



City of Lafayette
Agenda
Council Planning Subcommittee

Second Unit Amnesty Program Review

Date: September 13, 2016
Time: 4:00pm
Location: Conference Room 240
3675 Mount Diablo Boulevard, Lafayette, California

1. Call to Order
2. Adoption of Agenda
3. Public Comments
4. Staff Reports: Second Unit Amnesty Program
 - a) Response to questions from last meeting
 - b) Review various program options: discuss and direct staff
5. Schedule Additional Meetings as needed
6. Adjournment

I, Sarah Allen, declare under penalty of perjury that this agenda has been posted at least 72 hours in advance at the Lafayette City Offices, 3675 Mount Diablo Boulevard, Lafayette, California.

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Any writings or documents pertaining to an open session item provided to a majority of the City Council less than 72 hours prior to the meeting, shall be made available for public inspection at the front counter at the City Offices, 3675 Mount Diablo Boulevard, Suite 210, Lafayette, California during normal business hours.

Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, as required by Section 202 of the Americans with Disabilities Act of 1990 (42

U.S.C. Sec. 12132). Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to Joanne Robbins, City Clerk at (925) 284-1968 at least 48 hours before the meeting, if possible.

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Location of Agendas and Agenda Packets: Agenda and packets are available for review by the public during regular work hours at the Lafayette City Offices, 3675 Mt. Diablo Blvd., Suite 210. Agendas and packets shall be made available at least 72 hours in advance of each meeting.

Board Discussion: In accordance with State Law, the Board is generally prohibited from discussing and making decisions regarding items not posted on the agenda. Exceptions include items of urgency that become known to the Board after the posting of the agenda; discussion of such items requires a 4/5ths affirmative vote by the Board.

Persons Wishing to Speak: Any person may address the Board on any item listed on this agenda. Persons wishing to address the Board should complete a speaker slip and submit it to the City staff. In addressing the Board, speakers should step to the podium and state their names and addresses for the record.

Public Comments on Agenda Items: Persons wishing to speak on items listed on the agenda will be heard when called by the meeting chair. After the public has commented, the item will be closed to public comment and brought to the Board for discussion and action. There is no further comment permitted from the audience unless invited by the meeting chair.

Public Comments on Non-Agenda Items: Persons wishing to speak on matters not posted on this agenda are encouraged to submit the matter in writing to the City Clerk or staff aide at least ten days prior to the next regularly scheduled Board meeting date. Persons unable to do this may address the Board under the PUBLIC COMMENTS section of this agenda. Note, however, that such matters may be referred to staff for action or posted on a future agenda.

Time Limit on Comments: Persons will be permitted to speak for up to three minutes.

Posted Times: Posted times are estimated and actual times will vary. Public hearings may start later but never earlier than the posted time.

Reconsideration of Items: After the Board has acted on an agenda item, it may reconsider the same item later in the meeting in accordance with Council Rules of Proceedings II.D.4.

Consent Calendar: All matters listed under consent calendar are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless requested by a member of the Board or a member of the public prior to the time that the Board votes on the motion to adopt.

¹ "Board" is used here as a generic term for the City Council, commissions, committees, task forces, and other public decision-making boards.



City of Lafayette

Staff Report

Planning Subcommittee

Meeting Date: September 13, 2016

Staff: Sarah Allen, Associate Planner
Chris Joram, Planning Technician
Greg Wolff, Assistant Planning & Building Director

Subject: Second Unit Amnesty Program

Purpose

Respond to questions from the last subcommittee meeting and review the pros-and-cons of a range of second unit amnesty programs.

Background

On July 26, 2016 this Subcommittee met and was introduced to the concept of a Second Unit Amnesty Program and was provided research compiled by staff, including several examples from other jurisdictions. The Subcommittee held a second meeting on August 22, 2016 to discuss additional information about fees, funding sources, building code requirements, success rates as well as some legal issues. Questions from the second meeting are responded to below.

Subcommittee Questions from Second Meeting

1. What allows a second unit to count as affordable for RHNA purposes? Must it meet code?

What will HCD accept?

A dwelling unit need not be confirmed as 'legal' in order to be acknowledged and counted towards a jurisdiction's housing stock and RHNA numbers. In order to be counted as affordable (absent a BMR restriction in place) rent would need to fall into very low, low, or moderate income category; otherwise the default would be above moderate. Over time staff will need to monitor a variety of sources such as Craigslist and real estate listing to gather data on units and rent levels. With this information, staff can make the case to HCD that second units are affordable to a range of income levels.

2. What is the status of the City's affordable housing funds and many units can be garnered with that money? How does that compare to our RHNA numbers?

The City currently has around \$300,000 in redevelopment successor agency funds that could be used on affordable housing programs. (An additional \$1M is anticipated in FY 2018.) Conservative estimates for fees to legalize an unpermitted second unit are around \$25,000 with City fees making up around \$10,000 of that total. If the City were to waive all of its fees, the current funds could legalize around 20 second units. Monies spent on the program would need

to be in the form of low-interest loans and not a gift of public funds to a property owner to pay for another agency's impact fees. Please see attached for a breakdown of the City's RHNA allocation and projections on affordable housing production.

3. Can development impact fees be financed and paid incrementally with one's taxes similar to the PACE program?

There is no provision that would allow for financing development fees in this fashion.

4. Is it an option to waive city fees, or have the city pay/finance the fees due to other agencies?

The City Council can make a policy decision to waive City fees, however the lost revenue would need to be covered in some other way. Impact fees are not a mechanism to generate revenues for the general fund – they are limited to paying for the infrastructure needed to serve the new units. If those units are not contributing their fair share, then other sources, like the general fund, will need to be tapped to build the necessary infrastructure.

The City could choose to offer a low-interest loan program whereby the City would contribute the up-front funds to pay for a unit's development impact fees and the property owner would be legally bound to pay back the monies, with interest, over the term of the loan, which could be set at 10, 15, 20 years or another term acceptable to the City Council.

If the City offered a low interest loan program or waived City fees, it could do so in exchange for an affordability covenant on the second unit for a certain period of time. For example, the City could agree to waive its parkland impact fees if the property owner agrees to restrict the rent on the unit to very-low-income for 15 years.

5. What are the ethical implications of allowing non-conforming situations like a unit within the creek setback or regular setback. What does this do to the integrity of the planning process?

Almost universally, whenever there is a rule, there is someone breaking that rule. When any rule, regulation or law is contemplated, enforcement should be part of the consideration. The nature of an amnesty program is to forgive some aspect of prior bad behavior, in exchange for achieving a greater public good that is deemed of greater importance. For example, in the past the IRS has granted amnesty to tax evaders and has waived penalties if the evader comes forward and simply pays the outstanding taxes. The prior bad behavior is forgiven for the greater good of having the increased tax revenue, which either would not have been gotten at all, or would have cost the IRS significantly more to collect.

In the case of the amnesty program being considered, the City Council would need to prioritize competing public interests and determine what, if any, leniency it is willing to grant in exchange for bringing second units in from the dark. Exceptions to certain development standards like reduced setbacks or slightly over-sized units might be considered easier to grant, whereas off-street parking and development impact fees might be more difficult. In the end, the Council may decide that the integrity of the existing codes is such that it cannot justify any leniency, and can only focus on incentivizing property owners to bring their unpermitted units into compliance with current codes. Alternatively, the Council may determine that it will use other tools and programs to achieve the goals set forth in the General Plan Housing Element certified by the California Department of Housing and Community Development.

SUAMP Goals

The Housing Element of the Lafayette General Plan states “[t]he single most important goal of the Lafayette Housing Chapter is to achieve an adequate supply of safe, decent housing for all residents of Lafayette. In order to achieve this goal, the policies and programs of the Housing Chapter address several major issues:

- *Maintaining and preserving the existing housing stock*
- *Retaining the character of Lafayette's residential neighborhoods*
- *Meeting the City's regional housing needs allocations*
- *Providing additional affordable housing, particularly for senior citizens and young families”*

Promoting health, safety and general welfare is a foremost goal of the City and the basis for its land use authority. Bringing unpermitted second units in from the cold will allow the City and other agencies to better serve the tenants with emergency response and other services.

At its first meeting the Planning Subcommittee considered several goals specific to the amnesty program, which implement the General Plan. Two goals were: (1) to increase the stock of affordable housing units, and (2) to increase the number of legal units in Lafayette. Note that there are other ways to further these goals separate from the subject amnesty program. More broadly, goals of a Second Unit Amnesty Program are outlined below.

1. Ensuring the health & safety for all residents.
 - a. Emergency response
 - b. Built to code to ensure the structure/electrical are safe
2. Protecting the community character.
 - a. Privacy
 - b. Density
 - c. Aesthetics
 - d. Preventing absentee landlords
3. Increasing the stock of affordable housing units in Lafayette.
 - a. Smaller units are by nature more affordable than single family homes
 - b. Rental housing is generally more affordable than buying a for-sale unit
 - c. Elderly parents or college students often pay little or no rent
 - d. Possible income restrictions if City contributes money to the project
4. Increasing the number of legal dwelling units in the community.
 - a. Meeting the goals of the General Plan
 - b. Provide adequate housing for all segments of the community
 - c. Meeting the Regional Housing Needs Allocation (RHNA)
5. Increasing property values for owners.
 - a. Legal units allow for above board rental income (higher than substandard/illegal units)
 - b. Allow individuals who are downsizing to stay in second unit and rent out the main house
 - c. Increased re-sale value of property

As the property value increases, property taxes rise with the increase in assessed value, which can be a disincentive to a property owner. Higher taxes could trigger the owner to increase rent.

6. Incentivizing property owners to take advantage of the amnesty program.
This is the crux of the issue. Since there are many barriers (fees, potential for deconstruction, higher taxes) and no significant incentives to become a legal unit (an owner may feel that things are working fine as they are – they have their unit and are able to use it as they wish), many communities have found little success with amnesty programs.

Range of Programs to Consider

There is general agreement that there are dozens (or more) second units in the community that are off the radar either because they were built before such units were regulated or were constructed without the necessary permits. The bulk of these second units have existed for decades and have been part of the community fabric. Their tenants come and go, they park on the property or the street, they walk the trails and patronize local businesses. Acknowledging these units and documenting their existing would allow the city to demonstrate that there are actually more affordable housing units than previously documented and would allow the property owners and tenants to be better positioned to receive emergency response and other public services.

In light of the goals outlined above, there is a range of programs to consider with varying degrees of staff time, administration, and financial commitment on the part of the City.

SMALL PROGRAM – A small program could have City staff monitor a variety of public sources of information to develop an inventory of second units and rents to demonstrate to the State that Lafayette has more affordable housing than previously documented. Sources could include real estate listings, Craigslist rental listings, appraiser or real estate agent conversations with staff, or units reported to the school district as a student's place of residence. Beyond documentation of the unit, the City would not take on additional tasks like investigating whether the unit complies with the zoning code or building code, and bringing non-conforming units into conformance either through voluntary actions or code enforcement.

A small program would achieve the City's primary goal of documenting existing second units in the community, with little staff time and cost to the City. Property owners would maintain their status quo and would not be obliged to invest any money in City permitting or development impact fees.

MEDIUM PROGRAM – A medium program could have the same elements as the small program, but add on the requirement for a life-safety inspection by a licensed third party. For example, a new point-of-sale ordinance could require that the seller of a property file with the City a floor plan for all structures on the property. If there is a second unit on the property, a licensed home inspector would be required to inspect the property and certify there are no obvious threats to life-safety. This would be defined in the implementing ordinance and could include exposed wiring, lack of smoke/CO monitors, visible mold, etc.

This added inspection would add confidence that tenants would not be exposed to a unit with obvious life-safety concerns. City staff would administer the point-of-sale and inspection reports, but would not go further in investigating zoning or building code compliance. The City would achieve its primary goal of documenting second units and would have the additional confidence that units meet minimum safety standards. Property owners would not be obliged to file significant paperwork and would only need to invest in remedying substandard life-safety issues, without having to pay significant development fees to the City and other agencies.

LARGE PROGRAM – A large program would have the elements of the medium program, and would have City staff evaluate the unit’s compliance with zoning and building codes. Given the tenure of many of the community’s unpermitted second units, there is high likelihood of non-compliance with current codes. The City would be obliged to provide some form of leniency regarding zoning and building codes if the program were to have the possibility of success. Further, the largest disincentive for property owners with unpermitted second units is the tens of thousands of development impact fees. Significant incentives in the form of reduced or waived fees, low interest loan to ease up-front costs, or others would need to be in place to make the program viable.

A large program would achieve the City’s goals of documenting existing second units, promoting health and safety, and ensuring some level of compliance with zoning and building codes. Some aspect(s) of the amnesty program could be seen as being unfair to those who built second units legally prior to or after the program. The nature of any amnesty program is to forgive some aspect(s) of prior bad behavior, balanced with achieving a more compelling public interest. A large program would require the most staff time to administer and the most City investment in incentives such as waived or deferred fees. A property owner would have their unit legalized, but would have significant time and money investment in applying for the amnesty program, meeting minimum life-safety standards, and higher taxes moving forward.

Recommendation

Continue discussion and provide direction to staff. Schedule additional subcommittee meetings as necessary. Schedule City Council review.

Attachments

1. Policy Questions
2. RHNA Allocation Breakdown & Affordable Housing Production Projects

Second Unit Amnesty Policy Questions

Several policy questions have surfaced while researching other programs. Staff is requesting guidance from the Subcommittee before developing the draft regulations.

1. What current standards, if any, is the City willing to provide leniency on in order to encourage unpermitted second units to be permitted under the amnesty program?
Many of the standards such as size, parking and height will likely not meet current regulations. The City could consider a range or deviation that might be acceptable or possibly a full waiver. Each standard is meant to minimize the impact of the unit on the neighborhood and community and any leniency should be considered in this light. How big is too big? The current standards allow a maximum size of 750 sq. ft. for a detached unit. If there is an illegal unit that is 800 sq. ft. it might not pose an impact, but a 1,200 sq. ft. unit could be more of a problem. In this case would a portion of the larger unit need to be demolished in order to obtain approvals? It is valuable to note that some programs are unsuccessful if the standards remain too stringent.
2. What is the purpose and intent of the program? Are we concerned only with life safety issues or do we care about the planning aspects and neighborhood impacts? Are there impacts if the unit has been in place for several years with no complaints?
This relates to question #1 above in terms of which standards may be relaxed and also to the General Plan goal of retaining the character of residential neighborhoods.
3. What if a second unit cannot conform to the standards we have in place? Or even the reduced standards? What do we do about units we know about but cannot “approve”?
Some options might include:
 - *Not employing code enforcement on anyone who daylight their unit during the amnesty period.*
 - *Agreeing to not to use the information day lighted during the amnesty period for Code Enforcement during or after the amnesty period.*
 - *After the amnesty period ends, Code Enforcement would return to normal and be on a complaint basis.**In general, most other jurisdictions choose not to use code enforcement in cases where compliance cannot be achieved. Additionally, some jurisdictions have a registration program where the legal non-conforming status is documented, but no expansions are permitted.*
4. What is an appropriate length of time the program? What would be the cut-off date for eligible units?
Many other communities have a limited timeframe of one to two years. The cut-off date ranges from the date of the amnesty ordinance to the date the original second unit regulations.
5. Should the City consider an affordability restriction? Should affordability covenant be a condition of legalizing the illegal second unit? Or to legalize it if it would otherwise not meet development standards? What impact may this have on people wanting to come forward?
By their very nature second units are smaller in size and rental units so they are more affordable than single family homes; however, adding an affordability component if there is an appropriate nexus may further ensure the General Plan goal of providing affordable housing.
6. Should the City reduce the application and development fees?
The high costs associated with development fees and utility connection fees are a large deterrent to building new legal second units. If we reduce or remove the application and development fees it may provide an incentive for owners to take advantage of the amnesty program. Many other jurisdictions do this and in fact some also reduce the fees for new legal units during the same period. Some jurisdictions also work with the local School District, water district and building departments to see if

those fees can also be reduced. Staff has already received indication from the County Building department that they would not be inclined to reduce fees, as they feel it encourages and rewards those not following the rules. Attached is a chart showing approximate costs associated with developing a second unit.

7. What should the process for approval be? Should the Zoning Administrator act on the project? Should there be a public hearing if the standards cannot be met? *Currently any new unit that meets the development standards is acted on by the Zoning Administrator; a variance requires a public hearing. Staff would suggest that if the process is easy and straightforward it will likely be more successful.*

Affordable Housing Projections
Exercise for SUAMP 2016-08-30

PROGRESS TOWARDS MEETING REGIONAL HOUSING NEEDS 2007-2014: BUILDING PERMITS ISSUED

Income	Regional Housing Needs Allocation (RHNA) 2007-2014	Building Permits Issued 2007-14	Percentage of RHNA
Very Low	113	47	42%
Low	77	8	10%
Moderate	80	7	9%
Above Moderate	91	126	139%
TOTAL	361	188	52%

PROGRESS TOWARDS MEETING REGIONAL HOUSING NEEDS 2014-2022: BUILDING PERMITS ISSUED

Income	Regional Housing Needs Allocation (RHNA) 2014-2022	Building Permits Issued 2014-15	Percentage of RHNA
Very Low	138	0 ¹	0%
Low	78	1	1%
Moderate	85	7	8%
Above Moderate	99	74	75%
TOTAL	400	82	21%

PROJECTIONS FOR MEETING RHNA 2014-2022

Project Name	App Number	Est. BP Date	VLI Units	LI Units	Mod Units	AM Units	Total Units
Town Center III		2015	0	0	7	62	69
Lafayette Park Terrace	GP01-05	2016	0	1	2	15	18
Lennar Home	DR13-14	2017	2	2	6	56	66
Lenox – Mountain View Drive		2017	0	0	0	6	6
Lenox – Lafayette Circle		2018	0	2	0	10	12
Woodbury Highlands		2018	0	20	0	99	119
TOTALS			2	25	15	248	290
RHNA Allocation 2014-2022			138	78	85	99	
% of RHNA Allocation Achieved			1.5%	32%	18%	250%	

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¹ To fulfill their affordable housing obligations, the developers of The Woodbury project income-restricted 18 units (5 very low, 5 low, 8 moderate) in an existing apartment complex in the downtown. These units have not been categorized as “new” for RHNA purposes; however, they are now part of Lafayette’s affordable housing stock.