



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: November 22, 2006 REPORT NO: 06-180
ATTENTION: Committee on Land Use and Housing
Agenda of Nov. 29, 2006
SUBJECT: Mini Dorms/Nuisance Rental Properties
REFERENCES: Report 06-158

SUMMARY:

No action requested. This is an information item only.

Staff recommends that the City continue to enforce existing noise, party, and parking regulations and pursue nuisance violations as appropriate through the existing Permit Parking Districts, CAPPS Program, and Municipal Code requirements. Additional funding must be identified to cover the associated need for staff resources.

Background

The issue of how to regulate nuisance rental properties in single dwelling unit zones has been a concern within the City of San Diego for over 20 years. On May 26, 1987, the City adopted the Single Family Rental Overlay Zone, which was followed by the One-Family Dwelling Rental Regulations, adopted on June 3, 1991. Both ordinances were legally challenged by the College Area Rental Landlord Association (CARLA), and were repealed on December 9, 1997 after being declared unconstitutional by the Courts.

Since that time, the City has struggled with how to address the issue at the local level due to constraints at the State and Federal levels that do not allow for renters and owners occupying properties that are similarly situated to be regulated differently. (See City Attorney opinion provided in Attachment 1.) The City can enforce different development standards (such as parking requirements) upon a particular geographic area as long as they are applied equally to similarly situated properties. As of January 1, 2000, when the Land Development Code became effective, a Parking Impact overlay zone was applied specifically to campus impact areas (Section 132.0802) and requires additional parking spaces for single dwelling units with five or more bedrooms. Parking permit districts (B and E) were also created to address community concerns related to availability of on-street parking in surrounding neighborhoods adjacent to San Diego State University (SDSU) and Mesa College.

Other community complaints about rental properties are related to tenant behavior (ie noise, trash, parties, and threats/intimidation) and these activities currently violate existing codes. On March 29, 2006, staff informed the Land Use and Housing Committee, via a report on the Land Development Code work program that the nuisance rental property issue would be addressed through enforcement of existing codes and would not be prioritized for LDC amendments under the 2006 work program due to limited legal regulatory options available to the City and limited staff resources.

On October 25, 2006, the Development Services Department issued a report to the Mayor and Council (06-158) clarifying the Department policy on application of Parking Impact overlay zone requirements within the campus impact area. The report was issued in response to recent building permit applications for room additions to single dwelling units where additional parking was not required within the campus parking impact overlay zone. The report clarified that for all future permit applications, any room that can be used for sleeping and contains a door (or opening of standard door width) that separates it from the kitchen, living room, hallway or bathroom will be determined to be a bedroom, and will require parking in accordance with Section 142.0520.

Because the City's general funded, code enforcement program is necessarily reactive on a complaint basis due to limited staff resources, the community has continued to express their frustration that existing codes are not adequate to address the problem. In response to community concerns, Council District Seven (which represents the communities surrounding San Diego State University) has continued to pursue the item by scheduling meetings with staff (City Attorney, Development Services, and Police Departments), and by scheduling a Mini Dorm Community Forum on September 19, 2006 in the College Area. An October 11, 2006 memo issued by the District Seven contained a list of 12 community requests including requests for building moratoriums, to hold SDSU accountable, and to consider amendments to the code such as special regulations for rental properties. Analysis and discussion of alternatives to address nuisance rental properties in single dwelling unit zones are provided below and within the memo provided by the City Attorney (Attachment 1).

Discussion

The following options have been preliminarily analyzed (Attachment 2). Staff believes Options 1-6 are existing tools that can be used to successfully address the nuisance rental property issue. Options 7 and 8 are not recommended due to associated legal concerns, perceived high cost-low benefit, and difficult enforcement related to tracking the number of tenants or vehicles in a rented single dwelling unit.

- **Option 1- Enforce Existing Codes**

Staff recommends that the City continue to enforce existing noise, party, and parking regulations (including Campus Parking Impact overlay zone) and pursue nuisance violations as appropriate. In response to recent attempts to circumvent the code, the Development Services Department recently clarified the policy for defining a bedroom, which is expected to provide some relief to the Campus Impact areas where additional parking is required per bedroom. The code

enforcement process typically involves an inspection by enforcement staff to determine whether a violation exists and the issuance of a violation notice with a deadline for voluntarily compliance. The Neighborhood Code Compliance Division achieves voluntary compliance on approximately 80 percent of their cases, which are typically closed within 6 months. Property owners have the option of obtaining required permits, or voluntarily removing the violations. In cases where voluntary compliance is not achieved, additional enforcement remedies are pursued which include administrative citations, civil penalty notice and orders, as well as referral to the City Attorney's code enforcement unit for civil or criminal prosecution.

Neighborhood Code Compliance cases related to nuisance rental properties have been opened for garages being used as bedrooms, excess hardscape improvements within the front yard, and room additions and improvements without permits. In order to fully enforce existing codes with a proactive enforcement program, a Land Development Investigator and a Combination Dwelling Inspector would need to be added to the existing Neighborhood Code Compliance staff. Additional funding sources would need to be identified to cover the associated increase in staff and availability (non-standard work hours) for enforcement. The estimated cost would be approximately \$200,000 which includes salary, fringe, equipment and overtime.

- **Option 2- Amend Campus Impact Overlay Zone**

The standard parking requirement for a single dwelling unit is 2 parking spaces. The Campus Impact Overlay Zone requires single dwelling units with 5 or more bedrooms to provide 1 parking space per bedroom, or for additions to existing structures containing 5 or more bedrooms, 1 space per added bedroom, whichever is less. The limitation on parking spaces per bedroom was intended to restrict development of dwelling units with 5 or more bedrooms in the overlay zone where the existing development pattern is predominately 3-4 bedroom dwelling units. Some owners have developed 5 or more bedrooms by converting an existing garage to living space and have provided the required 5 or more surface parking spaces (resembling a parking lot) without regard to compatible design or function in the existing single dwelling unit neighborhoods.

Amendments to the Land Development Code may further reduce impacts such as:

- **Option 2a- Reduce the campus impact parking threshold to 4 bedrooms to further restrict bedroom additions in existing structures.**

Staff does not recommend reducing the (1 space per bedroom) threshold lower than 4 bedrooms, since staff believes that 2 parking spaces are adequate for a 3 bedroom single dwelling unit.

- **Option 2b- Require a minimum of two enclosed parking spaces.**

Some property owners have converted existing garage parking into living area, and have still been able to comply with the requirement to provide one parking space per bedroom. Staff has seen proposals for five or more surface parking spaces on a single dwelling unit lot that are seemingly inconsistent with the character of a single dwelling unit zone (instead are characteristic of a surface parking lot). Since enclosed parking is not required in the code, a requirement for a minimum of two enclosed parking spaces in the Campus Impact overlay zone may help to address this type of problem.

Option 2c- Modify the minimum parking design requirements to ensure proposed spaces are functional and minimize negative impacts on adjacent developments.

Because minimum driveway width at the property line and minimum parking space dimensions are the only explicit parking design requirements for single dwelling units in the LDC, some property owners have proposed creative parking designs inconsistent with standard transportation planning policies including narrow access drive widths, access drives along side property lines or at diagonal angles from the front property line, and constrained parking space access.

Option 2d- Reduce the amount of hardscape permitted within the front yard.

The existing code Section 131.0447 limits the amount of paving and hardscape to 70 percent of the total required front yard to allow flexibility for design of a driveway, entry walk, and architectural projections. Requests to reduce the amount of hardscape appear to be related to concerns regarding parking in the required setback. However, parking in the required front yard or street side yard is already restricted by Section 142.0510(e) so this type of change is not expected to prevent parking in the setback.

Staff concerns with these ideas for code changes are about their impact on remodels of legitimate single family home owners. While these physical requirements may limit conversions of existing single dwelling units to rentals, or expansions of existing rentals, they may also restrict home owners from doing reasonable remodels to their units. Any proposed changes would need to be thoroughly analyzed to minimize these unintended impacts.

Amendments to the LDC would require additional work by staff, City Council approval, and Coastal Commission certification and at current staffing levels would take a minimum of 1.5 years to complete.

• **Option 3- Require Residential Parking Permit Districts**

There are two existing parking permit districts adjacent to college campuses including District B adjacent to SDSU and District E adjacent to Mesa College. Parking permit districts are created and administered in accordance with Chapter 8, Article 6, Division 20 of the Municipal Code. Four parking permits (including a visitor's pass) are assigned to each property in the aforementioned districts. To further address on-street parking availability adjacent to local campuses, additional parking districts could be created, the provisions of the existing districts could be amended (ie reducing the number of permits per property), or as an alternative to parking permits, parking time limits could be posted (e.g. 2 hour parking zones or no overnight parking).

In addition to requiring an identified funding source, amending or creating new parking permit districts or limited parking zones would require additional studies, community support within the district, and City Council approval.

• **Option 4- Enforce Community Assisted Party Plan (CAPPS) Program**

The Community Assisted Party Plan Program is a San Diego Police Department (SDPD) program to address nuisance party houses. A house is considered "CAPPED" when 1) two police

responses are required to a nuisance party house within a 30-day period, 2) a police response to a nuisance party house results in immediate citations or arrests, or 3) SDPD adds a property to the CAPP list following investigation in response to a petition signed by five neighbors within reasonable proximity to a nuisance party house. Nuisance party houses remain “CAPPED” for a period of one year. Future police response to “CAPPED” houses results in academic sanctions for students and/or civil or criminal prosecution and fines for the responsible parties.

Improved participation and coordination between the community, the City (SDPD), and local Universities and Colleges will be necessary for continued CAPP program success. Adequate funding sources must be maintained for consistent program administration and police response.

- **Option 5- Implement Redevelopment Plans**

There are 11 existing redevelopment plans identified throughout the City (Attachment 3) in addition to the areas managed by Southeastern Development Corporation and Centre City Development Corporation. Redevelopment areas can be used to address the shortage of affordable housing options by increasing density in designated areas for redevelopment with a variety of housing options that also provide adequate space and amenities for the planned density. “Fraternity Row” is an example of a project that’s been implemented in the College Community redevelopment area.

The City is limited by redevelopment law in the planning and development of these areas. There are a variety of factors outside of the City’s control, such as market influences, property ownership, or State/Federal agencies that impact the timing of development in these areas.

- **Option 6- City Partnership with Universities**

The City is currently meeting with representatives from San Diego State University to develop an ongoing system for coordination on development and enforcement issues in the adjacent communities to encourage an active role by the University related to SDSU student issues.

The City has no authority over SDSU. Similar efforts should be made with the other local universities and colleges.

- **Option 7- Create Rental Inspection and Licensing Programs**

A rental inspection and licensing program is an option that has been considered, but is not recommended. Under a licensing program, owners of rental properties would be required to register their properties in a City database to record responsible party information for each change in lease, with required inspections prior to rental occupancy. Such a program would need to be applied to all rental properties equally (families and non-families) and therefore would affect all rental properties.

Such a program would have administrative processing and enforcement costs, which may have limited added value for the amount of work involved. The increased costs to the applicant are expected to be shifted onto the consumer through rental prices, which is overall a negative impact to housing affordability counter to the Mayor and Council’s goals.

- **Option 8- Regulate Rental Businesses in Single Dwelling Unit zones**

While the Attorney General opinion allows a City to regulate a rooming house business, this is an option that has been considered, but is not recommended. A new rooming house use would regulate off-premises property owners that rent their properties to a certain number of individuals (who live and pay rent as individuals) as a separately regulated use either requiring a discretionary use permit, applying limited regulations, or prohibiting the use altogether, as appropriate for the location.

This type of regulation would be extremely difficult to apply and enforce. Staff would be expected to track the number of tenants in a given dwelling unit while respecting the tenant's legal rights to privacy and to refuse entry on the premises. The regulation would also treat rental properties differently than owner occupied properties even though the potential nuisance concerns could be the same for a similarly situated rental or owner occupied property, which would seem to be counter to previous legal opinions by the Courts

FISCAL CONSIDERATIONS:

The Neighborhood Code Compliance program is a general funded service in the Development Services Department budget, while the Land Development Code Update is an enterprise funded service through department overhead via permit fees. The parking permit district programs are funded via other Department budgets such as Engineering and Capital Projects and General Services. Some of the options discussed in this report would increase City labor costs for a variety of Departments without any mechanism for cost recovery. In order to fully enforce existing codes with a proactive enforcement program, a Land Development Investigator and a Combination Dwelling Inspector would need to be added to the existing Neighborhood Code Compliance staff. The estimated cost to the General Fund would be approximately \$200,000, which includes salary, fringe, equipment and overtime. Other options such as the Rental Licensing Program (Option 7) and Rooming House- Separately Regulated Use Permit (Option 8) could result in expenses due to legal challenge.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On March 29, 2006, the Land Use and Housing Committee received a report indicating that the Mini-Dorm issue would be addressed through enforcement of existing codes and would not be prioritized for the 2006 Land Development Code work program.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On September 19, 2006, Development Services, Police, and City Attorney staff attended the Mini-Dorm Community Forum where staff fielded a variety of questions from the community. The Forum was well attended by the College Area community (approximately 330 residents), and received local media coverage including live broadcast on City Channel 24. Staff also participated in several follow up community meetings with the College Area Community Council. If staff is directed to proceed with code amendments, additional public outreach will be

conducted for review and comment on specific draft code language through the established code amendment process.

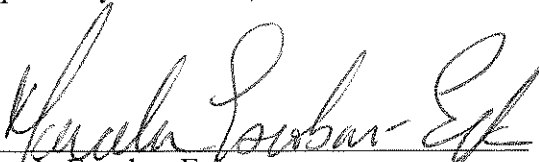
KEY STAKEHOLDERS AND PROJECTED IMPACTS:

There are many stakeholders representing a wide spectrum of concerns regarding potential regulations to address mini-dorms/public nuisance rental properties. They include, but are not limited to, single dwelling unit owners who occupy their residence, single dwelling unit owners who rent out their residence (including the College Area Rental Landlord Association), existing tenants, prospective home buyers, the San Diego County Apartment Association, local colleges and universities, members of the real estate industry, and community planning groups. Various City services including police, neighborhood code enforcement, parking enforcement, attorney, land development code, inspection, and permit review are required to regulate public nuisance rental properties. These existing constrained City services could be further negatively impacted depending on what alternative is selected.

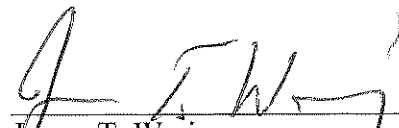
CONCLUSION:

Staff recommends that the City continue to enforce existing noise, party, and parking regulations and pursue nuisance violations as appropriate. Additional funding must be identified to cover the associated need for staff resources in order to fully enforce the existing Permit Parking Districts, CAPPS Program, and Municipal Code requirements, and facilitate the transition from a reactive enforcement program to a proactive enforcement program.

Respectfully submitted,



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ESCOBAR-ECK/KGB/AJL

Attachments:

1. City Attorney Opinion
2. Table: Potential Solutions
3. Redevelopment Agency Project Areas