

DATE ISSUED: May 14, 2003 REPORT NO. 03-103  
ATTENTION: Land Use and Housing Committee  
Agenda of May 14, 2003  
SUBJECT: Companion Unit Regulations  
REFERENCE: Manager's Report No. 00-220, dated October 13, 2000

SUMMARY

Issue - Should the Land Use and Housing (LU&H) Committee recommend adoption of the draft companion unit regulations to the City Council?

Manager's Recommendations - Recommend adoption of the draft companion unit regulations and the associated amendments to the Land Development Code.

Planning Commission Recommendation - This item is scheduled for Planning Commission hearing on May 15, 2003.

Community Planning Group Recommendation - On April 22, the Community Planners Committee (CPC) voted 18-6-1 in support of the draft companion unit regulations. The CPC also voted 16-7-2 to change the minimum lot size to 5,000 square feet and voted 20-5-0 to request Development Services provide quarterly reports to community planning groups on companion unit applications. Individual planning group votes are included in Attachment 1.

Other Recommendations - On April 9, 2003, the Land Development Code Monitoring Team voted 5-0 to approve the draft companion unit regulations. On April, 2003, the Housing Action Network recommended approval of the draft companion unit regulations.

Environmental Impact - The City of San Diego Land Development Review Division has prepared an Addendum to Environmental Impact Report (EIR) No. 96-0333 (September 12, 1997) for the Land Development Code in accordance with Section 15164 of the state

CEQA Guidelines. There are no new significant environmental impacts not considered in the previous EIR.

Fiscal Impact - None.

Code Enforcement Impact - This action could potentially decrease the number of illegal companion units, due to a simplified and less costly review process. Community planning groups will be provided quarterly updates on companion unit development applications and may use this information for code enforcement purposes.

Housing Affordability Impact - This action will increase affordable housing opportunities in San Diego and implement a key recommendation of the Housing Element.

## BACKGROUND

As defined by the state of California and the San Diego Municipal Code, a companion unit is an attached or detached unit that provides complete independent living facilities and that serves as an accessory use to a primary single dwelling unit. Companion units differ from guest quarters, which do not provide independent living facilities (i.e., the San Diego Municipal Code does not permit kitchens in guest quarters).

### State Legislation

In 1982, the state enacted legislation that requires jurisdictions in California, including charter cities, to either adopt local ordinances or use the state model ordinance to facilitate companion unit development. The legislation was based on findings that companion units are a potential source of affordable housing, there is unmet need for new housing in California, companion units are a cost effective means to provide housing without public subsidy, they generate additional income for homeowners (thus improving their own housing affordability), and companion units provide other non-economic benefits such as security and the ability to house elderly family members.

In 1994, the Legislature amended the statute to specify that “any second-unit ordinances adopted by local agencies should have the effect of providing for the creation of second units,” and that provisions of such ordinances “are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units in zones in which they are authorized by local ordinance.” In 2002, the Legislature further refined the requirements for local companion unit ordinances through Assembly Bill 1866 (AB 1866). AB 1866 requires jurisdictions to permit companion unit development ministerially in single and multifamily residential zones, without discretionary review or public hearing, and to prohibit restrictions that arbitrarily preclude companion units unless specific findings regarding public safety and welfare are made. AB 1866 also provides that local ordinances may not preclude companion units in single family or multifamily zones, unless doing so would limit housing opportunities. Jurisdictions must review applications for companion units ministerially beginning July 1, 2003.

### City Actions

On October 13, 2000, the LU&H Committee of the City Council directed staff to modify some provisions of the current companion unit regulations to encourage applications for companion units, while retaining the same level of discretionary review. This recommendation was incorporated into the 1999-2004 Housing Element of the Progress Guide and General Plan, which was adopted by the City Council in November of 2001 and subsequently certified by the state. Although the specific direction regarding companion units was to maintain the current discretionary level of review, the Housing Element generally acknowledges discretionary processes as an impediment to residential development. In general, the Housing Element directs the Planning Department to review process levels for residential development to determine if lower process levels would be feasible.

The Planning Department began work on Land Development Code changes pertaining to companion units in late 2001. Proposed changes to the companion regulations were presented to the CPC on May 28, 2002, and September 24, 2002. Staff also prepared several memoranda to address the issues raised by the CPC. The revisions were based on direction from the Housing Element and LU&H, and included a two-tiered process that allowed for both ministerial and discretionary review. Passage of AB 1866 in late September 2002 required staff to alter its approach to the draft regulations to address the new state requirements.

## DISCUSSION

While staff originally began revisions to the companion unit regulations in response to the City Council and the Housing Element, the current proposal also incorporates the requirements of AB 1866. Due to the requirements of the new state law, staff had limited ability to incorporate previous public input and recommendations from the CPC.

### Proposed Changes

The draft companion unit regulations and the associated Land Development Code amendments (shown in Attachment 2) propose a change in the review level from a Process Three Conditional Use Permit to a Process One Limited Use. However, it is important to note that other existing requirements in the Land Development Code that generally apply to residential development will apply to companion unit development. This includes the underlying base zones and existing discretionary processes, such as the Environmentally Sensitive Lands regulations, the Historic Resources regulations, and the Coastal Overlay zone.

The current regulations do not permit companion units in multifamily zones. The draft proposes that companion units be permitted in multifamily zones if the property would only allow one single family unit based on the size and density regulations of the premises. This allows more housing opportunities and also prevents multifamily lots from being underutilized.

In response to the Housing Element, the draft regulations no longer include several provisions related to occupancy, the vacancy rate, public services and facilities, the percentage of companion units per community plan area, and the Coastal Zone. The Housing Element direction is further described in Attachment 3.

The proposed revisions would allow companion unit development in the Coastal Overlay Zone for the first time, per Housing Element direction. This would require a Coastal Development

Permit in accordance with the provisions of the Coastal Overlay Zone. Applications for companion units in the non-appealable area of the Coastal Overlay Zone will require a Process Two level of review, for applications in the appealable area, a Process Three will be required. AB 1866 does not supercede the California Coastal Act, except that local governments are not required to hold public hearings for coastal development permit applications for second units.

The draft regulations also incorporate suggestions, to the extent possible, from the CPC and a subcommittee of the Land Development Code Monitoring Team, which included representatives from the CPC, the San Diego Association of Realtors, and the League of Women Voters. Staff had limited ability to incorporate some of the suggestions that were given prior to passage of AB 1866 due to the requirements of the legislation.

### Community Planners Committee

After preparing revisions in response to AB 1866, staff presented a new draft to the CPC on March 25, 2003 for discussion so that CPC members could relay the information to their respective planning groups. The CPC had many concerns regarding the changes, mainly the loss of discretionary review for companion unit applications, potential impacts to single family character in communities, and enforcement of private regulations. However, in recognition of the state law, the CPC voted to support the draft companion unit ordinance, requested Development Services provide quarterly reports to community planning groups on companion unit applications, and also recommended a minimum lot size of 5,000 square feet. These issues are discussed below.

### Single Family Neighborhood Character

To maintain the intent that companion units should not detract from the single family character of a neighborhood, companion unit entrances are not permitted on the building street wall or the front 50 percent of the structure. Staff has also incorporated the following specific suggestions that were provided by the CPC over the last year:

- Remove the provision that exempted the additional off-street parking requirements for companion units within the Transit Area Overlay Zone.
- Remove the draft provision that would permit companion units to be 1,200 square feet and retain the existing provision that restricts companion units to 700 square feet.

### Public Facilities and Services

Based on the requirements of AB 1866 and direction from the Housing Element, staff removed the provision that requires a determination of public facility and service adequacy. However, the noncodified portion of the ordinance will include a provision that requires the Planning Department to assess any negative impacts to public facilities and services if the number of companion units reaches five percent of the total single family units in the respective community plan area. If specific findings are made that the number of companion units has negatively impacted public safety and welfare, staff would propose amendments to the regulations as directed by the City Council.

## Private Regulations

An additional suggestion from the CPC was to include a provision that would require companion units to comply with private regulations (e.g., CC&Rs). The City Attorney has advised staff not to include this provision, as it would require public enforcement of private regulations. Staff will provide information from the Project Tracking System on the status of requested permits for companion units in the Annual Housing Element Progress Report and in quarterly reports to the planning groups. This information could assist communities in monitoring compliance with private regulations, as well as the Land Development Code. The CPC also suggested that staff inventory illegal units; however, the City does not have this ability and only has records of all legally permitted companion units.

## Maximum Unit Size/Minimum Lot Size

Staff is maintaining its recommendation for a minimum lot size of 4,000 square feet. The proposed regulations include more specific requirements than currently exist. As proposed, companion units could not exceed 500 square feet on lots smaller than 5,000 square feet and would not be permitted on lots smaller than 4,000 square feet. These provisions provide flexibility to the applicant, ensure simplicity in the review process, and maintain the intent to ensure that companion units are secondary to the primary unit.

The previous revisions to the regulations (prior to AB 1866) had a wider range of square footage that could be permitted in a discretionary process. Since the ordinance may no longer contain a discretionary process, the current proposal maintains the 700 square foot provision.

There is not a standard in determining an appropriate maximum size for companion units. Staff considered regulating a maximum size of 30 percent of the square footage of the primary dwelling unit, which could provide a range of 300 square feet to 900 square feet for homes that were 1,000 square feet to 3,000 square feet. This range could be overly restrictive for smaller homes and possibly too permissive for larger homes. However, some jurisdictions do use this percentage, (e.g., Dana Point and Encinitas). Some jurisdictions use 25 percent (Poway, Berkeley), which is a typical proportion for accessory uses in many jurisdictions; others use 40 percent (Santa Barbara). Using a percentage usually requires other qualifiers to be included (i.e., 25 percent and no more than 800 square feet), which can be confusing to the applicant and the reviewer and could be perceived as arbitrary.

Santa Cruz uses a similar sliding scale to the staff proposal and many jurisdictions have similar maximum sizes (typically 640 or 700 square feet). The proposed minimum size for premises seems appropriate when compared to other jurisdictions, which have minimums ranging from 4,500 (Berkeley) to 5,000 (Santa Cruz, Chula Vista) to 7,500 (Los Angeles). Attachment 4 illustrates how other jurisdictions in California use minimum lot sizes and maximum unit sizes in their companion unit ordinances. Staff is maintaining the recommendation for 4,000 square feet to ensure that all community plan areas have adequate opportunities for companion unit development. Attachment 5 provides data on the percentage of both multifamily and single family parcels (land use data for lots is not available) below 4,000 and 5,000 square feet by community plan area. It is important to note that parcel size does not relate directly to the size of the premises (i.e., the lot) and that multiple lots can be present on a parcel. This information

does not provide an exact picture of how companion units could be distributed by community plan area, but does offer a general illustration.

### Code Monitoring Team

Staff also incorporated several of the suggestions from the Code Monitoring Team subcommittee. Many of these suggestions were related to the Code Monitoring Team's mission to resolve conflicts and inconsistencies within the Land Development Code. This included removing duplicative provisions that are already required through the base zones or other applicable regulations. The subcommittee recommended the regulations provide more flexibility in the owner-occupancy requirements, while retaining the intent that only one unit on premises with a companion unit may be rented. Additionally, the subcommittee recommended that the provision that requires a replacement garage if an existing garage is converted to a companion unit be modified to only require replace parking equivalent to that previously provided by the garage. Staff incorporated both of these suggestions.

### Conclusion

The draft regulations reflect the requirements of AB 1866, address direction from the Housing Element, and maintain the intent to preserve neighborhood character.

Council adoption of the draft regulations will mainly affect Section 141.0303 (Companion Unit Regulations), but will also require revisions to several other sections of the Land Development Code. Specifically, it would require amendments to Sections 131.0422 (Use Regulations Table for Residential Zones) to permit companion units as a Limited Use in the single family zones and in multifamily zones under certain circumstances. It would also require an amendment to the General Provisions for Planned Districts to remove companion units from the list of uses (Section 103.0105.d.9) that require a Conditional Use Permit and add them to the list of uses that require a limited use permit (Section 103.0105.b.1). Section 126.0303 (When a Conditional Use Permit is Required) will be amended to remove companion units from the list of uses that require a Conditional Use Permit. Section 126.0704 (Exemptions from a Coastal Development Permit) will be revised to clarify that companion units are not exempt from Coastal Development Permits. The City Attorney has determined that these changes help bring the regulations into conformance with AB 1866.

The City of San Diego Land Development Review Division has prepared an Addendum to Environmental Impact Report No. 96-0333 (September 12, 1997) for the Land Development Code in accordance with Section 15164 of the State CEQA Guidelines. There are no new significant environmental impacts not considered in the previous EIR. The draft environmental document was distributed February 21, 2003 with a response date of April 14, 2003.

### ALTERNATIVES

Recommend adoption of the draft companion unit regulations as presented in this report with modifications to the design provisions to require that companion units use the same exterior building materials, exterior finish textures and exterior colors as the existing residence or other similar design requirements. Staff does not recommend this alternative because it has not been the City's practice to legislate specific design requirements in ministerial processes.

Respectfully submitted,

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S. Gail Goldberg  
Planning Director

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Approved: P. Lamont Ewell  
Assistant City Manager

Ewell/Goldberg/ATS

Note: Attachment Nos. 2 and 5 are not available in electronic format. A copy is available for review in the Office of the City Clerk.

- Attachments:
1. [Community Planning Group Votes](#)
  2. Draft Companion Unit Regulations and Associated Land Development Code Revisions
  3. [Housing Element Policy Direction](#)
  4. [Requirements for Minimum Lot Size and Maximum Unit Size: Other Jurisdictions](#)
  5. Residential Parcel Information per Community Plan Area