees, such as on-Site distribution of passes or subsidized transit passes for local transit system (participation in the regionwide Clipper Card or VTA EcoPass system will satisfy this requirement); or
 - iii. Provide preferential parking with Charging Station facility for electric or alternatively-fueled vehicles; or
 - iv. Provide a guaranteed ride home program; or
 - v. Implement telecommuting and flexible work schedules; or
 - vi. Implement parking cash-out program for employees (non-driving employees receive transportation allowance equivalent to the value of subsidized parking); or
 - vii. Implement public information elements such as designation of an on-site TDM manager and education of employees regarding alternative transportation options; or
 - viii. Make available transportation during the day for emergency use by employees who commute on alternate transportation. (This service may be provided by access to company vehicles for private errands during the workday and/or combined with contractual or pre-paid use of taxicabs, shuttles, or other privately provided transportation); or
 - ix. Provide shuttle access to Caltrain stations; or
 - x. Provide or contract for on-site or nearby child-care services; or

- xii. Incorporate on-site support services (food service, ATM, drycleaner, gymnasium, etc. where permitted in zoning districts); or
 - xiii. Provide on-site showers and lockers; or
 - xiv. Provide a bicycle-share program or free use of bicycles on-site that is available to all tenants of the site; or
 - xv. Unbundled Parking; and
- e. For any project that requires a TDM program:
- i. The decision maker for the project application shall first find in addition to other required findings that the project applicant has demonstrated that it can maintain the TDM program for the life of the project, and it is reasonably certain that the parking shall continue to be provided and maintained at the same location for the services of the Building or use for which such parking is required, during the life of the Building or use; and
 - ii. The decision maker for the project application also shall first find that the project applicant will provide replacement parking either on-Site or off-Site within reasonable walking distance for the parking required if the project fails to maintain a TDM program.
2. A reduction in the required off- street vehicle parking spaces for a Structure or use of up to ten (10) percent or up to two (2) Off-Street Vehicle Parking Spaces, whichever is less, may be authorized with a Development Permit or a development exception if no Development Permit is required for a particular use, for nonresidential uses in conformance with the following:
- a. In addition to the off-Street bicycle parking spaces required for the structure or use, ten (10) off-Street bicycle parking spaces consisting of bicycle racks or five off-Street bicycle parking spaces consisting of bicycle lockers shall be provided for every one (1) required Off-Street Vehicle Parking Space that is reduced; and
 - b. The bicycle parking spaces shall conform to all of the requirements of this Chapter.

B. One-Family Dwellings.

1. A reduction in the required off- Street vehicle parking for a One-Family Dwelling is allowed by right if the following criteria are met:
- a. At least one (1) covered parking space is provided; and
 - b. No more than one (1) dwelling occupies the Lot; and
 - c. The location of the required covered parking is set back a minimum of ~~sixtyfourty-five (45)~~ feet from the Front propertyLot Line when the garage is accessed via a curb cut from the Front propertyLot Line and forty (40) feet from the Side Corner propertyLot Line when the garage is accessed via a curb cut from the ~~corner~~ Side Corner propertyLot Line; and
 - d. The required covered parking is accessed by a driveway of a width no less than ten (10) feet and no more than twelve (12) feet; and
 - e. Any curb cuts accessing the parking shall be in proportion to the driveway width; and
 - f. No additional paving in the Front Setback shall be designated or used for parking; and
 - g. ~~The floor area of the covered parking structure does not exceed three hundred and fifty square feet; and~~

~~h.~~—The covered parking Structure shall meet all other applicable regulations of this Title.

2. Except for a Secondary Dwelling meeting one of the exception criteria from Secondary Dwelling Unit parking requirements as set forth in Section 20.30.150.I. of this Code, when a garage, carport, or covered parking Structure is demolished in conjunction with the construction of a Secondary Dwelling, and the off-Street parking spaces are required to be replaced, the replacement spaces may be covered spaces, uncovered spaces, or tandem spaces, or replaced by the use of mechanical automobile parking lifts. The location, design, and development of such replacement required parking spaces shall comply with Sections 20.90.120 and 20.90.140 of Chapter 20.90, with the provisions for stormwater management and treatment in Chapter 20.95, unless specific findings are made that parking in these areas is not feasible based on specific site or regional topographical or fire and life safety conditions.

C. Ground Floor Commercial Uses in Neighborhood Business Districts or Urban Villages.

1. The off-street vehicle parking requirement for uses subject to Note 3 on Table 20-190 in Section 20.90.060 shall be reduced to one (1) space per four hundred (400) square feet of floor area, provided all of the following requirements are met:
 - a. The Site is designated on the General Plan land use/transportation diagram with the Neighborhood Business District overlay or designated as Urban Village; and
 - b. The use is located on the ground floor of a Building; and
 - c. No parking reduction is approved for a use pursuant to Section 20.90.220A.1. of this Chapter.

D. Multiple Family Residential in the Main Street Districts. The decision maker may reduce the required vehicle parking spaces for a multiple-Family residential use in the Pedestrian Oriented Zoning Districts with a Development Permit based on the following findings:

1. The project includes one (1) or more of the following options:
 - a. The project includes Unbundled Parking that maximizes the efficient use of available parking; or
 - b. The project includes a Car-Share program that reduces the demand for parking spaces; or
 - c. The project promotes safe pedestrian movements by eliminating or significantly reducing the need for vehicular driveways to the Main Street by means of Parcel assembly or shared access or by providing a new pedestrian walkway to the Main Street that facilitates safe and convenient access for a substantial segment of the surrounding neighborhood; and
2. The project does not include a parking reduction pursuant to Section 20.90.220G.; and
3. For a project that includes ground floor commercial Building space, the project is designed in a manner that ensures the availability of adequate parking for ground floor commercial uses; and
4. The project provides vehicle parking spaces at a parking ratio of no less than 0.8 parking spaces per residential unit; and

- E. Nonresidential Uses in a Main Street District.** The decision maker may reduce the required vehicle parking spaces for non-residential uses by up to thirty (30) percent with a Development Permit based on the following findings:
1. The project achieves one of the following:
 - a. The project promotes safe pedestrian movements by eliminating or significantly reducing the need for vehicular driveways to the Main Street through Parcel assembly or shared access or by providing a new pedestrian walkway to the Main Street that facilitates safe and convenient access for a substantial segment of the surrounding neighborhood; or
 - b. The project promotes the efficient use of available parking by providing shared Parking Facilities; and
 2. The project does not include a parking reduction for ground-floor commercial Building area subject to reduced parking pursuant to Section 20.90.220A. or 20.90.220C. of this Title; and
 3. For a project that includes ground floor commercial Building space, the project is designed in a manner that ensures the availability of adequate parking for ground floor commercial uses.
- F. Miniwarehouse/Ministorage.**
1. A reduction in the required off- Street parking may be authorized with a Development Permit for those miniwarehouse/ministorage Buildings meeting all of the following requirements:
 - a. Buildings are single Story; and
 - b. Loading spaces are available directly adjacent to those storage units contained in the single-Story Building.
- G. Other Uses.**
1. Up to a twenty (20) percent reduction in the required off-Street parking for Private Instruction or personal enrichment; sororities, fraternities and dormitories occupied exclusively (except for administrators thereof) by students attending college or other educational institutions; SROs; Efficiency Living Units; Emergency Residential Shelters; Residential Care/Service Facilities; Convalescent Hospitals; Hotels/Motels; Bed and Breakfast Inns; senior housing uses; recreation uses; Gasoline Service or Charge Stations when combined with other uses; and performing arts rehearsal space uses may be approved with a Development Permit or a development exception if no Development Permit is required, provided that such approval is based upon the findings that the project is either within two thousand (2,000) feet of an existing or proposed bus or rail transit stop; or the use is clustered with other uses that share all parking spaces on a Site.
 2. Up to a one hundred (100) percent reduction in the required off-Street parking for Emergency Residential Shelters may be approved with a Development Permit or a development exception if no Development Permit is required.

CHAPTER 20.200 DEFINITIONS

20.200.325 - Dwelling, Secondary, or Accessory Dwelling Unit or ADU.

A "Secondary Dwelling" means an attached or detached residential dwelling which is ancillary to a one-family dwelling and provides complete independent living facilities for one or more persons that include permanent provision for living, sleeping, eating, cooking, and sanitation on the same parcel as the one-family dwelling unit is situated. A Secondary Dwelling shall be considered an Accessory Dwelling Unit for the purpose of application of State law pertaining to Accessory Dwelling Units.

20.200.350 - Efficiency Living Unit.

"Efficiency Living Unit" means a small Living Unit of no more than five hundred (500) square feet in area ~~that does not have a separate bedroom.~~

20.200.~~4010~~1040 - Residentially Zoned Property.

"Residentially Zoned Property" means real property situate in any of the Residential Zoning Districts as set forth in Chapter 20.30 of this Title or any Planned Development (PD) District in which residential uses are permitted.

20.200.~~4030~~ 1010 - Residential Care Facility.

"Residential Care Facility" is a facility licensed by the State of California where care, services or treatment is provided to persons living in a community residential setting.

20.200.~~4040~~ 1030 - Residential Service Facility.

"Residential Service Facility" is a residential facility, other than a Residential Care Facility or Single Housekeeping Unit, where the operator receives compensation for the provision of personal services, in addition to housing, including but not limited to, protection, supervision, assistance, guidance, training, therapy or other nonmedical care.

20.200.~~4370~~1440 - Yard.

"Yard" is an open space other than a court on the same Lot with a Building unoccupied and unobstructed from the ground upward except as otherwise provided in this Title.

20.200.~~4380~~1450 - Yard, Front.

"Front Yard" is that Yard which extends:

1. Across the full width of the Lot; and
2. From the front line of the Lot to the front of the Building.

20.200.~~4390~~1460 - Yard, Rear.

"Rear Yard" is that Yard which extends:

1. Across the full width of the Lot; and
2. From the rear line of the Lot to the rear of the Building.

20.200.~~4400~~1470 - Yard, Side.

"Side Yard" is that Yard which is neither Front Yard nor Rear Yard.

RE: Secondary Units

Nicole Montojo <nicole@siliconvalleyathome.org>

Wed 9/7/2016 9:36 PM

To: Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>;

Cc: Pilar Lorenzana-Campo <pilar@siliconvalleyathome.org>;

📎 1 attachments (378 KB)

ADU_Letter_8.15.pdf;

Hello Jenny,

I hope this email finds you well. In the attachment from the email below sent by Pilar Lorenzana-Campo on August 22, we included a note requesting information on the **total fees a homeowner must pay in order to create a SU**. It might have been overlooked, so I'm writing to follow up on this request. It's been quite a challenge for us to figure out what fees would apply and exactly how much they would cost, and we would really appreciate if you or another staff member at the Planning Department could provide a list that breaks down all of the potential fees (not just building permit fees, but the entire range of fees that would be incurred, including utility fees, school district fees, etc.), the amounts they range from, and how they are calculated. If we need to go about this request in a different way (such as submitting a formal request) please let me know so I can follow up.

I also have a few follow up questions regarding the information you shared at the last community meeting on Secondary Units:

- I remember you mentioning that it would be difficult to use an FAR requirement in place of minimum lot size, maximum floor area, and/or rear yard coverage requirements because it would be complicated to state this FAR in relation to the FAR requirement to the primary unit, and because an FAR requirement could imply that two-story or second story units are possible – did I summarize that accurately (if not, please feel free to correct)? Also, you noted that there is already an implied FAR requirement, and that you'd be willing to extrapolate that figure for us. **We're still interested in understanding what that implied FAR figure is, so could you please provide it for us?**
- I'm confused by the language used in the Draft Revised Secondary Unit Worksheet regarding required parking. It says that one additional space (**outside** front and side setbacks) plus required covered spaces for primary residence. Can you clarify what you mean by "outside front and side setbacks"? -- does that mean that the parking *cannot* be within the front and side setbacks? I know it also says that parking on the driveway in front setback is allowed, so I'm unclear on what the proposed rule actually is.

Lastly, attached is the electronic version of the letter that I gave you at the community meeting from the Bay Area Council coalition.

Thank you for taking the time to provide feedback on our recommendations and help us understand the proposed changes to the Secondary Unit ordinance. We look forward to seeing this item on the agenda at future Commission and Council meetings.

Sincerely,

Nicole Montojo
Policy Associate

August 15, 2016

RE: Unlocking the market for Accessory Dwelling Units (ADUs) to address the Bay Area's housing crisis

Dear Public Official,

In the face of an unprecedented housing crisis that threatens our families, economy, and environment, we appeal to your city to help us increase housing opportunities in the Bay Area through an exciting new campaign to unlock the market for Accessory Dwelling Units (ADUs).

Everyone deserves a home they can afford. Yet today, far too many couples, seniors, young people, and families are being priced out of the Bay Area and forced into long commutes that increase greenhouse gas emissions and traffic congestion. Our returning college graduates, our teachers, nurses, police and fire officers, service workers, and retirees all need a place to live. We want to have them here, near to us, in our neighborhoods, rather than be forced out—and encourage you to join us in our efforts.

Our groups are all supporting more funds for dedicated affordable homes, but that alone cannot solve this crisis. We need many more “tools in the toolbox.” That is why we are urging every city in the region to immediately modify their codes to expand the construction and legalization of ADUs with building permit approvals only. This will provide a rapid means of providing workforce infill housing within the existing fabric of Bay Area neighborhoods.

ADUs are simply a small second dwelling on the same property as a primary home, whether a basement in-law apartment, a unit over a garage, or a tiny house in the backyard. ADUs can create homes more easily than any other type of building, with no additional subsidy, and assist local homeowners in the process.

This is the first time our organizations have collaborated on a regional policy program of this magnitude. We have come together because the environmental, smart growth, senior, and business community all agree that the Bay Area needs our cooperation in response to the pervasive and alarming housing crisis facing our region. We look forward to working together with our local government partners to tackle this crisis and make the Bay Area an even better place to live.

The Case for Accessory Dwellings

Accessory dwellings offer a number of advantages to communities who have adopted them.

1. ADUs are a popular tool to provide more housing choices

Many cities around the world have recognized the power of ADUs to increase middle income housing and have amended their local policies to facilitate ADU development. In the United States a wide variety of jurisdictions—including Portland, Seattle, Marin County cities, Oakland, Berkeley, Santa Cruz, and Honolulu—have all recently created rules that allow homeowners to build ADUs with only a building permit—taking the cost and stress out of the application process and opening up more places where these units are viable. In Vancouver, ADUs are becoming one of the most

significant sources of new smaller homes, with over 1,000 building permits issued annually. In New South Wales, Australia, "granny flats" accounted for 5,000 new homes in a single year.

2. ADUs are less costly to build than other forms of housing

ADUs are the most affordable type of homes to construct in the inner Bay Area. They do not require paying for land, major new infrastructure, structured parking, or elevators. They are built with cost-effective one- or two-story wood frame construction, which is significantly less costly than homes in new multi-family infill buildings. And while ADUs are smaller than the single family homes they share a property with, they often provide as much living space as the new apartments and condominiums being built in new infill buildings and serve very well for couples, small families, young people, and seniors.

3. ADUs offer a green housing choice

ADUs provide a host of environmental benefits. UC Berkeley studies show that ADU residents have fewer cars and utilize transit more often than the general population. In communities already served by transit, ADUs can provide new homes without adding traffic, instead fostering more walking, biking, and transit. And ADUs make efficient use of developed areas while helping to ease development pressure on our natural and natural lands; every new home added in transit-served Bay Area cities is a home not pushed to the edge of the region, the middle of California, or out of state entirely, where the greenhouse gas footprint of development is much higher.

4. ADUs promote intergenerational living and can be a form of family insurance against catastrophic life events that could force foreclosure or relocation

ADUs give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care and helping extended families to be near one another while maintaining privacy. They also provide a source of income for homeowners who have experienced a tragic illness, job loss, or divorce that puts them at risk of losing their home.

5. Many existing large homes are underutilized and can accommodate ADUs

Studies from cities considering expansions of their ADU programs document that many existing single family homes are occupied by fewer people than they were designed to accommodate. An expansion of ADUs allows extra space to become a home for someone who would otherwise be priced out of a community, while maintaining the character of single family neighborhoods.

6. Barriers to ADUs must be removed to grow this housing source

Research completed at UC Berkeley has documented that homeowners will not try to get the approval of their neighbors or the city to add an ADU if the process is cumbersome, expensive, or controversial. Many local zoning codes and plans create standards that homeowners cannot achieve in order to rent a space in their home or converted garage. Ironically, it is easier to add a temporary rental in a home than a permanent one, and yet the need for permanent housing is so much greater. The explosive popularity of temporary rentals demonstrates that local homeowners are interested in ways to allow their homes to be fully utilized, add a source of income for their families, or allow aging in place. Allowing ADUs to be added on existing properties with an over the counter building permit encourages more long term housing within existing neighborhoods. In fact, ADUs offer cities that wish to require owner occupancy a better tool to control for temporary rentals, as the building permit process can be used to enforce local short term rental laws.

7. Local cities offer a number of models that could form the basis for a new ADU law in your city

We have compiled here for you several models from cities that have expanded opportunities for ADUs on a ministerial basis. We have also included recent studies from UC Berkeley about the types of local standards that prevent or facilitate ADUs in a number of Bay Area cities. These materials offer examples of development standards to encourage ADUs, academic research on ADUs, and press articles about cities that have shown leadership on this issue.

Recommendations for Local Action

Based on findings from UC Berkeley and elsewhere, we encourage local jurisdictions to adopt the following standards for ADU approval:

1. Relax parking requirements—particularly if the ADU is located within an existing home or within ½ mile of transit.

Off-street parking requirements, requiring additional spaces to be added, are among the most frequently cited reasons homeowners cannot add ADUs.

These requirements unfairly penalize ADUs, since homes are often occupied below their intended density, as in the case of empty nesters or single parent homes. If an ADU improves utilization of an existing home by renting extra bedrooms with a kitchen and a bath, then the number of cars associated with the property is likely to be similar to that of a single family occupying the same home.

Such requirements also fail to reflect the lower rates of car ownership and higher rates of transit use among ADU residents. In an era when many families are shedding an extra car as Uber, Lyft, car sharing and other on-demand transportation programs expand, many Bay Area communities are wisely reducing off-street parking requirements for ADUs. If parking is required, consider allowing tandem parking in existing driveways.

2. Reform land use controls to allow more ADUs with simple building permit approvals

Development standards are highly effective at preventing homeowners from adding ADUs. In particular, lot coverage ratios and setbacks that are not needed for fire safety prevent many otherwise appropriate areas on a single family lot from incorporating an ADU. If building and fire safety standards can be met, we encourage your city to add no or very minimal additional development standards to restrict ADUs. Creating clear standards for owners to simply obtain a building permit to add an ADU with a minimum of restrictions will significantly increase the number of owners willing and able to pursue this housing option.

3. Allow ADUs without cumbersome permitting or reporting requirements

Many homeowners will not create ADUs if it means high upfront costs, cumbersome permitting and fee burdens, or long-term contractual obligations that owners are not familiar with.

In order to expand ADUs enough to add to urgently needed housing supply, we need to make the economics work through reduced fees, to reduce the work required with easier permitting and less process, and even to provide technical assistance for interested owners to explain the “how to” of ADUs.

4. Broadly legalize existing ADUs that can meet basic building, health, and safety standards even if they are non-compliant with current planning codes

Today, many homeowners illegally rent portions of their property as ADUs. Many of these ADUs might not comply with current zoning or development standards, but they provide an existing home for someone. If that home is safe for occupants and neighbors, it should be allowed to come into compliance with building and safety codes and legally rented.

5. Relax utility service and hookup requirements and reduce other local fees

Requirements that treat an ADU like a new use rather than an accessory to a single family home—such as new water or sewer hookups, new sprinklers, or new utility meters—often drive up the cost of adding an ADU beyond what a homeowner can afford and may not be necessary when the existing home is already served by utilities and the ADU is fire-safe. Likewise, high fees charged for building, planning, or utility permits and review can amount to tens of thousands of dollars and prevent homeowners from seeking permission to add an ADU. In Marin County, cities have worked with their departments and local utilities to reduce the up-front fee and hook-up cost of ADUs to encourage this form of housing. Cities can also allow ADUs to utilize the existing utility services serving the primary residence, eliminating the need for costly new hookup fees and installation costs.

Next Steps

We would like to assist you in promoting more ADUs within your jurisdiction. In addition to providing you with the materials in this correspondence, we offer you the following:

1) Our public support for your ministerial ADU laws

Our organizations can write letters, send people to testify, and help educate the community about the many benefits of ADUs.

2) Lenders who will help your homeowners finance their ADU work

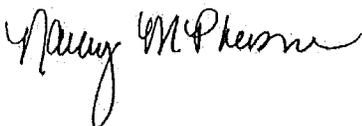
The Bay Area Council is working with member banks and loan originators to develop a specially targeted loan program for homeowners who would like to add ADUs.

3) Help publicize your program

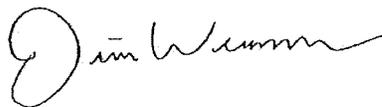
We will help your city develop public outreach to inform homeowners of the existence of new ADU rules so they can consider this option for their property.

We will be contacting your city to make an in-person presentation and offer our assistance and relevant materials. We hope we can assist you in revising your ADU policies to help create thriving, sustainable neighborhoods that welcome people from all walks of life and ensure that everyone can remain a part of their community and live in a place they are proud to call home.

Sincerely,



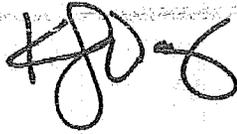
Nancy McPherson
California State Director
AARP



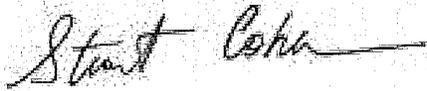
Jim Wunderman
President & CEO
Bay Area Council



Jeremy Madsen
CEO
Greenbelt Alliance



Kristy Wang
Community Planning Policy Director
SPUR



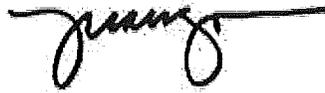
Stuart Cohen
Executive Director
TransForm



Evan Reeves
Research & Policy Director
Center for Creative Land Recycling



Carol Galante
Donald Turner Distinguished Professor
of Affordable Housing and Urban Policy;
Faculty Director, Turner Center
University of California, Berkeley



Pilar Lorenzana-Campo
Policy Director
SV@Home

SV@Home

[nicole@svathome.org]nicole@svathome.org



95 South Market Street, Suite 300, San Jose, CA 95113

[Website](#) | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

From: Pilar Lorenzana-Campo**Sent:** Sunday, August 21, 2016 9:19 AM**To:** Brilliot, Michael <Michael.Brilliot@sanjoseca.gov>; Adam Marcus <adam.marcus@sanjoseca.gov>**Cc:** Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>; Chen, Wayne <wayne.chen@sanjoseca.gov>; Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>**Subject:** Secondary Units

Hello, Adam and Michael.

I hope this email finds you well. We're glad that the City has decided to revise its secondary unit ordinance, especially since, as Michael indicated during our lunchtime forum, much of San Jose is zoned for single-family neighborhoods. In addition to the potential for more affordable housing in Urban Villages, the existing single-family neighborhoods have a role to play in increasing density incrementally.

Our preliminary recommended revisions to the ordinance, reflected in the attached chart, are guided by the desire to make it easier, more affordable, and faster to build secondary units in San Jose.

We look forward to tomorrow's conversation and to other opportunities to provide feedback on the proposed changes.

Best,
Pilar

Pilar Lorenzana-Campo
Policy Director
pilar@siliconvalleyathome.org
c. (408) 215-8925

SV@Home

95 South Market Street, Suite 300, San Jose, CA 95113



Standard	<u>Existing</u> Check List	<u>Proposed</u> Check List	SV@Home Recommendation	SV@Home Comments
Allowed districts	R-1 PD districts with R-1 zoning	R-1 and R-2 zones PD districts with R-1 and R-2 zoning	We support staff recommendations for broader applicability of SU.	
Minimum lot size	6,000 sf for attached 8,000 sf for detached	5,445 sf	We recommend eliminating the minimum lot size requirement and moving towards a floor area ratio (FAR) requirement.	<p>Rationale: We strongly recommend simplifying the overall regulations governing SU and maximizing opportunities for SU, recognizing that data shows that, in the most optimistic case, only one or two homeowners on a block would create a SU.</p> <p>And, as a practical matter, setbacks and floor area, however determined, dictate the minimum lot size that works.</p>
Maximum Floor Area	600 sf to 800 sf, depending on lot size.	600 sf if lot is less than 9,000 sf; 650 sf if lot is 9,001 - 10,000 sf; 800 sf if lot is greater than 10,000 sf.	We recommend eliminating the maximum floor area requirement and moving towards a floor area ratio (FAR) requirement.	<p>Rationale: The maximum floor area combined with minimum lot size, setback requirements, and rear yard coverage restrictions are overly onerous – making it complicated for homeowners to determine the potential for a SU, and dampening enthusiasm for pursuing a project.</p> <p>A FAR requirement is an effective regulatory mechanism that is easily implemented and is responsive to individual lot conditions that exist across San Jose's many neighborhoods.</p>
Rear Setbacks	Reduction of rear setback to 15 feet for	Reduction of rear setback to 5 feet for single	We support staff recommendations for a 5-foot rear setback (with	

	single story unit, as long as secondary unit occupies 50% or less of area between 15 feet and required rear setback.	story unit, as long as secondary unit occupies 50% or less of area between 5 feet and required rear setback.	the exception noted below under "Existing Accessory Structures").	
Rear Yard Coverage	Cumulative total of the rear yard covered by the secondary dwelling, accessory buildings, and accessory structures cannot exceed 40%	Cumulative total of the rear yard covered by the secondary dwelling, accessory buildings, and accessory structures cannot exceed 45%	We recommend eliminating the cumulative rear yard coverage restrictions. Instead cumulative building footprint of the primary dwelling unit and SU combined, should not exceed 50% of the lot.	Rationale: See comments on "Minimum Lot Size" and "Maximum Floor Area".
Existing accessory structures/ detached garages	SU can be attached to a detached garage if both conform to setbacks required of secondary units	No proposed changes.	We recommend allowing the conversion of detached or accessory structures <u>with no new rear or side yard setback requirements.</u>	Rationale: Allowing the conversion of existing structures is the easiest and most affordable way for homeowners to create new SU. This makes second units more feasible in older neighborhoods where legal accessory units are located near or on the property line. Additional requirements, such as placement of doors and windows, can be adopted to ensure that the SU is integrated with the primary residence.
Parking	One additional parking space (outside front and side setbacks) in addition to the two required covered spaces for primary	One additional parking space (outside front and side setbacks) plus required covered spaces for primary residence.	We recommend waiving parking requirements for SU constructed within a half-mile of transit.	Rationale: Research shows that SU residents have low rates of car ownership and high rates of transit use. Additionally, many single-family homes are underutilized and consequently, over-parked. Eliminating parking requirements for residential areas within a half-mile of

PRELIMINARY SV@HOME RECOMMENDATIONS ON SAN JOSE SECOND UNIT ORDINANCE

	residence. (Tandem parking allowed, provided all setback and paving requirements are met.)	(Tandem parking allowed, if all setback and paving requirements met. Parking on driveway in front setback allowed.)		transit is simply good policy. Other alternatives the City could pursue include: - Waiving the covered parking requirement for the primary residence if a SU is built. Waiving the parking requirements for SUs altogether.
Fees	No action suggested. We request information on the total fees a potential homeowner must pay in order to create a SU.	No action suggested.	We recommend that the City identify ways to reduce the entitlement and processing costs of creating SU.	Rationale: Permit, utility, and impact fees can add tens of thousands of dollars to the cost of creating SU. Reducing the financial burden for homeowners, through reduced fees as was recently done by Mountain View, or a fee-waiver program, as is the practice in Santa Cruz, are two ways for San Jose to make SU more affordable.
Bedroom / bathroom	One bedroom required and maximum allowed (up to 400 sq.ft.), one bathroom required and maximum allowed	Expansion to allow a combined sleeping/living area.	We recommend eliminating this requirement.	Rationale: This is an unnecessary regulation.
Storage / Closet	60 sf max	60 sf max	We recommend eliminating this requirement.	Rationale: This is an unnecessary regulation.
Owner Occupancy	Must submit copy of tax bill verifying homeowner's exemption	Must submit copy of tax bill verifying homeowner's exemption	We support staff recommendation and, in addition, recommend a requirement for the primary homeowner to occupy the primary or secondary unit.	
Deed restriction	No action suggested.	No action suggested.	We recommend prohibiting short-term	

			rentals of SU. Additionally, we recommend that the City establish meaningful penalties for violations.	
Program Elements	No action suggested.	No action suggested.	We recommend providing a central point of contact and resources to simplify process for homeowners desiring to create SU.	<p>Rationale: San Jose should make it as easy as possible to create SU. Among best practices that San Jose should consider include:</p> <ul style="list-style-type: none"> - Developing easily understood resources for homeowners desiring to create SU. - Establishing a program that centralizes all SU related information and procedures - Creating an expedited process for the approval of SU - Considering alternative building types, like tiny homes and other manufactured structures on permanent foundations, as a means of reducing costs and reducing time required.

Secondary Units Community Meeting

Antonina Ettare <runnershi@hotmail.com>

Wed 8/24/2016 8:34 PM

To: Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>;

Ms. Nusbaum,

I was not able to go to the Community Meeting on August 22, 2016. I would like to give my comment/input.

A number of years ago I converted my single-family residents to a duplex by adding a unit above the garage. This was after going through a lot of headaches, hoops, and jumping barriers that the Planning Department put me through. I am for changes to reducing setbacks and minimum lot size, and allow secondary units in the R-2 Two-Family Residence Zoning District.

I am NOT for changes to reducing parking requirements to these types of changes/dwellings.

There are neighborhoods that have parking issues regardless if it's a single-family home area or density home area. Increasing housing in an established neighborhood most likely will increase residents with cars. I live near the Civic Center Light Rail Station but unfortunately few of my neighbors use public transportation.

It would be irresponsible to reduce parking requirements and add housing without addressing the facts that people still love their cars.

I suggest a parking permit system for new high density housing. This will limit the number of cars to a resident and hopefully reduce parking impact.

I am for higher density housing but am NOT in favor of reducing parking requirements.

Respectfully,
Antonina
Hyde Park Neighborhood

Municipal Code Changes for Zoning

Warren Gannon

Tue 8/23/2016 2:11 PM

To: Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>;

Cc: Warren Gannon <warrengannon@me.com>;

Hello Jenny. I attended the meeting last night on the above subject. I had to leave before it was over but I did see the presentation and listen to many of the questions from the audience.

I feel you are on the right track with these suggested changes to Secondary Unit Requirements. I'm very supportive of the concept and would hope these modifications are approved by the City Council. Secondary units aren't the entire answer to the housing crisis but it's one step that will be helpful.

After reviewing the worksheet my only suggestion is to consider how to handle utility charges. If, in R1 neighborhoods the owner is allowed to have separate meters for the second unit it provides for the specter of a rental unit. On the other hand, if the metering for the main house includes the second unit it would usually mean the unit is meant for family/friend purposes. If the owner does decide to rent the unit he could add the probable (actual) increase in his gas/electric bill to the rent.

My only point in bringing this up is that people in R1 neighborhoods may have strenuous objections to the concept of second units (NIMBY). I built a place for my Mother on the back of our property when we lived in Southern California and the city insisted the utilities charges be metered through the main house. In my case, of course, that was not a problem.

At any rate, I think you and your people have done a good job in modifying the current ordinance and I would hope it gains approval as we move forward.

Best regards.....and keep up the good work!!!

Warren
warrengannon@me.com

Fw: Workshop on ADUs

Marcus, Adam

Thu 6/23/2016 4:39 PM

To: Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>; Brilliot, Michael <Michael.Brilliot@sanjoseca.gov>;
Cc: Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; Vacca, Kimberly <kimberly.vacca@sanjoseca.gov>;

Jenny,

Please add the below to the public record thanks.

From: Kevin Casey <kevin@newavenuehomes.com>
Sent: Thursday, June 23, 2016 2:03 PM
To: Marcus, Adam
Subject: Re: Workshop on ADUs

Apologies but this is a 6+ hour commitment to join. I can't afford to take a day to join.

Honestly, you really have to get rid of the exorbitant impact fees. It's clearly an unfair tax. Our project management system allows us to capture private conversations for hundreds of projects. Owners, architects and contractors using our system are afraid to be honest with you but in private they curse and gripe and consistently scheme to break the law once they hear about \$3,500+ Park fees, \$15,000 traffic fees, new water meter and new sewer hook up fees. They often times fire our licensed high quality architects and contractors to hire illegal/unlicensed people to do work that is not permitted. In other cities the total permit cost, including all planning, building, utilities and impact fees are less than \$10,000. In San Jose they are \$35,000+ and they drive the cost of the project up by another \$25,000 or more. One required a new fire hydrant!.

Kevin

Kevin Casey
email: kevin@newavenuehomes.com
phone: [510-900-9402](tel:510-900-9402)

New Avenue Inc.
[5515 Doyle Street #5](#)
[Emeryville, CA 94608](#)
www.newavenuehomes.com

On Tue, Jun 21, 2016 at 11:37 AM, Marcus, Adam <adam.marcus@sanjoseca.gov> wrote:
I hope you can make it Kevin. And yes, Tyler Kobick is already signed up.
We very much welcome your input in person or in writing.

-Adam

Adam Marcus, MCP

Acting Policy and Planning Manager

City of San José Department of Housing

adam.marcus@sanjoseca.gov | www.sjhousing.org[408.975.4451](tel:408.975.4451)

Our mission is to strengthen and revitalize our community through housing and neighborhood investment.

[Find us on Twitter!](#)

From: Morales-Ferrand, Jacky**Sent:** Tuesday, June 21, 2016 11:27 AM**To:** 'Kevin Casey'**Cc:** Marcus, Adam**Subject:** RE: Workshop on ADUs

The workshop will be held at the following time and location:

Thursday, June 23, 2016, 12:30pm - 4:00pm**San José City Hall - Wing Rooms 118 + 119**

200 East Santa Clara Street, San José

Validated parking available - (Park under City Hall)

Lunch will be provided

If you are available, please send an RSVP to Adam Marcus at adam.marcus@sanjoseca.gov so we can order lunch for you.

Thanks for your interest.

Jacky Morales-Ferrand

Director

City of San José Department of Housing

Jacky.Morales-Ferrand@sanjoseca.gov | www.sjhousing.org[408.535.3855](tel:408.535.3855)

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From: Kevin Casey [mailto:kevin@newavenuehomes.com]**Sent:** Tuesday, June 21, 2016 11:05 AM**To:** Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>**Subject:** Re: Workshop on ADUs

When is this? I'll try to join in person.

Kevin Casey

email: kevin@newavenuehomes.com

phone: [510-900-9402](tel:510-900-9402)

New Avenue Inc.
5515 Doyle Street #5
Emeryville, CA 94608
www.newavenuehomes.com

On Tue, Jun 21, 2016 at 7:57 AM, Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov> wrote:

We absolutely need someone who understands the challenges of building a secondary unit and has solutions. Not sure if a call in works but I will check with staff.

Should I add Tyler to the list? Do you have his email, I want to make sure we order lunch for him.

Jacky Morales-Ferrand
Director
City of San José Department of Housing
Jacky.Morales-Ferrand@sanjoseca.gov | www.sjhousing.org
[408.535.3855](tel:408.535.3855)

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From: Kevin Casey <kevin@newavenuehomes.com>

Sent: Monday, June 20, 2016 5:37 PM

To: Morales-Ferrand, Jacky

Subject: Re: Workshop on ADUs

I think Tyler Kobick who works with us is planning to attend. I have too much on my plate to commute to San Jose to join a meeting. I might be able to call in though. Frankly, you probably need me as we are the only platform that manages projects from concept to completion so we have the full picture while others typically only have a portion.

Kevin Casey
email: kevin@newavenuehomes.com
phone: [510-900-9402](tel:510-900-9402)

New Avenue Inc.
5515 Doyle Street #5
Emeryville, CA 94608
www.newavenuehomes.com

On Mon, Jun 20, 2016 at 11:38 AM, Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov> wrote:

I was hoping you or someone you know could attend the session and offer some ideas on how we could improve our code to make it easier to build these units in our community.

Improving the Secondary Unit Ordinance to make it work better is a Council priority. There is a lot of concern regarding neighborhood objections to change that we have to overcome. Having people with experience and ideas is really going to help our process.

So you would be part of a small group, looking at some examples in San Jose, and making suggestions on what works and what doesn't. City staff is going to take the ideas and see how to move forward with them.

Let me know so we can add you or your colleague to the workshop. Really appreciate it.

Jacky Morales-Ferrand

Director

City of San José Department of Housing

Jacky.Morales-Ferrand@sanjoseca.gov | www.sjhousing.org

408.535.3855

Our mission is to strengthen and revitalize our community through housing and neighborhood investment.

From: Kevin Casey [mailto:kevin@newavenuehomes.com]

Sent: Monday, June 20, 2016 10:49 AM

To: Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>

Subject: Workshop on ADUs

Hi Jacky,

I received your email.

I've taught classes on ADUs for several years. I'm the founder of New Avenue and we have over 100 architects and contractors working for New Avenue. They designed and built several ADU projects in San Jose.

Were you asking me if I wanted to attend or if I wanted to contribute to the class in some way? I could ask an architect on our team to speak or I might be able to speak as well.

Kevin

Kevin Casey

email: kevin@newavenuehomes.com

phone: [510-900-9402](tel:510-900-9402)

New Avenue Inc.

5515 Doyle Street #5

Emeryville, CA 94608

www.newavenuehomes.com

San Jose Secondary Dwellings Workshop - Comments

Patrick Bartlett <pbartlett@bevanbartlett.com>

Tue 6/21/2016 8:48 AM

To: Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>;

Good morning, Jenny:

I heard that City of San Jose was having a workshop on secondary dwellings this coming Thursday afternoon. I won't be able to attend, but I wanted to see if I could submit some of my comments on my most recent experience trying to submit and get a permit for an secondary dwelling in San Jose that we ultimately had to cancel:

- 1. The biggest and most obvious is the staggering Traffic Impact Fee (\$15,000!).** Simply can't fathom how this is reasonable for an secondary dwelling unit project, and a 700 square foot one at that. We weren't adding 50 cars to the neighborhood with this project, maybe 1 or 2 at most. This supposed fee should be done away with in my opinion, especially since other, similar projects were NOT required to pay it just a few years earlier
- 2. The fire department's requirements for additional fire hydrants to be installed along the street within 300' of the structure.** Given the size of the lot we were working with, I suppose we could have simply moved the structure to avoid this 300' requirement, however the client had very specific requirements why that was not immediately possible to do at the time. We still are required to do fire sprinklers inside the home anyway by code, so I just felt the fire department was being overly cautious (as they sometimes can I suppose). But given the very small size of this structure, at 700 square feet) it seemed overkill once again and would have been a very expensive burden for the client. We were working to do an alternate means and methods request to avoid this requirement, however we only got so far in light of issue #1 above.
- 3. The planning department review staff's inflexibility.** The San Jose guidelines very clearly state that 700 square feet was the maximum allowable size for the accessory dwelling unit. However, the language is not clearly written at this time to state 700 square feet of INTERIOR space, not TOTAL space. The client simply wanted to so some longer roof overhangs and an overhanging patio on the outside of the home. However, the planning department very strictly interpreted the requirement to mean any and all covered roof space, whether it was interior or exterior space. There was no clear written language specifically stating this was the requirement, but the planning staff made their own interpretation outside the language of the code and decided it was not possible to build the accessory dwelling unit unless it's roof area was a maximum 700 square feet. The lot we were working on was 52,800 square feet in size, and yet the department would not allow an additional 200 square feet of exterior covered roof area. Lastly, the planning department either was not capable or not interested in looking at alternate interpretations in our case, there was no opportunity to do an alternate means and methods request for an exception to allow additional area. At least the fire department was somewhat more agreeable to work with us.

Thank you for your time today,

Best regards,

Patrick Bartlett

Bevan+ Bartlett Architects, Inc.

pbartlett@bevanbartlett.com

www.bevanbartlett.com

T [\(415\) 518-2526](tel:4155182526)

Re: Granny flats zoning change

Cody Kraatz <kraatz.cody@gmail.com>

Mon 5/2/2016 9:42 AM

To: Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>;

Jenny,

We need to allow for higher densities in downtown San Jose. Our lot (I think we're R-2) is about 5,600 SF and should be allowed to have a detached secondary unit of up to 1,000 SF. Maybe not two story, although I think there are ways to do that tastefully with respect for privacy and sight lines with strategically placed windows and landscaping.

We need to reduce the lot size thresholds, parking requirements, and setbacks and increase the height limits and square footage allowed.

This is a social justice issue to me. We're trying to create transit-oriented affordable housing, give our parents an affordable place to live out their lives, provide an income stream potentially.

San Jose needs a progressive approach to ADUs to enable this. Other cities are moving forward. Look at Portland. We can be a leader in using ADUs to enable more people in this area to live in affordable quality housing and not live on the streets or leave the area. It also allows people to open up additional income streams via AirBnB or renting a room/apartment/tiny house.

It's also pragmatic. There are detached ADUs all over downtown. Let's get pragmatic and make sure that when people build these there's a process in place to ensure they're up to code, safe, dependable housing options.

We're on the periphery of an urban village that could get as high as 9 stories, near a BRT station and future BART stations. We're looking for an "urban village" approach to ADUs.

Thanks for considering my input.

Cheers,

Cody Kraatz

On Sat, Apr 30, 2016 at 9:46 PM Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov> wrote:

Today you can do a 2-story attached unit if you meet the development standards in the Zoning Code. Staff is not likely to recommend 2-story detached at this time due to privacy/sight line and shadow concerns, but your interest in it will be noted in the staff summary of stakeholder input.

Here is the link to the existing requirements for granny flats:

https://www2.municode.com/library/ca/san_jose/code_of_ordinances/toc/TIT20ZO_CH20.30REZODI_PT2USAL

-- Jenny

> On Apr 30, 2016, at 12:57 PM, Cody Kraatz <kraatz.cody@gmail.com> wrote:

>
> Hi Jenny,
>
> Is there more information you could share about the proposed changes to the zoning ordinance RE granny flats?

>
> We'll miss the May 2 meeting, and we're interested in building a detached, 2-story accessory dwelling unit on the back of our 5600 SF lot on E Saint James near 17th.

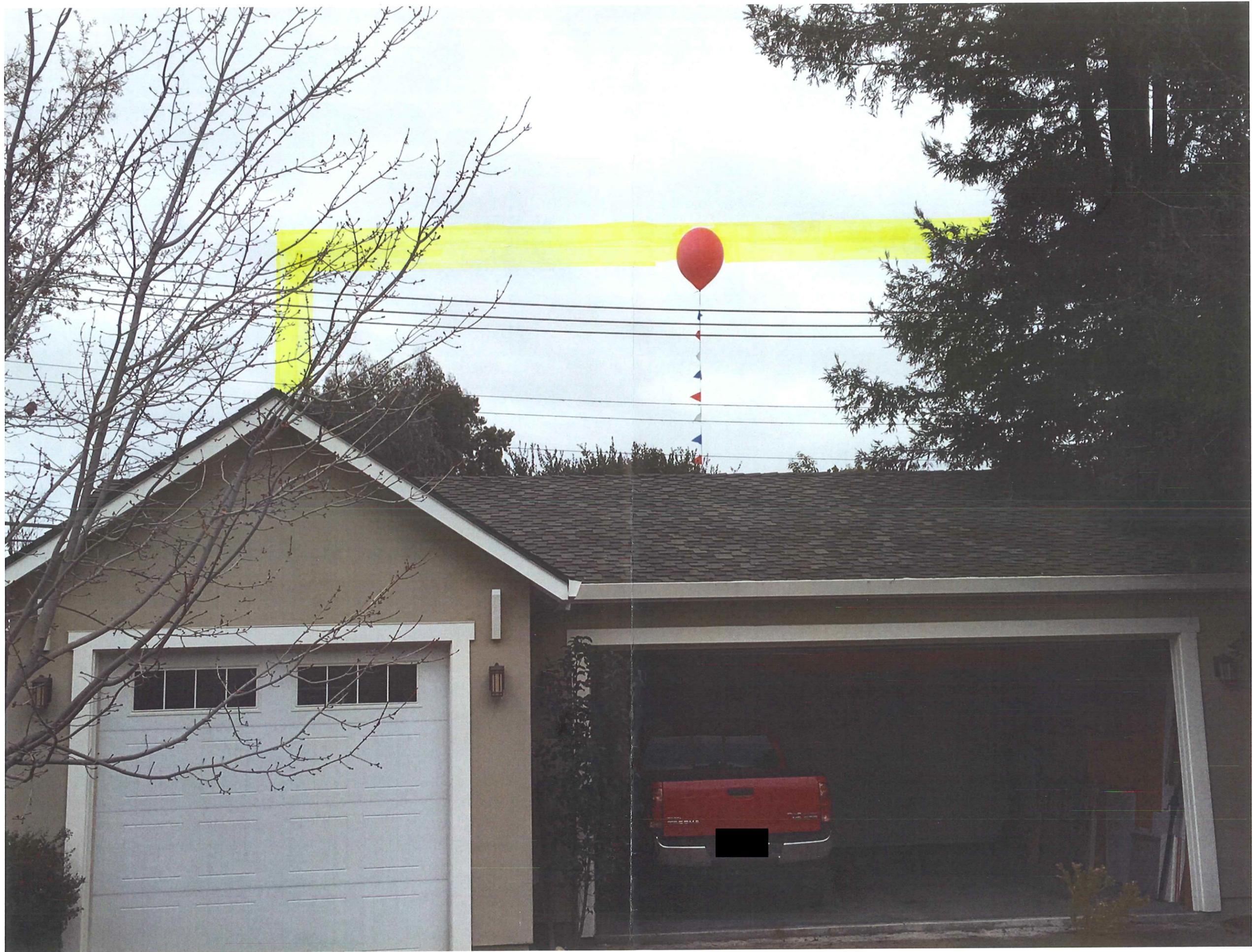
>
> I'm pretty sure we're in the R-2 zoning, and the location makes this a great location for low-parking, higher density, affordable, transit-oriented building. We're expecting to need this in a few years for my in-laws, it just so happens, but it could also be great for a student or a small family depending how much we can afford to build.

>

10/21/2016

Re: Granny flats zoning change - Nusbaum, Jenny

> Cheers,
> Cody





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