

DATE ISSUED: October 15, 2003

REPORT NO. 03-207

ATTENTION: Honorable Mayor and City Council

SUBJECT: Companion Unit Issues

REFERENCE: Manager's Report No. 01-131, dated June 18, 2003; Manager's Report No. 03-103, dated May 14, 2003; and Manager's Report No. 00-220, dated October 13, 2000.

SUMMARY

Issue – Should the Manager further amend the companion unit regulations of the land development code to incorporate changes related to the Peninsula Community Planning Board's recommendations and to visitability?

Manager's Recommendation – Do not amend the regulations.

Other Recommendations – The Peninsula Community Planning Board's recommendations are attached to this report.

Fiscal Impact – None.

BACKGROUND

As defined by the San Diego Municipal Code, a companion unit is an attached or detached unit that provides complete independent living facilities and serves as an accessory use to a primary single dwelling unit. By state law, all jurisdictions in California are required to either adopt local ordinances that permit companion units or use the state model ordinance. 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).

On July 14, 2003, the City Council adopted the current Companion Unit Ordinance in response to the City of San Diego's Housing Element of the Progress Guide and General Plan and to California Assembly Bill 1866 (AB 1866). AB 1866 became effective on January 1, 2003 and amended California Government Code to require local jurisdictions to permit companion units ministerially. Concurrent with adoption of the ordinance, the City Council also directed staff to return to Council in the fall to address the issues raised in public testimony by the Peninsula Community Planning Board, as well as the potential for visitability requirements for companion units. The Peninsula Community Planning Board's recommendations include restrictions on rental rates, occupancy, and second-story units, and are included in Attachment 1.

Staff is not recommending a new ordinance be introduced to incorporate the Peninsula Community Planning Board's recommendations or visitability requirements, based on review of the Housing Element and AB 1866. However, the July 14, 2003 adoption of the ordinance erroneously did not remove the conditional use permit requirement from open space and agricultural zone use tables. To correct this, the ordinance must be reintroduced. If the City Council chooses to direct staff to prepare amendments related to Peninsula's recommendations or visitability, the correction and the amendments could be processed concurrently.

Attached for the City Council's information is an interpretive memorandum for AB1866 (see Attachment 2), which was released by the State Department of Housing and Community Development (HCD) on August 6, 2003, subsequent to adoption of San Diego's local ordinance. Based on a review of the memorandum, the City's local ordinance appears consistent with HCD's interpretation of the legislation.

DISCUSSION

The following is the response to the Council direction for staff to address the issues raised during public testimony at the recent Companion Unit Ordinance hearing.

Peninsula Community Planning Board Recommendations

Prior to adoption of the ordinance, during the public input process, the Peninsula Community Planning Board offered several recommendations which were addressed in various forums, and in some instances, incorporated into the Companion Unit Ordinance. During the City Council adoption hearing, the board prepared additional recommendations, which are summarized below. Due to a state deadline to adopt an ordinance in compliance with AB1866, the City Council was unable to address the planning group's recommendations at the adoption hearing. Staff was directed to return to City Council in the fall to address these issues. Staff's response is below.

- ◆ Require single-story companion units for properties with an existing two-story primary residence. This would also prohibit second-story units over garages with alley access.

Staff Response: This requirement is arbitrary unless the City of San Diego revises its requirements for all potential development that could occur on a second story in residential zones (i.e., boarder and lodger accommodations, guest quarters). California Government Code Section 65852.150 states that: "Second unit ordinances should provide for the creation of second units.

The provisions in these ordinances relating to matters including unit size, parking, fees and other requirements should not be so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units in zones where they are permitted.” Companion units must meet the underlying development regulations in the Land Development Code. A second-story companion unit could not be determined to have more impacts to privacy than any other second-story additions to single-family homes.

- ◆ Require the owner to enter into an agreement with the City that restricts occupancy of the unit to two persons per bedroom.

Staff Response: The Peninsula Community Planning Board recommended that the ordinance incorporate the U.S. Department of Housing and Urban Development’s (HUD) occupancy guidelines. HUD’s guidelines are not legal requirements and are only meant to provide guidance to housing providers. The guidelines state that two persons per bedroom is generally a reasonable standard. HUD has also issued statements, in response to Fair Housing concerns, which stress that these guidelines are not strict standards and the size of bedrooms, age of children, and size/configuration of units may be considered when developing occupancy standards. Requiring strict occupancy standards for companion units could leave the City vulnerable to litigation, based on Fair Housing Law and the HUD statements.

The City of San Diego currently uses the California Building Code when considering occupancy issues in residential development. These standards are different than the HUD guidelines in that they are based on square footage of the units and do not include a person per bedroom guideline. Again, standards that are not applied to other types of residential development could be considered arbitrary under state law. Neighborhood Code Compliance continues to use the same standards that are applied to the entire City.

- ◆ Require the owner to enter into an agreement with the City that requires monthly rental rates be affordable to (30 percent of income) households whose incomes do not exceed 150 percent of the median area income.

Staff Response: The San Diego Housing Commission currently monitors occupancy and affordability levels for deed restricted properties participating in the following programs: density bonus, bonds, and housing commission loans. All properties must pay a \$500 set-up fee and an annual fee of \$65 per unit for projects less than 45 units. These fees do not cover the cost of this program. The San Diego Housing Commission could possibly absorb this workload, however, the number of companion units that will be developed under this ordinance is unknown, and there is no certainty that there will be staff capacity for this task.

The Housing Element does not include direction in terms of allocating resources to rental housing in this income category; the majority of its direction is focused on lower-income households (below 80 percent median area income). Restricting companion units at above-moderate income levels (above 120 percent median area income) could conflict with the Housing Element’s direction to remove government restraints from companion unit development and to

focus resources towards lower-income housing. Since the Companion Unit Ordinance may not result in the development of many units, restricting units may not be cost-effective in consideration of the City's housing goals.

Visitability

Another recommendation made during the public testimony portion of the adoption hearing was to require design provisions to improve visitability for companion units. These design provisions include prohibiting ground floor steps to companion units and requiring 32-inch wide doors on ground floor units.

Staff Response: This issue is better addressed at a more holistic level, so that all residential development is considered. Again, targeting requirements for companion units may be considered arbitrary. The Affordable Housing Task Force has made several recommendations to the Land Use and Housing Committee of the City Council that address this issue more broadly. Staff is currently analyzing the recommendations for City Council consideration. This issue will also be addressed more comprehensively in the 2004-2009 Housing Element update.

Conclusion

Based on review of the Housing Element and AB 1866, staff is not recommending additional amendments to the Companion Unit Ordinance beyond correcting the open space and agricultural use tables. If City Council directs staff to prepare amendments, staff recommends that they be processed concurrently with the correction to the ordinance.

Respectfully submitted,

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Planning Director

Approved: P. Lamont Ewell
Assistant City Manager

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Note: Attachment 1 is not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachments: 1. Peninsula Community Planning Board Recommendations
2. [HCD Memo on AB 1866 – Second Unit Legislation](#)