

<b>Location:</b>	<b>Citywide</b>
<b>Item:</b>	<b>Review proposed Planning Code amendments to the regulations for Secondary Units</b>
<b>Applicant:</b>	City of Oakland
<b>Case File Number:</b>	<b>ZT15018</b>
<b>General Plan:</b>	Citywide
<b>Zoning:</b>	Citywide
<b>Environmental Determination:</b>	The proposed amendments to the Planning Code rely on the previous set of applicable CEQA documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs- West Oakland (2003), Central City East (2003), Coliseum (1995), and Oakland Army Base (2002); the Historic Preservation Element of the General Plan EIR (1998); the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, “Previous CEQA Documents”). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, each as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).
<b>Staff Recommendation:</b>	Review, discuss and recommend approval to the City Council
<b>For Further Information:</b>	Contact <b>Ed Manasse</b> at 238-7733 or email <a href="mailto:emanasse@oaklandnet.com">emanasse@oaklandnet.com</a>

**SUMMARY**

The goal of the proposed amendments is to encourage construction of Secondary Units by reducing the regulatory barriers in the City’s current Planning Code language. Secondary Units are considered one way to help address the city’s housing shortages and escalating costs. Because Secondary Units are smaller, the average construction cost is usually much lower than even a typical new subsidized affordable apartment project. Another benefit of Secondary Units is that they are increasingly being used as independent living options for young adults and elderly family members. Also, because Secondary Units go into established neighborhoods, they can contribute to the city’s desire to maximize the use of existing available land in these neighborhoods.

The University of California Center for Community Innovation recently prepared a study titled “Yes in My Backyard: Mobilizing the Market for Secondary Units”, which discusses the benefits of and obstacles to Secondary Units in the East Bay. The study found that local regulations may impede the development of Secondary Units. See **Attachment B** for letters the City has recently received from homeowners requesting relief from regulations that impede the approval of a Secondary Unit.

Also, the Housing Equity Roadmap recently approved by City Council states that:

*“A recent study conducted focusing on the MacArthur BART station area and the Oakland portion of the Ashby BART station area found that Oakland has underutilized the building of secondary dwelling units. A sampling survey of homeowners found that 18 percent of houses already have at least one secondary dwelling unit. Approximately 7 percent of the homeowners surveyed were*

already planning on building a second unit and another 7 percent were interested but had encountered regulatory and/or financing barriers. The study found that the city's parking requirements were the biggest regulatory barrier to the development of second units, followed by lot setbacks. Under the city's current requirements, 230 homeowners in the studied areas could build a second unit. The study found that with the relaxing of parking requirements, 2,300 homeowners in the studied areas could build a second unit. In addition, through its relations with nonprofit and for-profit financial institutions, the city could help facilitate homeowners' access to capital resources for building a second unit.

*“Recommendation: Oakland should consider facilitating the development of secondary dwelling units by 1) relaxing requirements, such as parking and set-back; and 2) assisting with access to private capital resources.”*

In preparing the proposed Oakland Code amendments that will be discussed later in this report, Staff looked to the recently adopted Secondary Unit regulation changes in the City of Berkeley as one model. The following revised requirements for a Secondary Unit in Berkeley became effective on Aug.19, 2015:

Berkeley's regulations:

1. *Maximum size of 750 square feet or 75% of the primary structure, whichever is less.*
2. *Height - 14 foot maximum height at peak of roof, 10 foot maximum at eave of roof. Not to exceed 10 feet at property line.*
3. *Setback – 4 foot minimum side and rear setback from property line. No side or rear setback required if Secondary Unit will replace preexisting buildings on the property line.*
4. *Parking - tandem parking in driveway is allowed (including non-conforming driveways that don't comply with the minimum 2-foot landscaping strip). Proposed Secondary Units that are within one-quarter mile of a Bay Area Rapid Transit (BART) station and located in a Residential Permit Parking (RPP) Zone will have no additional parking requirement.*

In recognition of the potential of Secondary Units as a housing strategy, the following Oakland Code amendments are proposed to reduce barriers to Secondary Unit development - particularly existing parking requirements (see Attachment A for the full text of the proposed Secondary Unit Code amendments):

- **Parking** – Tandem parking regulations would be amended to allow tandem parking in all Zones, except S-11 or S-12, for Secondary Units up to the maximum size allowed (750 square feet or 75% of the primary structure, whichever is less). Also, proposed Secondary Units that are within one-half (½) mile of a BART Station, Bus Rapid Transit (BRT) Station, or “Major Transit Stop” (see definition below) would have no additional parking requirement. This provision is intended to facilitate the development of more “low carbon footprint” housing options for residents seeking to utilize transit to meet their daily needs (see Attachment C for a map of the areas where no additional parking would be required for a Secondary Unit).
  - “Major transit stop” is defined consistent with California Public Resources Code Section 21064.3; and means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a

frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

- **Setback** – New Secondary Units would be allowed up to 4 feet from the side and rear lot line if located within 35 feet of the rear property line. Existing accessory structures located outside of the front yard setback would be allowed to convert into a Secondary Unit - regardless of any existing nonconformity as to side setback, rear setback, or height - as long as the existing structure is not modified or added to in any way that increases the level of nonconformity with all applicable zoning regulations; the floor area of the resulting Secondary Unit does not exceed the maximum allowed; and the minimum parking requirement can be met on site.
- **Height** – Detached Secondary Units within the rear 35 feet of a lot would have a maximum roof height of 14 feet, and building walls located within 4 feet of the side or rear lot line would be limited to 10 feet in height.

To minimize the impact of Secondary Units on existing residences, Staff is proposing to couple the above regulatory relaxations with *a decrease in the overall maximum size of an individual Secondary Unit*. The city’s current size limit for a Secondary Unit is larger than what most cities allow, so the proposal is to reduce the maximum size from the current 900 square feet or 50% of the primary structure, whichever is less, to the proposed: 750 square feet or 75% of the primary structure, whichever is less.

**BACKGROUND**

On October 14, 2015, the Zoning Update Committee held a public meeting to hear comments and provide feedback on various proposed amendments to the Oakland Planning Code, including but not limited to revisions to regulations for Secondary Units. At the meeting, the ZUC recommended that the proposed revisions to Secondary Unit regulations be amended to include locations within ½ mile of a “major transit stop”, in addition to locations within ½ mile of a BART or BRT Station, as areas where no additional parking would be required for a Secondary Unit.

At the October 21, 2015 hearing, the Planning Commission took no action on the proposed Secondary Unit-related amendments, and instead asked that they come back soon for another hearing before the Commission, along with a plan for regulating and permitting short-term rentals.

In response, Staff scheduled this second Commission hearing on the proposed amendments to Secondary Unit regulations. If recommended by the Commission at today’s hearing, the intent is to present the proposed Secondary Unit changes to the Community and Economic Development (CED) Committee of the City Council on December 1, 2015 - *along with the other Code changes previously recommended by the Planning Commission on October 21, 2015 (Transitional and Supportive Housing regulation changes and miscellaneous minor Code changes).*

Ultimately, all proposed Planning Code amendments go to City Council for final review and approval.

**KEY ISSUES AND IMPACTS**

The differences between existing regulations related to Secondary Units and the proposed Code amendments described in this staff report are summarized below:

Regulation	Existing	Proposed
------------	----------	----------

<b>Max. Unit Size</b>	900 sf. or 50% of the existing Primary Unit, whichever is less	<i>750 sf. or 75% of the existing Primary Unit, whichever is less</i>
<b>Max. Building Height</b>	Same as Primary Unit	For detached Secondary Units within 35 ft. of rear lot line: <i>Max. roof height of 14 feet and max. wall height of 10 ft. within 4 ft. of the side or rear lot line</i>
<b>Min. Rear Setback</b>	Same as Primary Unit	<i>Allowed within normally required rear setback - as long as new detached Secondary Unit is located at least 4 feet from the side and rear lot lines</i>
<b>Min. Side Setback</b>	Same as Primary Unit	<i>Allowed within normally required side setback - as long as new detached Secondary Unit is located at least 4 feet from the side and rear lot lines</i>
<b>No. of Parking Spaces Req'd</b>	1 additional space for the Secondary Unit	1 additional space for the Secondary Unit - <i>unless the lot is located within 1/2 mile of a BART Station, BRT Station, or Major Transit Stop, and then no additional space is required</i>
<b>Tandem Parking</b>	Allowed for Secondary Units of up to 500 sf. in size only	<i>Allowed for all Secondary Units</i>
<b>Conversion of Existing Building to Secondary Unit</b>	Not allowed if located in any setback	<i>Allowed if legally in existence and located outside of front setback, regardless of any existing nonconformity as to side or rear setback, or height, as long as: any existing nonconformity is not increased; the floor area does not exceed the max. allowed; and the min. parking is met on site</i>
<b>Rebuilding Existing Building as Secondary Unit</b>	Not allowed if located in any setback	<i>Allowed, but only in conformance with all applicable zoning regulations - including min. 4-foot side &amp; rear setback</i>
<b>Sale of Unit</b>	Cannot be sold separately from the Primary Unit on site	(No Change - same as existing regulation)
<b>Owner Occupancy</b>	Owner must occupy either the Primary or Secondary Unit on site	(No Change - same as existing regulation)
<b>Dead-End Streets</b>	Site must be on a through street, or on dead-end street less than 300 ft. in length	(No Change - same as existing regulation)
<b>Min. Pavement Width</b>	24 feet for all streets connecting the lot to the nearest arterial; may be reduced to 20 feet upon granting of a Conditional Use Permit (CUP)	(No Change - same as existing regulation)

The public has expressed both support and concern for the Secondary Unit proposal. Supporters feel these changes would further encourage the production of Secondary Units which can be a source of “unsubsidized affordable” housing. Others have expressed concerns about: (1) rebuilding existing buildings as new Secondary Units, particularly those located on or very near property lines; (2) potential privacy impacts on neighbors from windows in Secondary Units located near property lines; and (3) the proposed ½-mile distance from transit in which the parking requirement would be waived, recommending instead a ¼-mile distance.

Regarding item (1) above, rebuilding existing buildings, unlike the new regulations in Berkeley, an existing building rebuilt as a Secondary Unit would need to conform to the four-foot setback requirement; it would not be allowed to be rebuilt in its previous location if it does not meet setback requirements. Regarding item (2) above, privacy impacts on neighbors due to windows, these impacts would be limited due to the height restriction (one-story) and the required setback. Furthermore, the Building Code generally requires new windows to be set back at least three feet from a property line. Regarding item (3) above, the ½-mile distance from transit where no parking is required, the rationale of using ½-mile as the distance from transit is consistent with state law Senate Bill (SB) 743 concerning Transit-Oriented Development (TOD) and new state law Assembly Bill (AB) 744 concerning parking reductions for affordable housing.

As background, Governor Brown signed SB 743 in September 2013, which made several changes to the California Environmental Quality Act (CEQA) for projects located in areas served by transit (i.e., Transit-Oriented Development or TOD). Those changes directed the Governor’s Office of Planning and Research to develop a new approach for analyzing the transportation impacts under CEQA. SB 743 also eliminates the need to evaluate aesthetic and parking impacts of a project, in some circumstances.

The focus on Transit-Oriented Development (TOD) is based on studies by the California Department of Transportation, the U.S. Environmental Protection Agency, and the Metropolitan Transportation Commission, among others, which have found that encouraging development in areas served by transit can result in local, regional and statewide benefits, including:

- Increased transportation choices;
- Increased public safety;
- Increased transit ridership;
- Reduced vehicle miles traveled;
- Increased household disposable income;
- Reduced air pollution and energy consumption;
- Conservation of natural resources and open space;
- Increased economic development;
- Increased affordable housing; and
- Reduced local infrastructure costs.

Some of the key terms used in SB 743 are:

- “Transit Priority Area”, which means an area within one-half (1/2) mile of a “major transit stop” that is existing or planned; and
- “Major Transit Stop”, which means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus

routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

At its October 21<sup>st</sup> meeting, the Planning Commission voted not to recommend approval of the proposed changes to the Secondary Unit regulations due to concerns about Secondary Units being used as short-term rentals (e.g., through listing services such as Airbnb) and that there should be a plan for regulating and permitting short-term rentals before the Secondary Unit regulations are adopted. Some Commissioners were concerned that encouraging new Secondary Units would encourage new short-term rentals, while other Commissioners felt that short-term rentals are a larger citywide issue that should be studied on a citywide basis and not specifically linked to Secondary Units. The concerns expressed around short-term rentals generally relate to: (1) the collection of Transient Occupancy Tax (TOT); (2) their effect on the supply of housing; and (3) potential nuisance impacts to neighbors. Regarding item (1), the TOT, the City has an agreement with Airbnb, which has the largest listings of short-term rentals in Oakland, to collect and remit TOT to the City. Regarding item (2), the effect on housing supply and item (3), potential nuisance impacts, these issues are not restricted to Secondary Units and have implications for all housing in the city.

Adopting special regulations for short-term rentals would likely be a lengthy and complex process based on the experiences of other cities. Because reforming the city's Secondary Unit regulations is a priority of the Mayor's office, Staff recommends that the development of any special regulations for short-term rentals be done separately from the adoption of the proposed Secondary Unit revisions. Such a proposal should also look at the short-term rental of all housing types, not just Secondary Units.

In the meantime, clarification of the city's existing regulations could be helpful to minimize concerns. For instance, current planning regulations already exclude any rental of a single-family home or Secondary Unit for less than one week, based on the following definition of "Permanent Residential Activities":

#### **17.10.110 Permanent Residential Activities.**

**"Permanent Residential Activities include the occupancy of living accommodations on a weekly or longer basis, with none of the living units under the same ownership or management on the same lot being occupied on a shorter basis;..."**

Therefore, the city already has the basis to strictly regulate the short-term rental of Secondary Units. To support better compliance, Planning Staff can update applicable Secondary Unit forms, handouts, and bulletins to clarify the existing restriction on less-than-weekly rental.

## **ENVIRONMENTAL DETERMINATION**

The proposed amendments to the Planning Code Text rely on the previous set of applicable CEQA documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs- West Oakland (2003), Central City East (2003), and Coliseum (1995); the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, "Previous CEQA Documents"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, each as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).

The proposed amendments to the Planning Code Text would not result in any significant effect that has not already been analyzed in the Previous CEQA Documents, and there will be no significant environmental effects caused by the change that have not already been analyzed in the Previous CEQA Documents. As a result, none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 are present in that: (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the Previous CEQA Documents due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no “new information of substantial importance,” as defined in CEQA Guidelines Section 15162(a)(3). In addition, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment).

**RECOMMENDATIONS**

1. Affirm Staff’s environmental determination;
2. Find that existing regulations being amended are inadequate and otherwise contrary to the public interest; and
3. Recommend that the City Council approve the proposed Planning Code Text amendments related to Secondary Units.

Prepared by:

\_\_\_\_\_  
Ed Manasse, Strategic Planning Manager

Approved by:

\_\_\_\_\_  
Darin Ranelletti, Deputy Planning Director

Approved for forwarding to the  
City Planning Commission by:

\_\_\_\_\_  
Rachel Flynn, Director - Department of Planning and Building

**ATTACHMENTS:**

- A. Full text of the proposed Secondary Unit Code amendments
- B. Letters the City has recently received requesting relief from regulations that impede the approval of a Secondary Unit
- C. Map of areas where no additional parking would be required for a Secondary Unit (areas within ½ mile of a BART Station, BRT Station, or Major Transit Stop)