OFFICE OF THE CITY MANAGER

June 21, 2004

TO: City Council

FROM: City Manager

RE: Second Unit Ordinance

At the City Council meeting on March 1, 2004 staff was directed to return with additional information to address questions raised by the City Council. This information has been assembled and provided as an addendum to the March 1, 2004 Agenda Report to be heard again by the City Council on June 21, 2004.

A part of the information requested by the City Council includes an inventory of existing properties with multiple units on single-family zoned lots. A map was prepared showing the requested properties using information obtained from the Los Angeles County Assessor's Office and a citywide land use inventory prepared by staff in 1990. Subsequent to the collection of the data and the preparation of the map, it was suggested that information from the City's utility departments (Water and Power) be used to potentially identify additional existing single-family lots with multiple units that may not have been reflected on the previous map. Based on information provided by the City's Water & Power Departments, a new map entitled "Existing Two to Eight Units or Two or More Water or Power Meters on Single-Family Zoned Properties" was prepared and is attached to this memo.

Staff collected information from the City's Water & Power Departments of all the single-family properties that have more than one water or power meter. This data was cross referenced with the data previously collected from the Los Angeles County Assessor's Office and the land use inventory prepared by City staff. The results showed that 291 properties that have more than one utility meter are not part of the properties included in the County Assessor and land use survey. The breakdown of the additional utility meters and property sizes are:

	2+ Water Meters	2+ Power Meters
Single-Family Properties Under 10,000 sq. ft.	9	27
Single-Family Properties Over 10,000 sq. ft.	228	27

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A large majority of the new properties that show up on the map as having two or more utility meters are large estate lots located in the western and southern areas of the City. Based on the location of the properties and the larger lot sizes, many of these units may represent legal non-conforming units that served as butler/caretaker's quarters.

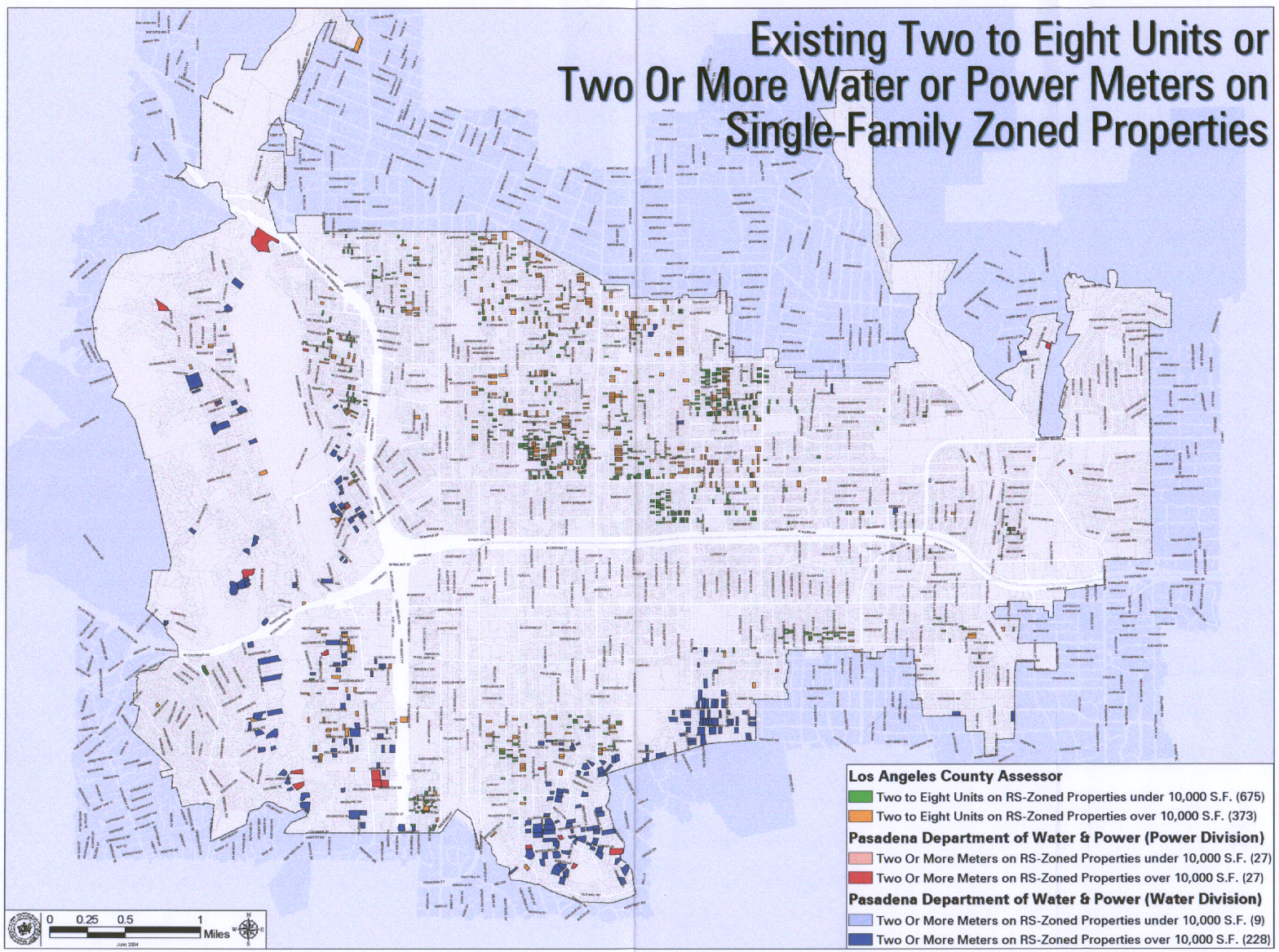
However, with the data collected from the Los Angeles County Assessor's Office, a definitive determination that multiple meters means multiple units on a property cannot always be assumed because a list of all properties with multiple meters does not capture all existing multiple unit properties and does not guarantee that multiple units exist on a site. Some properties that have 2 or more units may not necessarily have more than one water or power meter. Conversely, a property with one or more water or power meter may not have more than one unit. Larger lots may utilize a separate water meter exclusively for landscaping. In the case of a butler/caretaker's quarter on a lot, the second utility meter may serve that unit.

Respectfully submitted,

Cynthia Kurtz

CYNTHIA J. KURTZ
City Manager

Existing Two to Eight Units or Two Or More Water or Power Meters on Single-Family Zoned Properties



TO: CITY COUNCIL **DATE:** APRIL 26, 2004

FROM: CITY MANAGER

SUBJECT: PROPOSED AMENDMENT TO TITLE 17 (ZONING CODE) OF THE PASADENA MUNICIPAL CODE TO ALLOW FOR SECOND UNITS IN SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS

At its meeting of March 1, 2004, the City Council considered the proposed Code Amendment to allow second units within all single-family residential districts in the City. A motion to approve the item was tabled to provide time for staff to return with additional information to address questions raised by the City Council. The information requested included:

- How the affordability standards would apply to a covenant placed on second units and could an affordability covenant be applied to existing second units.
- An inventory of existing properties with multiple units on single-family zoned lots.
- The possibility of requiring a Conditional Use Permit for second units on single-family lots under a specific threshold size.
- The possibility of establishing a distance requirement between second units or a cap on the number of second units permitted per block.
- The relationship between the Second Unit Ordinance and the General Plan.

TRANSPORTATION ADVISORY COMMISSION:

The Transportation Advisory Commission heard this item at its April 15, 2004 meeting. The Commission unanimously did not support staff's recommendation. The recommendation prepared by the Commission is included as Attachment 2 of this memorandum.

INFORMATION TO THE CITY COUNCIL:

The following is in response to the information requested by the City Council:

Affordability Standards. The City Council may elect to adopt a standard that an affordability requirement be placed on second units constructed under this ordinance. The income level/rent for this requirement (low-income or moderate-income) is also at the discretion of the City Council. One way to achieve this is through the filing of a covenant with the Los Angeles County Recorder's Office for a term specified by the City of Pasadena. The covenant could set forth the limit for the annual household income of the tenants as well as the amount of rent that may be collected based on the family size appropriate to the unit. The table below is based on the area median income (AMI) of $55,100 for Los Angeles County. The AMI is adjusted for the income level and family size appropriate to the unit. Monthly rent for a low-income household is 18% of the adjusted AMI. Monthly rent for a moderate-income household is 33% of the adjusted AMI.

6/21/2004
~~4/26/2004~~
6.A. 7:00 P.M.

The most likely size of a second unit would be a studio, a 1-bedroom, or a 2-bedroom. The following limits would apply to these unit sizes after applying the calculations for low-income and moderate-income households.

Unit and Family Size	Annual Household Income	Monthly Rent *
0-Bedroom (Studio) 1-Person Household	Low-Income - $33,300 Moderate-Income - $46,250	Low-Income - $578 Moderate-Income - $1,060
1-Bedroom 2-Person Household	Low-Income - $38,100 Moderate-Income - $52,900	Low-Income - $661 Moderate-Income - $1,212
2-Bedroom 3-Person Household	Low-Income - $42,850 Moderate-Income - $59,500	Low-Income - $744 Moderate-Income - $1,364

*these figures may be subject to reduction in the amount of applicable utility allowances to the extent that the tenant pays for certain utilities.

If an affordability covenant is adopted along with a second unit ordinance, there are potential costs associated with the program related to the monitoring, enforcement, and any annual adjustments to the AMI. The State legislation precludes a local agency from charging any additional fees outside of the normal regulatory processing fees associated with a building permit.

An affordability covenant cannot be required for existing second units. Any new standards adopted by the City cannot be applied retroactively to legally permitted structures or units. An affordability covenant may be applied to an existing second unit if an addition is proposed to the second unit.

Existing Multiple-Unit Properties on Single-Family Zoned Lots. There are approximately 21,000 single-family zoned properties in the City. Based on information obtained from the Los Angeles County Assessor's Office and a citywide land use inventory conducted by staff in 1990, approximately 1,048 single-family properties are currently developed with 2 or more units (5%), and approximately 373 of the 6,929 single-family lots that meet the 10,000 square foot minimum lot size are developed with 2 or more units (5%) (Attachment A). Many of these properties are currently legal non-conforming uses for one of the following reasons, a previous downzoning from a multi-family zoning designation, they are located in areas that were annexed and were likely developed with multiple units prior to incorporation into the City, or they were developed prior to the City's enactment of its current zoning regulations.

Conditional Use Permit on Lots Under a Certain Threshold. The City Council asked staff to research the possibility of requiring a Conditional Use Permit for second units on smaller lot

sizes in addition to allowing second units on single-family properties by right that meet a minimum lot size requirement. The only evidence of a similar requirement is in the City of San Rafael where second units are allowed up to a maximum size of 800 square feet, but a Use Permit is required for second units between 800 square feet and 1,000 square feet. Staff contacted the Department of Housing and Community Development (HCD) regarding this standard and did not receive a definitive response as to whether this approach is consistent with the intent of Assembly Bill 1866. The HCD did say that a "two-tier" process could be implemented as long as it does not involve a discretionary review with a public hearing and if objective criteria are established in the administrative review of the proposal.

Assembly Bill 1866 is clear in that second units shall be approved ministerially and without any public hearing. As such, a Conditional Use Permit for second units on smaller lots does not appear to be consistent with the purpose of the State legislation. A secondary option would be to establish a second set of standards for smaller lots. Establishing this "two-tier" process is a way to further regulate second units on smaller lots, but will not accomplish the same goal as a Conditional Use Permit would. The main objectives of requiring a Conditional Use Permit are to notify the surrounding property owners and to have the ability to tailor conditions that are specific to a project. If an administrative approval process is adopted, no conditions could be imposed, no notification would occur, and staff would be reviewing the proposal against an approved set of development standards (lot coverage, floor area, height, setbacks, etc.).

Distance Requirement Between Second Units/Limit Number of Second Units Per Block. A block limit or distance requirement may be imposed on newly constructed second units. The City would incur additional costs due to the staff time needed to research each proposal in relation to existing second units. If the City Council considers this option, staff recommends the use of a distance requirement as the blocks in the City vary in their dimension.

Relationship Between Second Unit Ordinance and the General Plan. Further clarification was requested relating to the proposed Second Unit Ordinance and consistency with the City's General Plan. The Land Use Element of the General Plan states, "Support retention of existing units in specified zoning districts by allowing development of a single additional unit on a lot." Currently, second units are allowed in the RM-12 Multi-Family (Two Units per Lot) Residential Districts, which maintain a character very similar to RS (Single-Family) districts with standards that allow two units. Permitting second units in single-family residential districts is consistent with both the purpose, that is, to support retention of existing units, and also with the direction of the policy, to allow development of a single additional unit on a lot. The *2000-2005 Housing Element*, however, does not include a policy concerning second units in single-family districts. This is because in 1999 the City Council directed staff to amend the city's *Housing Element*, as well as the *Land Use Element*, to "remove or modify the language of any policy, objective, program, or statement referencing the encouragement or plan for developing or establishing second units in areas zoned for single-family."

Assembly Bill 1866 states that inconsistency with the General Plan cannot be used as a reason for a City to prohibit second units. The law also says that a second unit allowed as part of a second unit ordinance shall not be viewed as exceeding the allowable density for a single-family lot, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the single-family lot.

Respectfully Submitted,

CYNTHIA J. KURTZ, CITY MANAGER

Prepared by:

ARIEL SOCARRAS
ASSOCIATE PLANNER

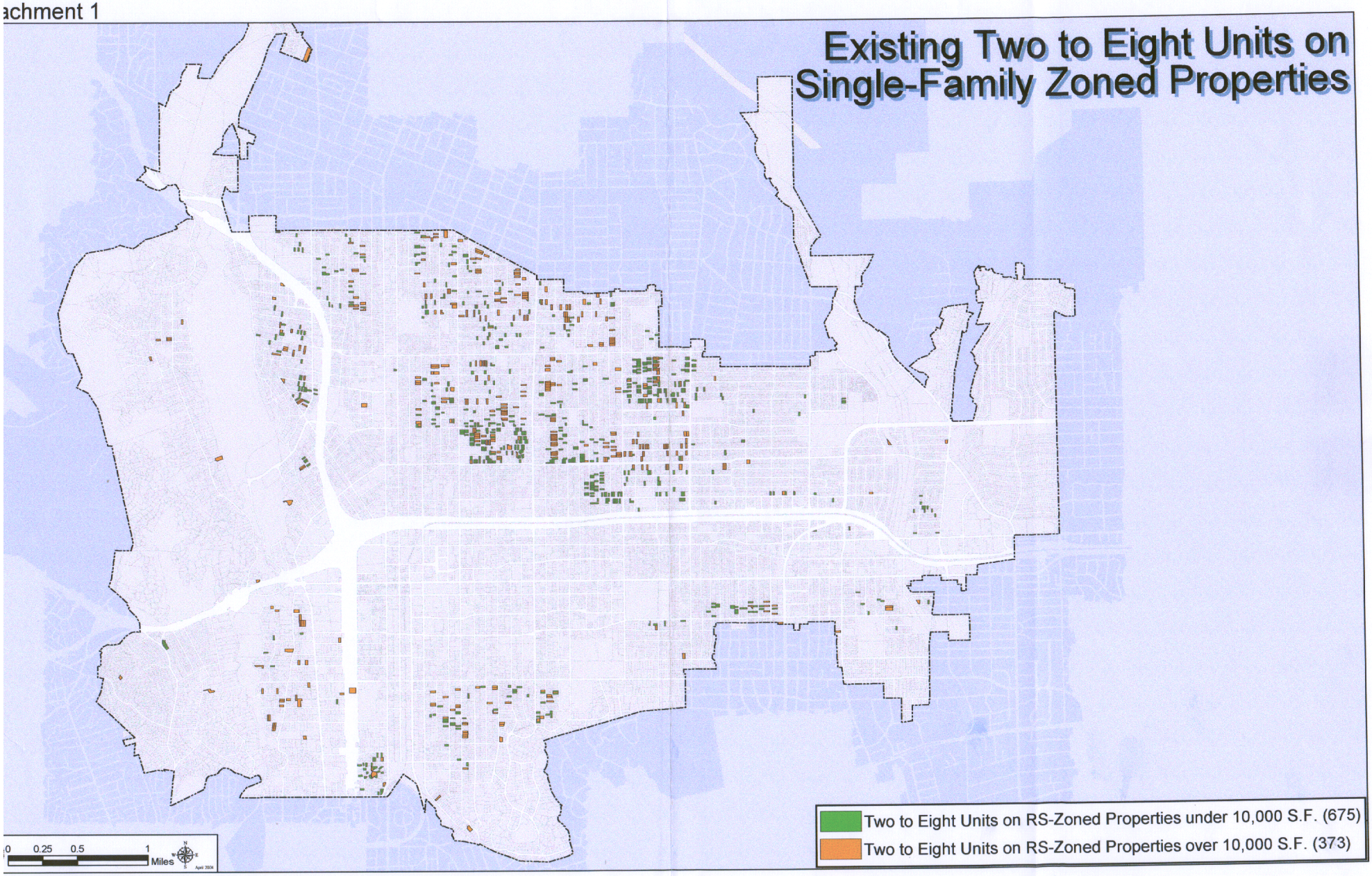
Approved by:

RICHARD J. BRUCKNER
DIRECTOR PLANNING AND
DEVELOPMENT

MICHELLE B. BAGNERIS
CITY ATTORNEY

Attachment 1 – Map of Single-Family Properties With 2 or More Units
Attachment 2 – Transportation Advisory Commission Recommendation

achment 1


Existing Two to Eight Units on Single-Family Zoned Properties
Two to Eight Units on RS-Zoned Properties under 10,000 S.F. (675)
Two to Eight Units on RS-Zoned Properties over 10,000 S.F. (373)
0 0.25 0.5 1
Miles

MEMORANDUM - CITY OF PASADENA
DEPARTMENT OF TRANSPORTATION

April 19, 2004

TO: Mayor Bill Bogaard
Vice Mayor Sid Tyler
Members of the City Council
City Manager Cynthia Kurtz

FROM: Transportation Advisory Commission

RE: Proposed Second Unit Ordinance

On April 15, 2004, the Transportation Advisory Commission (TAC) reviewed the proposed amendment to Title 17 (Zoning Code) of the Pasadena Municipal Code to allow for second units in single-family residential zoning districts. Following public comment and discussion, TAC unanimously approved the following resolution:

"TAC believes very strongly that the ordinance as written is seriously flawed and must be amended. As written, the ordinance gives lie to our stated goal to protect and preserve our neighborhoods. The proposed second unit ordinance is inconsistent with the spirit of the 1994 General Plan because it would increase density and traffic in residential neighborhoods rather than concentrating new density downtown."

"The City did not consider traffic and parking impacts on our neighborhoods. Although new second units would create parking and traffic impacts in already congested R-1 zones, the staff report contains no analysis to measure these impacts. Nor have these potential impacts been studied as part of the upcoming draft environmental impact report for the General Plan update."

"For these reasons, the proposed second unit ordinance should not be adopted in its current form. To ensure consistency with our General Plan, minimize parking and traffic impacts, and maintain the aesthetic character of Pasadena's neighborhoods, the second unit proposal should be revised as follows:

- All parcels with second units should have a common, shared driveway.
- Second unit parking should be on-site, with no parking allowed on the street. Second units should comply with existing parking requirements.
- The minimum lot size should be increased from 10,000 square feet to 15,000 - 20,000 square feet, to be consistent with the current requirement that single-family residences have a minimum lot size of 7,500 square feet.

- Single-family residences should not be demolished to build second units.
- Second units should not be permitted in historic/landmark districts, or in hillside zones.
- The Planning and Development Director should not be given discretion to waive preservation standards with respect to relocated historic structures.
- Trailers or prefabricated housing should not be permitted.
- A dispersal requirement should be included in the ordinance to control the concentration of new second units.
- The City should limit the total number of second units that can be built in any given year, with a ten-year cap of 150.
- All setbacks (front, side and back) should conform to the Municipal Code.
- The size of new second units should be limited to 800 square feet.
- The City should consider requiring an affordability covenant for new second units.
- City staff should conduct an inventory of existing second units in Pasadena.
- City staff should conduct an analysis to determine how many new trips would be generated by full build-out of second units."

Please feel free to contact Chair Richard Quirk if you have any questions regarding TAC's resolution. Thank you for giving us the opportunity to serve the City of Pasadena as citizen commissioners.

Very truly yours,

Richard Quirk, Chair | Michael Brady | Alan Clelland

Vince Farhat | Carolyn Naber | Juan Carlos Velasquez

cc: TAC and Planning Commissioners

Agenda Report

TO: CITY COUNCIL **DATE:** MARCH 1, 2004

FROM: CITY MANAGER

SUBJECT: PROPOSED AMENDMENT TO TITLE 17 (ZONING CODE) OF THE PASADENA MUNICIPAL CODE TO ALLOW FOR SECOND UNITS IN SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS

CITY MANAGER'S RECOMMENDATION:

It is recommended that the City Council, following a public hearing:

1. Acknowledge that this amendment to Title 17 (Zoning Code) of the Pasadena Municipal Code is exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (CEQA), Public Resources Code §21080.17. CEQA is not applicable to local ordinances regulating construction of second units;

2. Approve a proposed amendment to the Zoning Code that would allow for the development of second units in single-family residential zoning districts subject to the specific development standards outlined in this report (Attachment A).

3. Direct the City Attorney to prepare an ordinance amending Title 17 (Zoning Code) of the Pasadena Municipal Code to allow second units in single-family districts subject to the specific development standards outlined in this report; and

4. Direct the City Clerk to file a Notice of Exemption with the Los Angeles County Recorder.

PLANNING COMMISSION'S RECOMMENDATION:

The Planning Commission reviewed this proposal on January 14, 2004. Issues raised and discussed by the Commission include minimum lot size, second unit size, parking standards, affordability, prohibition, General Plan consistency, and increased availability of housing for the youth, elderly, and lower income brackets. The Commission recommended approval of staff's recommendation by a vote of 5-4, with the most contentious issue being what minimum lot size is the most appropriate. The Commission also recommended that second units in Landmark

Districts be subject to the same standards that currently exist for additions to single-family homes in these districts. Staff incorporated this standard into its recommended development standards as reflected in this report. In addition to supporting staff's recommendation, the Commissioners felt that their individual concerns with the ordinance should also be forwarded to the City Council (Attachment B).

NORTHWEST COMMISSION:

On November 11, 2003 staff presented the proposed second unit ordinance to the Northwest Commission. Concerns were raised on the potential of allowing increased density in the Northwest as a result of the ordinance. In addition, there was discussion regarding reducing the recommended maximum size of second units. The Northwest Commission passed a recommendation to the Planning Commission and City Council to approve the proposed ordinance as recommended by staff.

COMMUNITY DEVELOPMENT COMMITTEE:

The proposed Code amendment was presented to the Community Development Commission (CDC) as an information item on January 22, 2004. The key points of concern discussed by the CDC were reducing the recommended minimum lot size, increasing the recommended maximum second unit size, allowing detached second units to be two stories, and to not prohibit the issuance of an Overnight Parking Permit. The intent of these suggestions was to provide more flexibility in the development standards to promote in increased housing in the City.

HOUSING AFFORDABILITY TASK FORCE

As part of its Final Report to the City Council in 2003, the Task Force recommended the creation of a second unit ordinance as a way to increase the housing stock in Pasadena. The Task Force determined that second units would increase density and the availability of housing while maintaining the character of single-family neighborhoods. The development standards recommended by the Task Force for second units are not consistent with staff's recommended development standards. The two sets of recommended development standards are provided alongside one another in Attachment A of this report.

EXECUTIVE SUMMARY:

The proposed amendment to the Zoning Code is to allow second units in single-family districts citywide subject to compliance with specific development standards. This is in response to recent State legislation, AB1866 (Attachment E), and a recommendation from the City's Housing Affordability Task Force (Task Force). One of the Task Force's final recommendations to the City Council was to allow for the creation of second units in single-family residential districts throughout the City. AB 1866 became effective on July 1, 2003, tightening restrictions on how local agencies regulate second units. The law states that no local agency shall preclude second units within single-family districts unless specific findings of adverse impacts are made. Additionally, the Bill changes the way local jurisdictions may process applications for second units, in that it requires that applications for second units be considered as a plan check and no

conditional use permit can be required. Staff researched other cities' response to the new legislation and their respective standards (Attachment C) upon formulating the recommended development standards included in this report.

BACKGROUND:

While further limiting the authority a city has to restrict second units, AB 1866 does continue to allow cities to develop their own development standards to apply to second units. However, if a city does not adopt their own development standards, the standards set forth by the State are applied. Some of the State imposed standards include a maximum unit size of up to 1,200 square feet for a detached unit (30% of living area for attached unit), no minimum lot size, and that all requirements related to height, setback, lot coverage, and floor area are met.

Staff researched other cities with second unit ordinances and established the set of development standards included in this report to tailor the standards towards the needs of the residents and neighborhoods of Pasadena rather than relying on the standards developed by the State.

A complete list of recommended development standards from the Task Force and staff is included as Attachment A to this report. The key development standards recommended by staff are:

- **Minimum lot size of 10,000 square feet in any RS zoning district.** Under State law, a local agency can regulate the zoning districts where second units are permitted and the respective lot size. Staff's recommendation is to allow second units on properties of 10,000 square feet or more in all four single-family residential districts in the City (RS-1, RS-2, RS-4, and RS-6). This minimum lot size is consistent with the recommendation of the Task Force. The number of lots affected Citywide by this standard is 6,929, which makes up approximately 33% of all single-family zoned properties in the City (Attachment D).

- **Second units must meet all of the existing development standards applicable to the RS (Single-Family Residential) districts (e.g., Lot Coverage, Floor Area, Height, Setbacks etc.).** Staff is recommending that second units be treated similar to an addition to a single-family dwelling regardless of whether the second unit is detached or attached. All development standards of the zoning district (except for parking) shall be met (i.e. setback, height, gross floor area, coverage). Detached second units shall be limited to the height requirements of an accessory structure, which is one story and 17 feet. In respect to all other standards, a detached second unit will be subject to the same development standards as the primary structure.

- **Second units shall have a maximum unit size of 800 square feet.** A variety of different thresholds for maximum second unit sizes were considered. The State recommended standards sets a maximum second unit size of 1,200 square feet. Residents and Commissioners expressed opinions ranging from requiring a maximum unit size of 400 square feet to no maximum at all. Ultimately, staff went back to its previous recommendation in 1998 that allows a second unit up to 800 square feet. Staff considers this to be a size that is an appropriate maximum for a second unit.

- **Entries to second units may not be visible from the street.** Requiring that the entry to the second unit not be visible from the street will help preserve the street character of the single-family neighborhoods.

- **The property owner shall occupy one of the two units on site.** The intent of this requirement is to protect single-family areas by requiring home occupancy, retaining pride in ownership in single-family neighborhoods, and to ensure that a single-family neighborhood does not turn into an area with absentee landlords. Another benefit of requiring owner occupancy is that the owners are likely to be selective about the other person(s) living on their property.

- **The primary structure must comply with the two-covered parking space requirement to allow a second unit on the property.** State law states that parking requirements for second units shall not exceed one open parking space per unit or per bedroom. Staff is recommending that the second unit be required to provide one parking space, which may be uncovered, in tandem, and located on the driveway. Additionally, staff is recommending that a second unit shall not be permitted unless the primary structure complies with the minimum two covered parking spaces.

- **Properties with second units may not obtain an Overnight Parking Permit to allow overnight on-street parking.** Concerns were raised regarding the increased traffic and parking that would result from the introduction of second units into a single-family neighborhood. To mitigate this potential impact, staff is recommending a standard that does not allow an Overnight Parking Permit to be issued to a property that has a second unit that was approved under this ordinance.

- **Flexibility from the development standards for the relocation of a historic or significant home.** Staff is recommending flexibility from the development standards for second units for the moving of a historic or significant structure/single-family dwelling onto a property with an existing single-family residence. Flexibility could include using the existing house as the Second Unit even though it may exceed the maximum second unit size, or vise-versa for the relocated front unit. Such waivers from these standards to accommodate the relocation of a historic structure shall be subject to the review and approval of the Director of Planning and Development.

PROHIBITION OF SECOND UNITS

Some community members asked that no second units be allowed. To make the findings to prohibit second units in the City, potential impacts would need to be quantified and directly related to public health, safety and welfare. Some of the potential impacts that may support prohibition of such an ordinance would be related to the availability of water, and the impact on the public sewer and other related infrastructure, parking, traffic, crime, parks, and lack of open space. Due to the limited size of the proposed second units, and the fact that the proposed ordinance will not increase the maximum allowable building area on any individual parcel, that any impacts related to the development of a second unit would be minor and would not meet the

criteria needed to make the findings necessary to prohibit second units. Under the staff recommendation, the second units would have no greater impact than room additions currently allowed.

COMMUNITY ISSUES

Staff met with the community at four neighborhood meetings. Staff presented draft recommendations and received comments and input from the public regarding the development standards to apply to second units. The primary concerns regarding second units were additional traffic, increased density, massing of development, and the potential loss of neighborhood character. The community was concerned that the addition of second units would eliminate single-family districts throughout the city. The issues and suggested modifications to the development standards discussed with the public include:

- The minimum Lot Size Threshold – Residents suggested that a number of different minimum lot sizes should be considered. Second unit advocates promoted a reduced minimum lot size. Opponents, suggested a higher minimum lot size.
- Maximum square footage of Second Unit – Some residents expressed that the maximum second unit size should be reduced to 400 square feet or to a percentage of the existing house as a method of ensuring the second unit's affordability. Other residents felt that the recommended maximum second unit size of 800 square feet was not large enough.
- Detached units – It was suggested that only new detached second units be allowed as an attempt to minimize the number of second units built and to preserve the character and integrity of existing homes in single-family neighborhoods.

ENVIRONMENTAL DETERMINATION:

The Environmental Administrator has determined that the proposed amendment regarding second units in single-family residential districts is exempt from the California Environmental Quality Act (CEQA) pursuant to the guidelines of the California Environmental Quality Act (CEQA), Public Resources Code §21080.17. CEQA is not applicable to local ordinances regulating construction of second units.

FISCAL IMPACT:

There will be no fiscal impacts associated with the proposed code amendments since the amendment will be reviewed as part of the plan check process. Fees are collected to cover the costs associated with plan check process.

Respectfully Submitted,

CYNTHIA J. KURTZ, CITY MANAGER

Prepared by:

ARIEL SOCARRAS
ASSOCIATE PLANNER

Approved by:

JRP

RICHARD J. BRUCKNER
DIRECTOR PLANNING AND DEVELOPMENT

Attachment A – Proposed Development Standards
Attachment B – Planning Commission Concerns
Attachment C – Assembly Bill 1866
Attachment D – Map of Single-Family Properties 10,000 square feet and larger

ATTACHMENT A
PROPOSED DEVELOPMENT STANDARDS FOR
SECOND UNITS IN SINGLE-FAMILY RESIDENTIAL DISTRICTS

HOUSING TASKFORCE RECOMMENDATIONS 2003	STAFF'S RECOMMENDED DEVELOPMENT STANDARDS 2004
Changes in State law prohibit the City from requiring a Conditional Use Permit.	Changes in State law prohibit the City from requiring a Conditional Use Permit.
Minimum lot size of 10,000 square feet in any zoning district.	Minimum lot size of 10,000 sq. ft. in any zoning district.
There shall be no limit to the size of the second unit as long as it meets development standards/zoning requirement (lot coverage, etc).	Require that second units meet the existing development standards for additions to single-family residences (except the parking standards).
No recommendation	Require that second units in Landmark Districts meet the existing development standards for additions to single-family residences in Landmark Districts (except the parking standards).
No recommendation	Require that all entries (i.e. door) to the second unit not be visible from the street.
There shall be no limit to the size of the second unit as long as it meets development standards/zoning requirement (lot coverage, etc).	Limit the size of a second unit to 800 square feet.
No recommendation.	Require that the property owner occupy one of the two units on the site.
No recommendation.	Allow a second unit only when there is an existing single-family unit on the site or if a vacant lot, allow second unit to be constructed at the same time as the principal unit. The second unit shall be located behind the primary structure.
There shall be no maximum number of residents in the second unit dictated by the City.	Allow the limit on the number of persons to be determined by the Housing Code as it is for all housing.

HOUSING TASKFORCE RECOMMENDATIONS 2003	STAFF'S RECOMMENDED DEVELOPMENT STANDARDS 2004
No recommendation.	Require that the second unit share the driveway with the existing single-family unit but allow a second driveway off an alley if there is an alley.
Units may be multiple stories, which would include units built over garages, provided the existing structure has multiple stories.	Limit detached second units to one-story, allow them to be two-story if attached to the principal dwelling; Can be located above an attached garage only if the garage is meeting the setback and height limits. An attached 2nd unit must be attached to the primary unit by a common wall, floor, or ceiling and not simply by a breezeway or porch.
No recommendation.	Require that there be a distance of six feet (eave to eave) between the single-family unit and a detached second unit. A minimum distance of ten feet shall be required from the entrance of the second unit when it faces the wall of another structure on the property.
No recommendation.	Require one parking space which may be uncovered, and be a tandem space located on a driveway; if covered parking is constructed, then it must meet all requirements and cannot be tandem; such covered parking shall not be included in the FAR calculation as an incentive. In hillside overlay, the required guest parking can count as the parking for the second unit. No Overnight Parking Permits shall be issued for a property with a second unit allowed under this ordinance.
No Recommendation.	Require that the two-covered parking spaces be provided for the principal structure before a second unit can be built.
No recommendation	Require that a second unit is permitted only if the lot is connected to a sewer system.
No recommendation.	Require that if the lot is a flag lot in a hillside area that the lot have at least 20 feet of paved access.

HOUSING TASKFORCE RECOMMENDATIONS 2003	STAFF'S RECOMMENDED DEVELOPMENT STANDARDS 2004
No recommendation.	Flexibility shall be provided for the moving of a historic or significant structure/single-family dwelling onto a property. Flexibility could include using the rear house as the second unit even though it may exceed the maximum second unit size, or vise-versa for the relocated front unit. Such waivers from these standards to accommodate the relocation of a historic structure shall be subject to the review and approval of the Director of Planning and Development.

ATTACHMENT B
PLANNING COMMISSION CONCERNS

While formulating a motion in favor of staff's recommendation with the added language discussed in the staff report, the Planning Commission felt that there were enough additional concerns from individual Commissioners that warranted sending an addendum to the City Council. These are items where a majority of support was not expected at the time of the motion, but were considered significant enough by the Commission to send as items that the City Council should take into account when considering adopting this second unit ordinance. The following is a breakdown of the items voiced:

Commissioner Leon
-Affordability covenant should be considered.

Commissioner Crowfoot
-The City Council should consider a "sliding scale" to allow smaller second units on single-family properties between 9,000 square feet and 10,000.

Commissioner McDonald
-Data should be gathered to figure out how this works in our city to protect historical districts, protect hillside districts, fire protection areas.
-Second units should be dispersed throughout the City by requiring a distance requirement between second units.
-Affordability covenant should be required.

Commissioner Janisch
-Additional data should be gathered to make the consistency findings with the General Plan and its principles in light of the State statute.
-The practical enforceability of an affordability covenant should be considered.
-Minimum lot size should be 12,000-15,000 square feet.

Commissioner Peterson-More
-Affordability covenant should be required.
-Detached second units should be allowed to be two stories if it is consistent with the neighborhood and the unit is not looking into someone else's property.

Chair Siegel
-Affordability covenant should be required.
-A dispersal requirement should be considered to control the concentration of second units.
-Minimum lot size should be 12,000-15,000 square feet.

Commissioner Flores
-Affordability covenant should be required.

Commissioner Johnston
-Affordability covenant should be required.

ATTACHMENT C

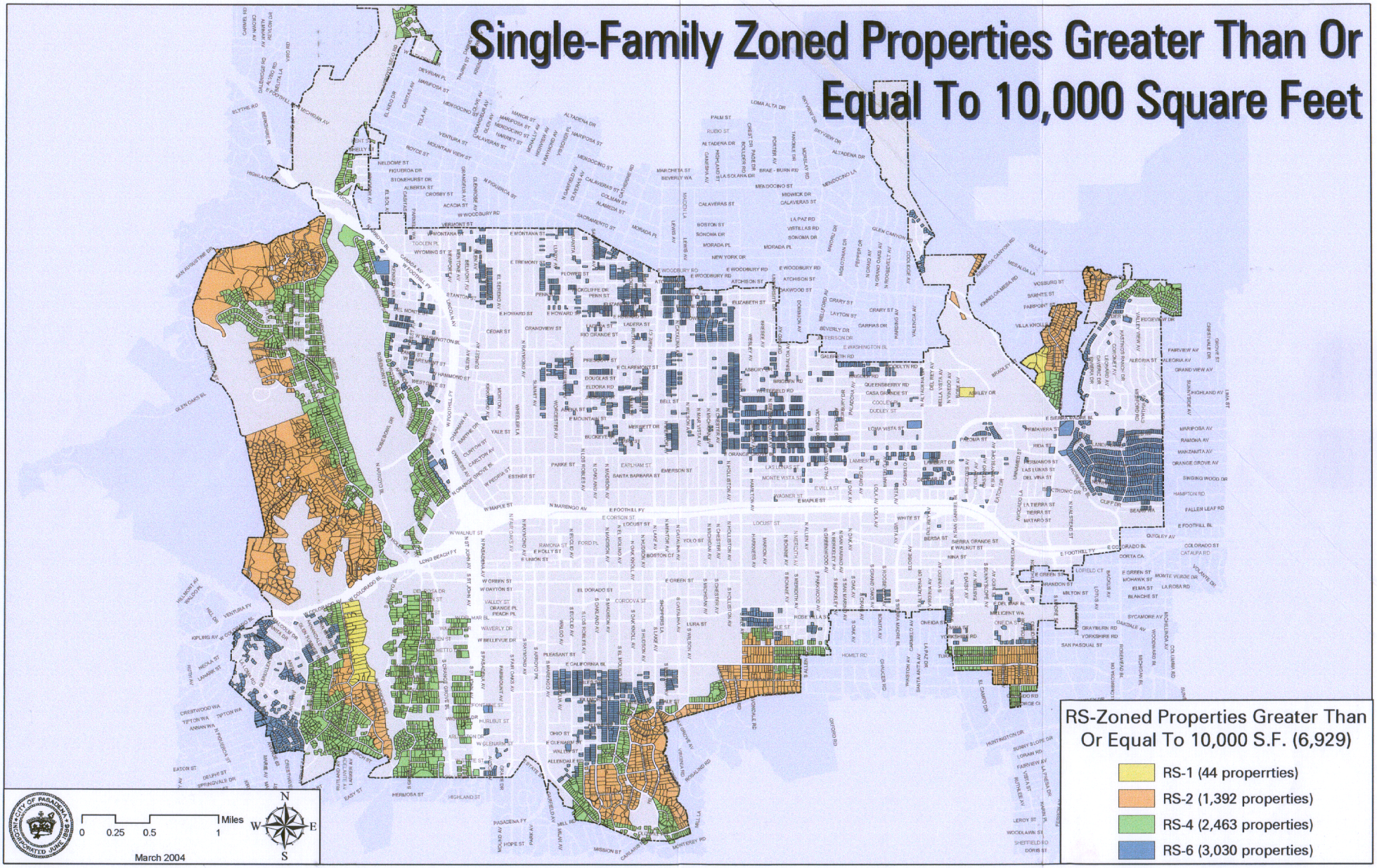
Other Agencies' Second Unit Standards

CITY	MIN. LOT SIZE	UNIT SIZE
* State of California	None	1,200 s.f.
Burbank	6,000 s.f.	500 s.f.
La Cañada Flintridge	10,000 s.f.	640 s.f. for lots 10,000 s.f. – 14,999 s.f 700 s.f. for lots 15,000 s.f. – 19,999 s.f. 775 s.f. for lots 20,000 s.f. – 29,999 s.f. 900 s.f. for lots 30,000 s.f. – 39,999 s.f. 1,000 s.f. for lots 40,000 s.f. or greater
South Pasadena	12,500 s.f.	Min. 600 s.f.; Max. 850 s.f. or 30% of the floor area of primary dwelling, whichever is less.
San Marino	15,000 s.f.	Min. 600 s.f.; Max. 1,000 s.f.
Whittier	None	400 s.f. plus 1 s.f. for every 20 s.f. of property exceeding the minimum lot size for the zone, but not greater than 60% of the floor area of main structure.
Santa Monica	5,000 s.f.	Min. 220 s.f.; Max. 650 s.f.
Orange	None	Min. 450 s.f; Max. 640 s.f.
LA County	5,000 s.f.	600 s.f. for 5000 s.f. lot 800 s.f. for 6,000 s.f. lot 1,000 s.f. for 7,500 s.f. lot 1,200 s.f. for 10,000 s.f. lot or greater

*State of California standards would apply if the City fails to adopt an ordinance regulating 2nd units

ATTACHMENT D

Single-Family Zoned Properties Greater Than Or Equal To 10,000 Square Feet



ATTACHMENT E
ASSEMBLY BILL 1866

BILL NUMBER: AB 1866 CHAPTERED
BILL TEXT

CHAPTER 1062
FILED WITH SECRETARY OF STATE SEPTEMBER 29, 2002
APPROVED BY GOVERNOR SEPTEMBER 29, 2002
PASSED THE ASSEMBLY AUGUST 29, 2002
PASSED THE SENATE AUGUST 27, 2002
AMENDED IN SENATE AUGUST 22, 2002
AMENDED IN SENATE AUGUST 5, 2002
AMENDED IN SENATE JUNE 19, 2002
AMENDED IN ASSEMBLY MAY 23, 2002
AMENDED IN ASSEMBLY MAY 14, 2002
AMENDED IN ASSEMBLY APRIL 22, 2002
AMENDED IN ASSEMBLY APRIL 1, 2002

INTRODUCED BY Assembly Member Wright

JANUARY 31, 2002

An act to amend Sections 65583.1, 65852.2, and 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1866, Wright. Housing: density bonuses.

(1) The Planning and Zoning Law requires the housing element of the general plan of a city or county, among other things, to identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and to make adequate provision for the existing and projected needs of all economic segments of the community. That law permits the Department of Housing and Community Development to allow a city or county to identify adequate sites by a variety of methods.

This bill would authorize the department to also allow a city or county to identify sites for 2nd units based upon relevant factors, including the number of 2nd units developed in the prior housing element planning period.

(2) The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of 2nd units on parcels zoned for a primary single-family and multifamily residence, as prescribed.

This bill would require, when a local agency receives its first application on or after July 1, 2003, that the application shall be considered ministerially without discretionary review or hearing, notwithstanding other laws that regulate the issuance of variances or special use permits.

The bill would authorize a local agency to charge a fee to reimburse the agency for costs it incurs as a result of these provisions.

(3) The Planning and Zoning Law also requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with incentives or concessions for the production of lower income housing units within the development if the developer meets specified requirements. Existing law requires the local government to establish procedures for carrying out these provisions.

This bill would revise those provisions to refer to an applicant who proposes a housing development and would recast them to, among other things, revise criteria for making written findings that a concession or incentive is not required, add criteria for continued affordability of housing in a condominium project, authorize an applicant to request a meeting on its proposal for a specific density bonus, incentive, or concession or for the waiver or reduction of development standards, and exempt developments meeting certain affordability criteria from specified laws. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

The bill would also authorize an applicant to initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession in violation of these provisions, and would require the court to award the plaintiff reasonable attorney's fees and costs of suit. It would authorize a local agency to charge a fee to reimburse it for costs that it incurs as a result of these provisions.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65583.1 of the Government Code is amended to read:

65583.1. (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for compliance with state law, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The department may also allow a city or county to identify sites for second units based on the number of second units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and

Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.

Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 if the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of paragraph (2).

(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:

(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been cited and found by the local code enforcement agency or a court to be unfit for human habitation and vacated or subject to being vacated because of the existence for not less than 120 days of four of the

conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation, except that if the period is less than 20 years, only one unit shall be credited as an identified adequate site for every three units rehabilitated pursuant to this section, and no credit shall be allowed for a unit required to remain affordable for less than 10 years.

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located in a multifamily rental housing complex of 16 or more units, are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at a cost affordable to low- or very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The acquisition price is not greater than 120 percent of the median price for housing units in the city or county.

(vi) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 30 years.

(C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by persons of the same or lower income group as the current occupants for a period of at least 40 years.

(ii) The unit is multifamily rental housing that receives governmental assistance under any of the following state and federal programs: Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 17151(d)(3) and (5)); Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1); Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q); for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s); under Section 515 of the Housing Act of 1949, as

amended (42 U.S.C. Sec. 1485); and any new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f); any state and local multifamily revenue bond programs; local redevelopment programs; the federal Community Development Block Grant Program; and other local housing assistance programs or units that were used to qualify for a density bonus pursuant to Section 65916.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any such housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, "committed assistance" means that the city or county enters into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. "Committed assistance" does not include tenant-based rental assistance.

(5) For purposes of this subdivision, "net increase" includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) On July 1 of the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision.

If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

SEC. 2. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance may do any of the following:

(A) Designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(B) Impose standards on second units that include, but are not limited to, parking, height, setback, lot coverage, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(C) Provide that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of second units. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of second units.

(b) (1) When a local agency which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially

without discretionary review pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use permit for the creation of a second unit if the second unit complies with all of the following:

(A) The unit is not intended for sale and may be rented.

(B) The lot is zoned for single-family or multifamily use.

(C) The lot contains an existing single-family dwelling.

(D) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(E) The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area.

(F) The total area of floorspace for a detached second unit shall not exceed 1,200 square feet.

(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(H) Local building code requirements which apply to detached dwellings, as appropriate.

(I) Approval by the local health officer where a private sewage disposal system is being used, if required.

(2) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(3) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(4) No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second units if these provisions are consistent with the limitations of this subdivision.

(5) A second unit which conforms to the requirements of this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) No local agency shall adopt an ordinance which totally precludes second units within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting the ordinance.

(d) A local agency may establish minimum and maximum unit size

requirements for both attached and detached second units. No minimum or maximum size for a second unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings which does not permit at least an efficiency unit to be constructed in compliance with local development standards.

(e) Parking requirements for second units shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the use of the second unit and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(f) Fees charged for the construction of second units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

(h) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area," means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Second unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.

SEC. 3. Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant proposes a housing development within the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units as prescribed in this chapter. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be

implemented.

(b) A city, county, or city and county shall either grant a density bonus and at least one of the concessions or incentives identified in subdivision (j), or provide other incentives or concessions of equivalent financial value based upon the land cost per dwelling unit, when the applicant for the housing development agrees or proposes to construct at least any one of the following:

(1) Twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code.

(4) Twenty percent of the total dwelling units in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

The city, county, or city and county shall grant the additional concession or incentive required by this subdivision unless the city, county, or city and county makes a written finding, based upon substantial evidence, that the additional concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of the moderate-income units that are directly related to the receipt of the density bonus for 10 years if the housing is in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code.

(d) An applicant may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(1) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have

an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), "density bonus" means a density increase of at least 25 percent, unless a lesser percentage is elected by the applicant,

over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units which is equal to 10, 20, or 50 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, in which at least 20 percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a "density bonus" of at least 10 percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units which is equal to 20 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes either (1) a project to substantially rehabilitate and convert an existing commercial building to residential use, or (2) the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(i) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(j) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code,

including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(k) If an applicant agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, city and county, or county may, at its discretion, grant more than one density bonus.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(m) A local agency may charge a fee to reimburse it for costs it incurs as a result of amendments to this section enacted during the 2001-02 Regular Session of the Legislature.

(n) For purposes of this section, the following definitions shall apply:

(1) "Development standard" means any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.