

DATE ISSUED: June 18, 2003 REPORT NO. 03-131

ATTENTION: Honorable Mayor and City Council  
Agenda of June 24, 2003

SUBJECT: Companion Unit Regulations

REFERENCE: Manager's Report No. 03-103, dated May 14, 2003 and Manager's Report  
No. 00-220, dated October 13, 2000

SUMMARY

Issues – Should the City Council 1) certify the Addendum to Environmental Impact Report (EIR) No. 96-0333 (September 12, 1997) for the Land Development Code, 2) adopt the draft Companion Unit Ordinance and the associated amendments to the Land Development Code, and 3) approve the Penalty-Free Program for code compliance?

Manager's Recommendations – 1) Certify the Addendum to Environmental Impact Report (EIR) No. 96-0333 (September 12, 1997) for the Land Development Code, 2) adopt the draft Companion Unit Ordinance and the associated amendments to the Land Development Code, and 3) approve the Penalty-Free Program for code compliance.

Land Use and Housing Committee Recommendation – On May 21, 2003, the Land Use and Housing Committee voted 4-1 to support the Manager's recommendations with a modification to increase the minimum lot size for companion units from 4,000 square feet to 5,000 square feet. The committee also requested that staff bring a recommendation to the City Council for a penalty-free program to bring illegal companion units into compliance with the Land Development Code and report on companion unit applications quarterly.

Planning Commission Recommendation – On May 15, 2003, Planning Commission voted 7-0 to recommend that the City Council approve the draft regulations as proposed by the Manager and consider a penalty-free program to bring illegal companion units into

compliance with the Land Development Code. The Planning Commission also requested to receive quarterly reports on companion unit applications.

Community Planning Group Recommendation - On April 22, 2003 the Community Planners Committee (CPC) voted 18-6-1 in support of the draft companion unit regulations. CPC also voted 16-7-2 to change the minimum lot size to 5,000 square feet and voted 20-5-0 to request that the Development Services Department 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 22, 2003, the Housing Action Network recommended approval of the draft companion unit regulations.

Environmental Impact – For the revised companion unit ordinance, 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. The “Penalty-Free” Program is exempt from CEQA pursuant to State CEQA Guidelines Section 15061 (b) (3).

Fiscal Impact – None.

Code Enforcement Impact – This action could potentially decrease the number of future illegal companion units, due to a simplified and less costly review process, based on a ministerial process. Community planning groups will be provided quarterly updates on companion unit development applications and may use this information for code enforcement purposes. Approval of the Penalty-Free program would result in the waiver of penalties for companion units being brought into compliance with the Land Development Code through the permit process.

Housing Affordability Impact – This action will increase affordable housing opportunities in San Diego and implement a Housing Element policy recommendation.

## 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 permit companion unit development. The legislation was based on findings that companion units are a potential source of affordable housing, that there is unmet need for new housing in California, that companion

units are a cost effective means to provide housing without public subsidy, that they generate additional income for homeowners (thus improving their own housing affordability), and that 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 (see Attachment 2) requires jurisdictions to permit companion units ministerially, 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 multi-family zones, unless doing so would limit housing opportunities. Jurisdictions must review applications for companion units ministerially beginning July 1, 2003, or be in the process of adopting an ordinance within 120 days after July 1, 2003.

#### City Actions

On October 13, 2000, the Land Use and Housing Committee of the City Council directed staff to modify 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. Specifically, the Housing Element recommends removal of 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 4. 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 and directs the Planning Department to determine if lower process levels for residential development would be feasible.

In response to the Housing Element direction, the Planning Department began work on Land Development Code changes concerning companion units in late 2001. From January through September of 2002, staff met with a citizen’s advisory committee to revise the companion unit ordinance. This committee included representatives from the Code Monitoring Team, the Community Planners Committee, the League of Women Voters, and the San Diego Board of Realtors. Early on, the group recommended that staff further incorporate the intent of the State law, as well as the Housing Element policy recommendation to consider lower process levels for housing development.

As a result of the committee’s input, staff prepared code revisions that included a two-tier process that allowed for both ministerial and discretionary review, as well as the more specific Housing Element recommendations. Staff also incorporated several other suggestions from the citizen’s advisory committee that 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 committee recommended that 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 committee recommended that the provision that requires a replacement garage if an existing garage is converted to a companion unit be modified to only require replacement parking equivalent to that previously provided by the garage. Staff incorporated all of these suggestions.

The proposed changes to the companion regulations were presented to CPC on May 28, 2002, and September 24, 2002. Staff also prepared several memoranda to address the issues raised by CPC. The CPC's concerns included the loss of discretionary review for companion unit applications, potential impacts to single family neighborhood character, public facilities and services, and enforcement of private regulations. Passage of AB 1866 in late September 2002 required staff to alter its approach to the draft regulations to address the new State requirements. After preparing revisions in response to AB 1866, staff presented a new draft to CPC on March 25, 2003 for discussion so that CPC members could relay the information to their respective planning groups. Despite concerns with the change in process, CPC voted on April 22, 2003 to support the draft companion unit ordinance with the ministerial process in recognition of the State law, requested that the Development Services Department provide quarterly reports to community planning groups on companion unit applications, and recommended a minimum lot size of 5,000 square feet, rather than 4,000 square feet, under a ministerial process.

## DISCUSSION

The proposed changes to the companion unit regulations and their relation to community concerns are discussed below.

### Process Level

The draft companion unit regulations and the associated Land Development Code amendments (shown in Attachment 3) propose a change in the review level from a Process Three Conditional Use Permit to a Process One Limited Use. Existing requirements in the Land Development Code that generally apply to residential development will also apply to companion unit development. This includes the underlying base zones and other applicable requirements, which may contain discretionary thresholds, such as the Environmentally Sensitive Lands regulations, the Historic Resources regulations, and the Coastal Overlay zone.

### Location and Number

The current regulations do not permit companion units in multi-family zones. The draft proposes that companion units be permitted in multi-family 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 multi-family lots from being underutilized.

The proposed revisions would allow companion unit development in the City's Coastal Overlay Zone for the first time, per Housing Element direction. Units 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 current regulations include a provision that prohibits the number of companion units in a community plan area from exceeding 5% of the number of single family units in that plan area. Per the adopted Housing Element recommendation, staff has removed this provision.

#### 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% of the structure. Staff also incorporated the following suggestions from CPC:

- Remove the existing provision that exempts 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 through the ministerial process.

#### Public Facilities and Services

The provision that requires a determination of public facility and service adequacy based was removed on the requirements of AB 1866 and direction from the Housing Element. 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 impacts to public facilities and services caused by companion units have negatively impacted public safety and welfare, staff will modify the regulations as directed by the City Council at a public hearing. Staff will track the number of companion units by community plan area quarterly and will also prepare an annual report.

#### Maximum Unit Size/Minimum Lot Size

As proposed, companion units could not exceed 700 square feet and would not be permitted on lots smaller than 5,000 square feet. These provisions ensure simplicity in the review process, and maintain the intent that companion units are secondary to the primary unit. The current regulations do not include a minimum lot size. Staff has modified its recommendation for a minimum lot size of 4,000 square feet in response to community input and Land Use and Housing direction. Although more than 50% of the single family parcels in eight community plan areas (Barrio Logan, Centre City, Greater Golden Hill, Normal Heights, Mission Beach, Ocean Beach, Old San Diego, and Midway) are on average below 5,000 square feet, it is unlikely that there will be a significant loss of housing opportunities in these plan areas. Other communities, such as Carmel Valley, have some zoning categories with minimum lot sizes of 3,500 square feet; however the parking requirements would most likely make companion unit development infeasible on these sites.

Attachment 5 illustrates how other jurisdictions in California use minimum lot sizes and maximum unit sizes in their companion unit ordinances. Attachment 6 provides data on the percentage of both multi-family 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 of the residential parcel sizes.

There is not a standard in determining an appropriate maximum size for companion units. Staff considered regulating a maximum size of 30% 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% (Poway, Berkeley), which is a typical proportion for accessory uses in many jurisdictions, including the City of San Diego; others use 40% (Santa Barbara). Using a percentage usually requires other qualifiers to be included (i.e., 25% 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).

#### Project Tracking

Staff will provide information from the Development Services' Project Tracking System on the status of requested permits for companion units in the Annual Housing Element Progress Report and in quarterly reports to 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.

#### Private Regulations

The CPC and some planning groups requested that the City require companion units to comply with private regulations (e.g., CC&Rs). The City Attorney has advised staff not to include such a provision, as it would require public enforcement of private regulations.

#### “Penalty-Free” Program for Companion Units

Staff recommends that the City Council approve a six-month program that would allow owners to bring existing companion units into compliance with the Land Development Code without code compliance penalties (reinspection fees, administrative citation fees, and civil penalties). Applicants would still be required to pay permit processing fees.

#### 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

### ALTERNATIVES

Recommend adoption of the draft companion unit regulations as presented in this report with modifications to the proposed ministerial design provisions, such as requirements for 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 specific design criteria because it is 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: Lamont Ewell  
Assistant City Manager

Ewell / Goldberg / ATS

- Attachment(s):
1. [Community Planning Group Votes](#)
  2. [Assembly Bill 1866](#)
  3. [Draft Companion Unit Regulations and Associated Land Development Code Revisions](#)
  4. [Housing Element Policy Direction](#)
  5. [Requirements for Minimum Lot Size and Maximum Unit Size: Other Jurisdictions](#)
  6. [Residential Parcel Information per Community Plan Area](#)