



## DEPARTMENT OF CITY PLANNING RECOMMENDATION REPORT

### City Planning Commission

**Date:** May 12, 2016  
**Time:** 8:30 a.m.  
**Place:** Board of Public Works, Rm 350  
City Hall, 200 N. Spring St.,  
Los Angeles, CA 90012

**Case No.:** CPC-2016-1245-CA  
**CEQA No.:** N/A  
**Location:** Citywide  
**Council No.:** 16-0348  
**Council District:** All

**PROPOSED PROJECT:** An ordinance to repeal subsections 12.24 W.43 and 12.24 W.44 of Chapter 1 of the Los Angeles Municipal Code (LAMC) for the purpose of complying with state law AB 1866 on Second Dwelling Units and grandfathering Second Dwelling Units permitted since June 23, 2003.

**RECOMMENDED ACTIONS:**

1. **Approve** the proposed ordinance (Exhibit A) and recommend its adoption by City Council;
2. **Adopt** the staff report as its report on the subject;
3. **Adopt** the attached Findings;
4. **Approve and recommend** that the City Council, based on the whole of the record, determine that the proposed ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code 21080.17 and CEQA Guidelines sections 15061(b)(3) and 15303.

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## PROJECT ANALYSIS

### Project Summary

“Second dwelling units” (SDUs) is the term used by the City to describe a second dwelling unit located on the same property as another dwelling unit. It can be attached to the main dwelling unit or built separately but must always have at least two rooms and include a kitchen. The State of California uses the term “second units”, while others prefer calling them “granny flats,” or “accessory dwelling units” (ADUs).

On February 25, 2016, the Los Angeles Superior Court invalidated the City’s policy regarding SDUs. The Court’s Order (1) leaves the City with existing second dwelling unit ordinances that do not comply with state law; (2) casts uncertainty over the legality of SDUs already constructed; and (3) casts uncertainty for property owners, who applied for, or received building permits, from proceeding with, or completing, SDU projects currently in the planning process or under construction. The City estimates that hundreds of second dwelling unit projects, either currently under construction or in plan check, are affected by the ruling.

The proposed ordinance would repeal the City’s second unit ordinances, Los Angeles Municipal Code (LAMC) §§12.24 W.43 and W.44. With this action, the City will revert to the SDU state law (Government Code Section 65852.2) and the City’s current policy intent with respect to SDUs, as described in the Housing Element. The ordinance would also “grandfather” the SDU projects that have been permitted since 2003, by declaring them to be to be legal non-conforming uses if the permit otherwise complies with all state and local laws.

### Background

#### **Intent of State Second Unit Law**

California’s second-unit law (GCS 65852.2) was enacted in 1982 and has been amended four times. The aim of state law has been to encourage the creation of second-units while maintaining local control and flexibility.

SDUs have been identified by the State as providing an important housing option to both potential renters and homeowners. They typically cost less than other types of housing, provide convenient housing for family members, help ease a severe rental housing deficit, maximize limited land resources and existing infrastructure and assist low and moderate-income homeowners with supplemental income.

The intent of the law is stated as follows:

It is the intent of the Legislature that any second-unit ordinances adopted by local agencies have the effect of providing for the creation of second units and that provisions in these ordinances relating to matters including unit size, parking, fees and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units in zones in which they are authorized by local ordinance.” (Gov. Code §65852.150)

#### **The City’s Existing SDU Zoning Provisions**

The City’s existing SDU zoning provisions, LAMC §§ 12.24 W.43 and W.44, create discretionary Conditional Use Permit processes for standard sized lots (W.43) and for larger lots (W.44), each requiring approval by the Zoning Administrator. In addition to the standard CUP findings (e.g., project compatibility with surrounding neighborhood), the ordinances also include several

development standards. For example, second units on standard sized lots are, among other limitations, limited to A, RA, RE, RS, R1, RMP, and RW1 zones, 640 square feet, and lots with a minimum size of 7,500 square feet.

### **AB 1866 and Government Code §65852.2**

A significant change occurred in 2002 with the State's passage of AB 1866 that amended Government Code §65852.2. Government Code §65852.2(a)(3) mandates that SDU applications be considered ministerially without discretionary review or a hearing thereby precluding conditional use, variance or other discretionary review.<sup>1</sup>

State law also provides for local governments to write their own ordinance to regulate SDUs provided it meets the requirements and intent of state law.<sup>2</sup> For example, Government Code §65852.2(c) prevents cities from precluding second units within single-family or multifamily zoned areas unless the ordinance contains specified findings.<sup>3</sup>

The State Department of Housing and Community Development, in a memorandum to local planning departments, said the law "requires localities to consider applications for the development of second-units ministerially with the intent to create second-units and not constrain their development." If localities do not have a SDU ordinance, or their law is not in accordance with state law, AB 1866 introduced a series of development standards (65852.2.(b)) that would then apply. The State's second-unit law also contains provisions that apply in the absence of a local ordinance.

### **The City's Existing Second Dwelling Unit Regulations Do Not Comply with AB1866**

The City's existing second dwelling unit regulations include discretionary standards as part of the Conditional Use Permit and further effectively limit SDUs to single family zones without the required findings under state law, both which do not comply with state law.<sup>4</sup>

Recognizing that a discretionary process is no longer permitted, the Department of City Planning and the Department of Building and Safety jointly issued an Interdepartmental Correspondence concerning AB 1866's impact on the City's SDU law (2003 Interdepartmental Correspondence - *Exhibit C*). The correspondence stated that, pursuant to state law, the City's second unit ordinance "will no longer be applicable," but that the objective development standards contained in the law "will now be used to determine if a second dwelling can be permitted by right in a single family zone."

### **The 2009 Action Update; 2010 ZA Memorandum 120; and 2013 Housing Element**

In December 2009, the Director of Planning, in consultation with the Office of the City Attorney, issued an Action Update on Accessory Dwelling Units addressed to Neighborhood Councils,

<sup>1</sup> Gov. Code §65852.2(a)(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".)

<sup>2</sup> California Department of Housing and Community Development. August 6, 2003. Memorandum titled *Second-Unit Legislation Effective January 1, 2003 and July 1, 2003*.

<sup>3</sup> Gov. Code §65852.2(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.")

<sup>4</sup> Of the areas specified in LAMC 12.24W43 for second dwelling units, only RMP, mobile home park, is a listed in the zoning code as a multi-family zone. While RMP is technically in the multi-family zone, it comprises a minuscule portion of the lots zoned multi-family and does not appear to comply with the mandate of Government Code Section §65852.150 that prohibits second unit ordinances that "unreasonably restrict the ability of homeowners to create second units"; or mandate of Government Code Section 65852.2(c), that prohibits second units ordinances that "totally preclude" second units within multi-family use zones.

City Council members, and Interested Parties stating, among other matters: “It is crucial that Neighborhood Councils understand that without a City ordinance, the permissive state standards will continue to apply.”<sup>5</sup>

In 2010, the Chief Zoning Administrator (ZA) of the Department of City Planning issued a memorandum (ZA Memorandum 120 - *Exhibit D*) superseding the 2003 Interdepartmental Correspondence and providing that a SDU would be permitted if it meets the state law standards, where they apply, in addition to regular city zoning standards.

The default state law standards are similar, though generally less detailed and more permissive, than the standards in the City’s second unit ordinance. For example, state law allows second units up to 1,200 square feet, requires no minimum lot size, and provides for SDUs in single-family and multi-family zones. The City’s standards limit SDUs to 640 square feet, lots that are 50% larger than the minimum lot size allowed for that zone (and may in no case be less than 7,500 square feet), and A, RA, RE, RS, R1, RMP, and RW1 zones. However, the City’s standards are more flexible and tailored in some ways, for example allowing for reduced ten-foot “passageway” requirements.

In 2013, the City Council adopted an update to the Housing Element of the City’s General Plan. The 2013-2021 Housing Element affirms that the City should follow, as a matter of policy, the state law standards for approving second units<sup>6</sup>. The Housing Element also calls for the DCP to “identify obstacles to enable second units on single family lots and propose ways to address the obstacles.” (Program 69 on pg. 6-47).

### **Litigation Background**

On September 23, 2014, the Department of Building and Safety, applying the 2010 Memorandum, issued a building permit for an 895-square-foot second unit located at 2716 S Krim Drive (also known as 2723 Anchor Avenue) in Cheviot Hills. After losing an appeal of the issuance of the building permit (DIR-2015-290-BSA-1A) a group led by a nearby property owner filed a lawsuit challenging the building permit and the City’s overall SDU policy.

On February 25, 2016, the Los Angeles Superior Court invalidated both the building permit and the City’s policy and practice of applying standards for second units under the 2010 Memorandum. The court ruled the 2010 Memorandum to be invalid because it did not analyze whether the standards of the City’s second unit ordinance could be severed from its discretionary components and applied ministerially. The court explained that AB 1866 required such a severance analysis and that “severance should occur wherever possible to preserve the validity of an impermissible statute.” The court held that the City could not disregard its second unit ordinance without a severance analysis or further legislative action<sup>7</sup>.

On April 4, 2016 the Court entered Judgment which: (1) directs issuance of a writ of mandate to command the City to immediately rescind the building permit issued to the SDU applicant at 2716 Krim Drive; (2) enjoins the City “from issuing any further building permits for second dwelling units under invalid ZA 120”; and (3) requires monthly reports on the status of the City’s actions regarding second dwelling units.

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<sup>5</sup> Government Code Section 65852.2(b)(4) states: “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.”

<sup>6</sup> City of Los Angeles General Plan, Housing Element; adopted December 3, 2013; pages 2-11 through 2-12.

<sup>7</sup> The plaintiff neighborhood group also challenged the City’s policy and practice of determining setbacks in certain hillside areas. The City successfully defended against that challenge, and the court upheld the City’s setback calculations in hillside areas

Enjoined by the Court from issuing any further building permits for second dwelling units under invalid ZA 120, and without an ordinance that complies with state law, the City is currently unable to issue building permits for SDUs.

## **Issues**

### **Status of Second Dwelling Units in Los Angeles**

Since the passage of AB 1866 in 2003, a total of 591 SDUs have been permitted in the City of Los Angeles, of which only 347 have been completed by receiving a Certificate of Occupancy<sup>8</sup>. This represents an extremely small amount of approvals, considering the size of Los Angeles and that approximately 100,000 units have been built in the City since that time. In comparison, Portland, Oregon (a much smaller city) has permitted about 600 SDUs in the last two years alone<sup>9</sup>. In 2015 a record number of SDUs was permitted in the City (88); however, this was still less than 5% of the total number of single-family homes built that year.

Since 2010, when the City issued Zoning Administrator Memo 120, the number of SDUs permitted by the City has increased, though it remains minimal. From an average of about 30 SDUs a year from 2003 to 2009, the figure has doubled to about 60 per year since 2011.

Approximately 58% of the SDUs that have been permitted in Los Angeles since 2003 are detached structures. The rest are (in order) a mix of garage conversions, other accessory structure conversions, attached new construction and conversions of existing single-family dwellings. Almost 90% of the SDUs that have been permitted are located in the San Fernando Valley, with a few in South LA, Hollywood and West LA.

### **City Policy on Second Dwelling Units**

Since the City Council adoption of the 2006-2014 Housing Element of the General Plan, the City has had a policy and program to alleviate barriers to increased construction of SDUs. The objective of the program (number 68 in the current 2014-2021 Housing Element) has been to “identify development standards and code requirements that pose compliance difficulties” and “adopt amendments to the Zoning Code to alleviate (those) challenges.” The Mayors *Sustainable City Plan* included a policy to “pilot new regulations governing second units and granny flats” as a way to build capacity for housing. In addition, several City Council motions supporting SDUs have been issued by Council members in recent years, including motions most recently by Councilmembers Cedillo (CF 14-0057-S1) and Price (CF 14-0057).

Like the State, the City’s primary goal in supporting the concept of SDUs is primarily related to housing availability and affordability. The City is currently in the midst of an unprecedented housing crisis, with vacancy rates for housing the lowest of any major city. SDUs are an affordable housing option that, up until December 2015, has only provided an additional 347 completed units since 2003. Many more SDUs (likely thousands) exist as non-permitted structures.

### **Policy Alternatives**

A policy alternative to the proposed repeal ordinance is making substantive changes to the City’s SDU regulatory framework by adopting a new SDU ordinance. While a comprehensive

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<sup>8</sup> Department of Building and Safety permit data from January 2003 through December 18, 2015, as analyzed by the Los Angeles Mayor’s Office Innovation Delivery Team. Because there is not currently a ‘second dwelling unit’ category in the city’s permit tracking system, this list was generated based on a keyword search that included the following terms: 1) ‘ZA 120’; 2) ‘AB 1866’; 3) ‘Secondary’; 4) ‘2nd’; 5) ‘Accessory’. From there, the list was reviewed to remove non-secondary units.

<sup>9</sup> <http://portlandtribune.com/pt/9-news/273749-146747-code-changes-could-boost-number-of-adus>

policy review is always welcome, undertaking it now, in lieu of the proposed ordinance, would have significant negative consequences for hundreds of Angelenos. Delay or inaction on this repeal ordinance would cast uncertainty over the validity of hundreds of building permits issued for SDUs already constructed, and prevent residents who applied for or received building permits from completing SDU projects currently in the planning process or under construction. Any new policy approach to make substantive changes to the City's SDU policy framework would require many months (likely more than a year) for additional public outreach, technical review of best practices, policy development, and debate by policymakers, leaving a very lengthy period of legal and practical uncertainty. In addition, if policy changes further restrict SDUs, the City runs the risk of running afoul of state law and its own General Plan. Acting on this repeal ordinance will not preclude a locally-tailored SDU policy from being developed in the City at a later date.

It does not appear feasible or advisable to leave the City's existing second dwelling unit ordinances, LAMC §§12.24W43 and 44 in place (by not repealing them). While the Court did not prohibit the City from attempting to perform a "severability analysis" of these sections, such an analysis would not leave the City with second dwelling unit standards that comply with state law or are consistent with the Housing Element. LAMC §§12.24W43 and 44 violate state law because they include discretionary standards as part of the Conditional Use Permit and further effectively limit SDUs to single family zones without the required findings under state law. Gov. Code §65852.2(a)(3) and (c). These sections are not consistent with the Housing Element which provides for application of the state standards as a matter of policy and calls for the removal of barriers. While a severance analysis might arguably be able to sever the discretionary portions of these ordinances, such an analysis could not provide for second dwelling units in multifamily zones, nor change the ministerial development standards to be consistent with the Housing Element. Such an analysis also would restrict, rather than expand opportunities for second dwelling units and be contrary to the City's stated practice since May 2010, as outlined in ZA Memorandum 120.

### **Conclusion**

The proposed ordinance will address the City's current situation by taking an action that will eliminate confusion and create a clear policy on SDUs moving forward. The ordinance would bring the City's regulations into compliance with state law and the Housing Element of the General Plan, allow the continued construction of, and processing of permit applications for, SDUs and eliminate confusion and potential litigation regarding second dwelling units that are already built, under construction, or in the permitting process phase. The ordinance would essentially align the City with the SDU policy that has been in effect, as stated in the 2010 ZA Memo. Acting on this repeal ordinance now will also not preclude a locally-tailored SDU policy from being developed in the City at a later date.

## FINDINGS

### General Plan/Charter Findings

#### **City Charter Section 556**

In accordance with Charter Section 556, the proposed ordinance is in substantial conformance with the purpose, intent and provisions of the General Plan in that it would further accomplish the following goals, objectives and policies of the General Plan outlined below.

#### General Plan Framework Element

The proposed ordinance will meet the intent and purposes of the General Plan Framework Element to encourage the creation of housing opportunities for households of all types and income levels, while at the same time preserving the existing residential neighborhood stability of single-family zoned neighborhoods and promoting livable neighborhoods. SDUs, as a housing typology, furthers those goals as they increase capacity and availability of housing without significantly changing neighborhood character. In particular, the ordinance would further the intent and purpose of the Framework Element of the following relevant Goals and Objectives:

#### *GOAL 3A - Preservation of the City's stable single-family residential neighborhoods.*

The proposed ordinance is in substantial conformance with the intent to preserve the City's stable single-family neighborhoods as it would result in relatively minor alterations to a very small number of single-family properties each year. As described above, permit data analyzed by the City shows that the number of SDUs being permitted under the state's standards vs. the city's standards does not represent a significant amount of additional activity in single-family neighborhoods (approximately 30 more a year). Therefore, historical evidence has shown that the proposed ordinance will not lead to an inordinate amount of SDUs in the City's single-family neighborhoods.

The state's standards, which would formally become effective upon the repeal of the ordinance, require that the lot contains an existing single-family dwelling. Therefore, in the vast majority of cases, these units would be either be built behind the main home, or attached to the rear of the existing home. Either way, the SDUs are unlikely to be significantly different in character from existing typical rear yard structures such as garages or carriage houses. They are also unlikely, in the vast majority of circumstances, to be significantly visible from the public way. In addition, the state's standards require that the increased floor area of an attached second unit not exceed 30 percent of the existing living area. This limitation is not included in the City's SDU ordinance. The 30 percent limitation helps differentiate an attached SDU from a traditional duplex, which is not permitted in single-family zones. The state's standards do allow for a 1,200 square foot detached structure to be built (versus 640 square feet under the City's standards). While this may result in larger SDUs than otherwise permitted, it is important to note that the state's standards require that City zoning requirements relating to height, setback, lot coverage, architectural review, and other applicable zoning requirements must be enforced. Therefore, a 1,200 square foot SDU can only be reasonably placed on a lot with enough empty space to accommodate a 15 foot rear yard setback, 5 foot side yard setbacks and a 10 foot separation between buildings. These standards offer significant protections against out of scale new development in single-family neighborhoods.

The State Legislature has determined it is appropriate to provide for second dwelling units within single-family and multifamily zoned areas absent specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas. Gov. Code §65852.2(c). The City's Housing Element also provides for

second units within single-family and multifamily zoned areas, as a matter of City-wide policy. The proposed ordinance will increase housing production and capacity in single family and multi-family neighborhoods on lots designed to accommodate more than one independent residence within the existing home or as a separate structure, as part of the City's overall goal to increase housing production and capacity in the City overall to accommodate the existing and expected increases in population.

*GOAL 4A - An equitable distribution of housing opportunities by type and cost accessible to all residents of the City*

The ordinance would also further a more equitable distribution of housing opportunities as it would permit a greater diversity of dwelling units in areas of the City that would otherwise receive little additional housing. This creates additional opportunities for homeowners to purchase and stay in their homes, as well as for renters to live in areas they might otherwise be excluded from. SDUs are usually smaller than the primary home on the property, which adds to the diversity of type and of housing in the City. The ordinance would facilitate the construction and preservation of a range of different housing types that address the particular needs of the city's households, including the elderly, disabled family members, in-home health care providers, young adults, etc. The proposed ordinance thereby expands rental and homeownership accessibility in single family and multi-family neighborhoods for all residents of the City.

*Objective 4.4 - Reduce regulatory and procedural barriers to increase housing production and capacity in appropriate locations.*

The ordinance would reduce the regulatory and procedural barriers to the operation and placement of second dwelling units by providing for implementation of the ministerial development standards in Government Code Section 65852.2(b)(1) in approving second dwelling units on a City wide basis as has been done since 2009. The ordinance allows the continued construction and processing of permit applications for SDUs for which permits have previously issued but which are not yet fully constructed, eliminates confusion over the legality of second dwelling units that are already built and eliminates potential litigations between neighbors and against the City regarding second dwelling units that are in the planning process, under construction, or already built. It would also expressly permit SDUs on multi-family lots and allow for a greater variety of SDUs to be built. The historical data shows that the production of SDUs increased significantly since 2010 when the City officially aligned its policy with the state standards (although still a relatively small total number).

#### Housing Element

The SDU housing typology is specifically called out by the Housing Element as a way to facilitate the provision of additional rental housing types and help make ownership more affordable. The Housing Element includes a specific Program (or implementation action) to alleviate barriers to increased construction of SDUs (Program 68 in the current 2014-2021 Housing Element). In addition, the proposed ordinance is in substantial conformance with the purpose, intent and provisions of the General Plan in that it would further accomplish the goals, objectives and policies of the Housing Element outlined below.

*Objective 1.4 Reduce regulatory and procedural barriers to the production and preservation of housing at all income levels and needs.*

*Policy 1.4.1 Streamline the land use entitlement, environmental review, and building permit processes, while maintaining incentives to create and preserve affordable housing.*

The proposed ordinance would streamline the land use entitlement, environmental review, and building permit processes for the operation and placement of second dwelling units as it allows: (1) the continued construction and processing of permit applications for SDUs for which permits have previously issued but which are not yet fully constructed; (2) eliminates confusion over the legality of second dwelling units that are already built and (3) eliminates potential litigations between neighbors and against the City regarding second dwelling units that are in the planning process, under construction, and already built; (4) expressly permits SDUs on multi-family lots; and (5) allow for a greater variety of SDUs to be built. The historical data shows that the production of SDUs increased under the proposed policy of adopting the state standards. The ordinance would also further a more equitable distribution of housing opportunities as it would permit a greater diversity of dwelling units in areas of the City that would otherwise receive little additional housing.

*Policy 1.2.2 Encourage and incentivize the preservation of affordable housing, including non-subsidized affordable units, to ensure that demolitions and conversions do not result in the net loss of the City's stock of decent, safe, healthy or affordable housing.*

The proposed ordinance encourages and incentivizes the preservation of non-subsidized affordable units by making it more likely they are able to be legalized in the future and therefore will not have to be demolished.

*Policy 1.1.1 Expand affordable homeownership opportunities and support current homeowners in retaining their homeowner status.*

The proposed ordinance expands affordable homeownership opportunities and supports current homeowners as the additional rental income from a SDU allows households to afford homeownership who may not otherwise be able.

*Policy 1.1.2 Expand affordable rental housing for all income groups that need assistance.*

The proposed ordinance expands the creation of additional rental housing options by supporting the creation of additional SDU units, which adds to the overall rental housing supply, which results in lower rents by increasing the overall vacancy rate in the City.

*Policy 1.1.3 Facilitate new construction and preservation of a range of different housing types that address the particular needs of the city's households.*

The proposed ordinance facilitates the construction and preservation of a range of different housing types that address the particular needs of the city's households, including the elderly, disabled family members, in-home health care providers, young adults, etc.

*Policy 1.1.6 Facilitate innovative models that reduce the costs of housing production.*

The proposed ordinance also facilitates an innovative housing type that reduces the typical cost of new construction, because the cost of land does not have to be factored into the development costs.

Finally, the ordinance would support the intent and purposes of the Housing Element of the General Plan regarding SDUs in that it affirms that the City should follow, as a matter of policy, state law standards for approving second units (2013 Housing Element, pages 2-11 through 2-12.).

**City Charter Section 558(b)(2)**

In accordance with Charter Section 558(b)(2), the adoption of the proposed ordinance would be in conformity with public necessity, convenience, general welfare and good zoning practice for the following reasons:

The proposed ordinance is in conformity with public necessity because it: (1) brings the City's regulations into compliance with state law; (2) brings the City's regulations into compliance with the Housing Element of the General Plan; (3) allows the continued construction of SDUs for which permits have previously issued but which are not yet fully constructed; (4) allows the continued processing of permit applications for SDUs; (5) eliminates confusion over the legality of second dwelling units that are already built; (6) eliminates potential litigations between neighbors and against the City regarding second dwelling units that are in the planning process, under construction, and already built; and (7) reverts the City to the SDU policy in effect since 2009 which has been relied upon since that time by property owners, family members, students, the elderly, in-home health care providers, the disabled, and others, who reside in second dwelling units.

The proposed ordinance is in conformity with public convenience for the same reasons as stated above, because it: (1) brings the City's regulations into compliance with state law; (2) brings the City's regulations into compliance with the Housing Element of the General Plan; (3) allows the continued construction of SDUs for which permits have previously issued but which are not yet fully constructed; (4) allows the continued processing of permit applications for SDUs; (5) eliminates confusion over the legality of second dwelling units that are already built; (6) eliminates potential litigations between neighbors and against the City regarding second dwelling units that are in the planning process, under construction, and already built; and (7) reverts the City to the SDU policy in effect since 2009 which has been relied upon since that time by property owners, family members, students, the elderly, in-home health care providers, the disabled, and others, who reside in second dwelling units. The proposed ordinance is additionally in conformity with public convenience because acting on the proposed ordinance will not preclude a locally-tailored SDU policy from being developed in the City at a later date.

The proposed ordinance is in conformity with general welfare for the same reasons as stated above, because it: (1) brings the City's regulations into compliance with state law; (2) brings the City's regulations into compliance with the Housing Element of the General Plan; (3) allows the continued construction of SDUs for which permits have previously issued but which are not yet fully constructed; (4) allows the continued processing of permit applications for SDUs; (5) eliminates confusion over the legality of second dwelling units that are already built; (6) eliminates potential litigations between neighbors and against the City regarding second dwelling units that are in the planning process, under construction, and already built; and (7) reverts the City to the SDU policy in effect since 2009 which has been relied upon since that time by property owners, family members, students, the elderly, in-home health care providers, the disabled, and others, who reside in second dwelling units. The proposed ordinance is additionally in conformity with general welfare because acting on the proposed ordinance will not preclude a locally-tailored SDU policy from being developed in the City at a later date.

The proposed ordinance is in conformity with good zoning practice because it: (1) brings the City's regulations into compliance with state law; (2) brings the City's regulations into compliance with the Housing Element of the General Plan; and (3) reverts the City to the SDU policy in effect since 2009 which has been relied upon since that time by property owners, family members, students, the elderly, in-home health care providers, the disabled, and others, who reside in second dwelling units.

**City Charter Section 559**

In accordance with Charter Section 559, and in order to ensure the timely processing of this ordinance, the City Planning Commission authorizes the Director of Planning to approve or disapprove for the Commission any modification to the subject ordinance as deemed necessary by the Office of City Attorney. In exercising that authority, the Director must make the same findings as would have been required for the City Planning Commission to act on the same matter. The Director's action under this authority shall be subject to the same time limits and shall have the same effect as if the City Planning Commission had acted directly.

**CEQA Findings**

Pursuant to Sections 21080.17 of the California Public Resources Code and CEQA Guidelines Section 15061(b)(3), the adoption of the proposed ordinance is exempt from the California Environmental Quality Act (CEQA).

Under PRC Section 21080.17, CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code (i.e. second dwelling unit law). The proposed ordinance, if adopted will result in implementing the State law for second dwelling units within the City of Los Angeles.

Additionally, the grandfathering portions of the proposed ordinance would be subject to the "common sense" exemption at CEQA Guidelines section 15061(b)(3), which provides that, where it can be seen with certainty that there is no possibility that a project may have a significant effect on the environment, the project is not subject to CEQA. The grandfathering provisions will result in approximately 350-400 existing non-conforming SDUs becoming legal, in addition to approximately 175 SDUs currently in the development pipeline but not yet finished with construction. As such, the effect of the grandfathering provisions for units already built is to maintain the existing baseline conditions and would not have a significant effect on the environment.

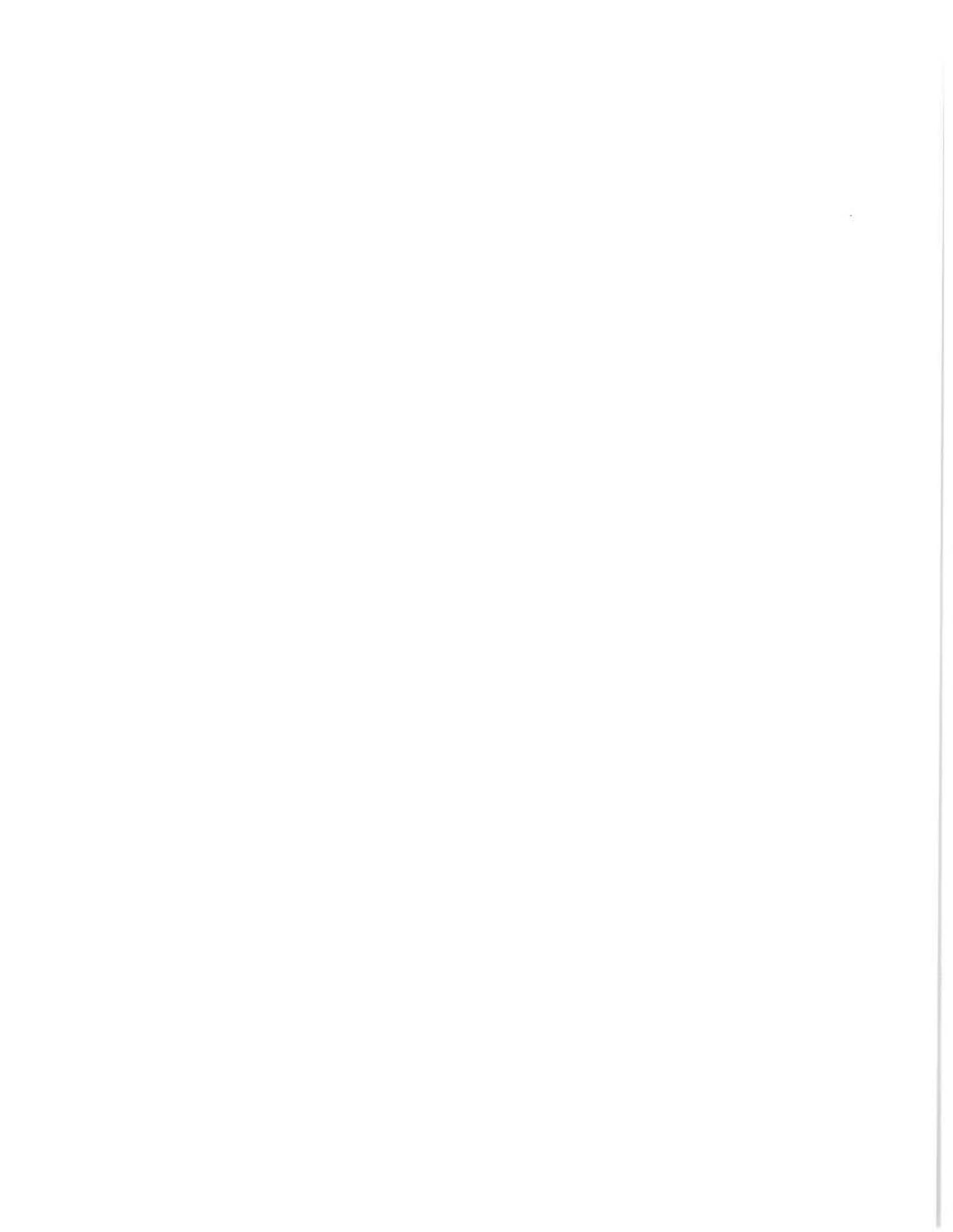
For those approximately 175 SDUs that have received building permits but have not yet been constructed or finished construction, the CEQA Guidelines Section 15303(a) (Class 3 Categorical Exemption for New Construction or Conversion of Small Structures) also applies. The exemption expressly exempts the approval of SDUs in residential zones and would apply to these 175 unfinished and/or permitted but not constructed SDUs. Additionally, the City finds that the exceptions to the exemptions in Guidelines section 15300.2 do not apply. There is nothing unusual about second dwelling units in a City of the size and type of Los Angeles and 175 SDUs in a City of the size of Los Angeles with approximately 600,000 single family homes would not reasonably be expected to result in cumulative impacts. An analysis of these 175 SDUs did not find any significant concentrations, which would be expected to trigger unusual circumstances. The City has no evidence or any reason to believe any of the other exceptions apply related to sensitive environment, scenic highway, historic resources, or properties listed on the Cortese list for hazardous wastes.

## **PUBLIC HEARING AND COMMUNICATIONS**

The proposed ordinance includes an Urgency Clause. Timing is critically important in this matter given the current legal uncertainty faced by hundreds of Los Angeles homeowners and residents as well as the City.

The ordinance meets the regulations for amending the zoning code prescribed in LAMC 12.32, including publication of a hearing notice in a newspaper of general circulation in the City 24 days prior to the date of the hearing. The notice was published in the Daily Journal on April 18, 2016. The ordinance and hearing notice for the City Planning Commission was also sent by email to interested parties and Neighborhood Councils on Thursday April 14th. The email generated a number of clarification questions and comments by community members. Some community members expressed that they believe the City should enact a comprehensive SDU policy.

Public input has also been received through the City Council process related to the Court's decision (CF 16-0348). Public testimony occurred most notably at the April 6, 2016 meeting of the City Council's Housing Committee. The public comments received were generally supportive of the need to expedite the repeal of the ordinance and grandfather current barriers. Likely issues of public interest were identified and discussed under the Issues section above.



# **EXHIBIT A: Proposed Ordinance**

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CPC-2016-1245-CA  
May 12, 2016

**ORDINANCE NO.** \_\_\_\_\_

An ordinance repealing Subsections 12.24.W.43 and 12.24.W.44 of Chapter 1 of the Los Angeles Municipal Code.

**WHEREAS**, by its adoption of this Ordinance the Los Angeles City Council makes the following findings:

1. The extreme shortage of housing in the City of Los Angeles has been well documented. High land and construction costs and a long-standing insufficient supply of housing have caused rents to rise steadily for many years, increasing the number of renters who are either cost-burdened or live in overcrowded and often substandard conditions; and

2. The Los Angeles General Plan prioritizes the need for a mix of housing types across the City, including both rental and homeownership opportunities for singles, families, seniors, persons with disabilities, and multi-generational families; and

3. Second dwelling units, often referred to as “granny flats”, can help homeowners make ends meet while providing affordable housing opportunities for single young people, seniors, and multi-generational families by providing a mix of housing that responds to changing family needs and smaller households; and

4. Second dwelling units can provide housing benefits without significantly changing the basic character of established neighborhoods and allow more efficient use of housing stock and infrastructure; and

5. The second dwelling unit ordinance enacted by the City of Los Angeles establishes a discretionary Conditional Use Permit process, stated in Los Angeles Municipal Code Sections 12.24.W.43 and 12.24.W.44; and

6. In 2002, the State of California enacted AB 1866, amending Government Code Section 65852.2, which requires, among other matters, that municipalities with their own second dwelling unit ordinances administer them “ministerially without discretionary review or a hearing”, and states in Government Code Section 65852.2(b)(1) a set of ministerial state development default standards for approving second dwelling units for cities that have not adopted an ordinance governing second units in accordance with state law; and

7. On June 23, 2003, the City of Los Angeles responded to AB 1866 by issuing “Internal-Departmental Correspondence” (2003 Internal-Departmental Correspondence) from the City’s Department of City Planning and Department of Building and Safety, stating that effective July 1, 2003 a second dwelling unit would be considered through a ministerial process without discretionary review and permitted if it met all of the standards in the 2003 Internal-Departmental Correspondence; and

8. On May 6, 2010, the City, through the Office of Zoning Administration, issued ZA Memorandum 120 (ZA Memo 120), which replaced the 2003 Internal-Departmental Correspondence and provided that a second dwelling unit would be considered through a ministerial process without discretionary review and permitted if it met all of the standards in ZA Memo 120; and

9. The City of Los Angeles committed to facilitate the production of second dwelling units when it adopted the Housing Element of the General Plan adopted December 3, 2013; and

10. In 2016, the Los Angeles Superior Court entered an Order in the case titled *Los Angeles Neighbors in Action vs. City of Los Angeles, et al.* (BS 150559), finding ZA Memo 120 invalid; and

11. Property owners in the City have constructed second dwelling units in reliance upon building permits issued pursuant to the 2003 Internal-Departmental Correspondence and 2010 ZA Memo 120, the validity of which may be made uncertain by the Court's 2016 Order in *Los Angeles Neighbors in Action vs. City of Los Angeles, et al.* (BS 150559); and

12. It is the intention of the City Council to promote laws and policies to help alleviate the extreme shortage of housing in the City of Los Angeles, and to expand rental and homeownership opportunities for singles, families, seniors, persons with disabilities, and multi-generational families; and

13. It is the intention of the City Council to repeal LAMC sections 12.24.W.43 and 12.24.W.44 and apply the state's default development standards in Government Code Section 65852.2(b)(1) in approving second dwelling units; and

14. As a matter of public policy the City Council finds it is not in the best interests of the City or its residents to question the lawfulness of any second dwelling unit to the extent it was constructed pursuant to the 2003 Internal-Departmental Correspondence or ZA Memo 120; and

15. As a matter of public policy the City Council finds it is in the best interests of the City and its residents to bestow legal non-conforming status to any second dwelling unit to the extent it was constructed pursuant to the 2003 Internal-Departmental Correspondence or ZA Memo 120.

**NOW, THEREFORE,**

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

Section 1. Subsections 12.24.W.43 and 12.24.W.44 of the Los Angeles Municipal Code are hereby repealed.

Sec. 2. **LEGAL NON CONFORMING STATUS.** Any second dwelling unit approved pursuant to the June 23, 2003, Internal-Departmental Correspondence issued by the City of Los Angeles Department of City Planning and Department of Building and Safety, or the May 6, 2010, Zoning Administrator Memorandum 120 issued by the Office of Zoning Administration, shall be considered lawful to the extent that such second dwelling units were approved pursuant to the Internal-Departmental Correspondence or Zoning Administrator Memorandum 120.

Sec. 3. **SEVERABILITY.** If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance, which can be implemented without the invalid provisions and, to this end, the provisions of this ordinance are

declared to be severable. The City Council hereby declares that it would have adopted each and every provision and portion thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**Sec. 4. URGENCY CLAUSE.** The City finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reasons: The City is currently in the midst of a housing crisis, with the supply of affordable options unable to support the demand for housing in the City. The US Census reports that vacancy rates for housing in the Los Angeles area are currently the lowest of any major city. A housing option that is currently available and affordable for many in the City is second dwelling units. However, a 2016 Order of the Los Angeles Superior Court invalidated ZA Memo 120, and that invalidation (1) leaves the City's existing second dwelling unit ordinances in violation of state law; (2) casts uncertainty over the validity building permits issued in reliance upon ZA Memo 120; and (3) effectively precludes residents who received building permits in reliance upon ZA Memo 120, or who are otherwise in the process of applying for building permits for second dwelling units, from proceeding with their projects. The City estimates there exist hundreds of second dwelling unit projects either currently under construction or in plan check in reliance upon ZA Memo 120. Immediate action is necessary to bring the City's regulations into compliance with state law; allow the continued construction of, and processing of applications for, second dwelling unit; and eliminate confusion and potential litigation regarding second dwelling units that are already built, under construction, and in the permitting process phase.

Public testimony further confirms the dire position of residents pursuing and constructing second dwelling units due to the court's Order. Failure to take immediate action will leave many construction sites unattended and potentially in dangerous situations; and will impede the orderly sale of property in the City as properties with second dwelling units are unable to gain Certificates of Occupancy and therefore be sold as tendered.

Failure to take immediate action to provide for the continued construction of second dwelling and processing of second dwelling unit applications and certainty for residents who constructed second dwelling units in reliance upon policies and practices implemented by the City for second dwelling units since June 23, 2003, will exacerbate the housing shortage and negatively impact individuals living in and seeking to construct second dwelling units.

For all of these reasons, this ordinance shall become effective upon publication pursuant to Section 253 of the Los Angeles City Charter.

**Sec. 5.** The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of \_\_\_\_\_.

HOLLY L. WOLCOTT, City Clerk

By \_\_\_\_\_ Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality  
MICHAEL N. FEUER, City Attorney

By \_\_\_\_\_

STEVEN BLAU  
Deputy City Attorney

Date \_\_\_\_\_

File No(s). \_\_\_\_\_

**EXHIBIT B:**  
**California Government Code §65852.2**

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CPC-2016-1245-CA  
May 12, 2016

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.

## **EXHIBIT C:** **2003 Interdepartmental Correspondence**

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CPC-2016-1245-CA  
May 12, 2016

## CITY OF LOS ANGELES

## INTER-DEPARTMENTAL CORRESPONDENCE

DATE: June 23, 2003

TO: Department of City Planning Staff  
Structural Plan Check Engineers and Building Inspectors

FROM: Robert Janovici, Chief Zoning Administrator, Department of City Planning *RJ*  
Peter Kim, Zoning Engineer, Department of Building and Safety *PK*

SUBJECT: SECOND DWELLING IN SINGLE FAMILY ZONE PURSUANT TO AB1866

State Assembly Bill 1866, Chapter 1062, amending Government Code Sections 65583.1, 65852.2, and 65915 becomes effective on July 1, 2003. The changes in the State code mandates that the creation of second units on parcels zoned for a primary single family be considered ministerially without discretionary review or hearing.

Currently, 12.24W43 of the Planning and Zoning Code addresses permitting a second dwelling in a single family zone, under the authority of the Zoning Administrator subject to specified conditions. Pursuant to the State law, most of the conditions contained therein will now be used to determine if a second dwelling can be permitted by right in a single family zone. Therefore, Section 12.24W43 will no longer be applicable and should the second dwelling not be able to meet the specified "by right" conditions, then a zone variance would be required through the City Planning Department.

Effectively, July 1, 2003, a second dwelling will be permitted in the A, RA, RE, RS, R1, RU, RZ, RMP or RW1 Zones if it meets ALL of the following standards.

- (1) the second dwelling unit consists of a group of two or more rooms for living and sleeping purposes, one of which is a kitchen, and the second dwelling unit has a maximum floor area of 640 square feet; and
- (2) the second dwelling unit is located on a lot having an area at least 50 percent larger than the minimum area required for a lot in the zone in which it is located, and in no event is the lot area less than 7,500 square feet; and
- (3) the second dwelling unit meets the yard, lot coverage, passageway, and height requirements applicable to the zone in which it is located; and
- (4) the primary dwelling unit and all other existing or proposed buildings meet the use, lot coverage, height, yard and other requirements applicable to the zone in which they are located; and
- (5) at least one covered or uncovered off-street automobile parking space is provided for the second dwelling unit, in addition to the off-street automobile parking spaces required by Section 12.21A4(a)

for the principal dwelling; and that such parking provided is in compliance with the parking facilities requirements as set forth in Section 12.21A5; and

(6) the second dwelling unit is combined with or be attached to a main building containing only one dwelling unit unless:

(a) The second dwelling unit results from the conversion of a legally established, detached accessory living quarters, servants' quarters, or guest house which had been issued a certificate of occupancy prior to July 1, 1983; or

(b) The detached dwelling unit will be constructed in full compliance with setback, lot coverage, height and other requirements applicable to the zone; and

(7) not more than one entrance to the dwellings is visible from the street frontage(s) for each lot; and

(8) the second dwelling unit is not be located in a Hillside Area, as defined in Section 91.7003 of the Building Code, in an Equinekeeping District, along a Scenic Highway designated in the General Plan (as identified in ZIMAS, or determined by City Planning counter), or where the width of the adjacent street is below current standards as defined in Section 12.37H (as determined by the City Engineer); and

~~(9) no building nonconforming as to use is converted to a second dwelling unit.~~

**EXHIBIT D:**  
**2010 Zoning Administrator's Memorandum 120**

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CPC-2016-1245-CA  
May 12, 2016



**OFFICE OF ZONING ADMINISTRATION**

City Hall • 200 N. Spring Street, Room 763 • Los Angeles, CA 90012

**OFFICE OF ZONING ADMINISTRATION**

MEMORANDUM

ZA MEMORANDUM NO. 120

May 6, 2010

TO: Office of Zoning Administration  
Public Counters  
Interested Parties  
Department of Building and Safety

FROM: Michael LoGrande *ML*  
Chief Zoning Administrator

SUBJECT: **SECOND DWELLING UNITS PURSUANT TO AB 1866**

State Assembly Bill 1866 became effective on July 1, 2003 amending Government Code Sections 65583.1, 65852.2 and 65915 that allows the creation of second dwelling units on residentially zoned lots, be considered ministerially without discretionary review or hearing. The intention of this memorandum is to assist with implementing AB 1866. It supersedes a previous memorandum issued by Robert Janovici, former Chief Zoning Administrator, and Peter Kim, former Zoning Engineer, dated June 23, 2003.

A second dwelling unit is permitted by right on a lot if it meets ALL of the following AB 1866 standards:

1. The second unit is not intended for sale and may be rented;
2. The lot is zoned for single-family or multi-family use;
3. The lot contains an existing single-family dwelling;
4. The second unit is either located within the living area of the existing dwelling (attached) or on the same lot as the existing dwelling (detached);
5. The total area of the increased floor area of an attached second unit does not exceed 30 percent of the existing floor area;
6. The total area of the floor area for a detached second unit does not exceed 1,200 square feet;
7. The 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 are met;

8. The local building code requirements which apply to dwellings, as appropriate, are also met; and
9. A minimum of one additional covered or uncovered off-street parking space is provided. If not otherwise prohibited by the zoning ordinance or any other land use regulation, tandem parking is allowed and the parking space may be located in a required yard.

#### APPROVAL

If the proposed second dwelling unit meets all nine AB 1866 standards, the Department of Building and Safety shall approve the plans and issue a building permit. If the proposed unit meets all nine standards but is governed by an historic preservation overlay zone, specific plan, or other zoning regulation that requires architectural review or a similar type of review, then the Department of Building and Safety shall refer the applicant to the Department of City Planning. The Planning Department may impose conditions on the project as a result of this architectural or similar review, but may not deny the second unit if it otherwise meets all nine AB 1866 standards.

#### ALTERNATIVE APPROVAL

If a proposed second dwelling unit does not comply with the nine standards listed above, then AB 1866 does not apply and all applicable regulations in the zoning code govern. If an applicant still wishes to build a second unit, then two options may be available:

First Option. Obtain all necessary approvals as provided by the zoning code. For example, if a proposed second dwelling unit complies with all nine standards set forth above except the required rear yard, then the applicant would have to file for two discretionary land use approvals: (1) an adjustment, pursuant to LAMC Section 12.28, for a reduced rear yard; and (2) a variance, pursuant to LAMC Section 12.27, for an increase in density to permit an additional unit on a lot where the zoning only allows one dwelling unit.

Second Option. Obtain an approved conditional use permit from the Zoning Administrator pursuant to either LAMC Section 12.24-W,43 or LAMC Section 12.24-W,44, subject to all applicable requirements and limitations set forth in those sections.

#### MULTIPLE DWELLING ZONES

AB 1866 shall not be construed to allow an increase in the density of a zone that may permit two or more dwelling units on a single lot. For example, a third dwelling unit on a lot zoned R2 is not allowed by right pursuant to AB 1866.