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MEMORANDUM FOR: Planning Directors and Interested Parties

FROM: 
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Division of Housing Policy Development

SUBJECT: **Second-Unit Legislation Effective January 1, 2003
and July 1, 2003**

AB 1866 (Chapter 1062, Statutes of 2002) amends two sections of Government Code to encourage the creation of second-units, generally as follows:

1. *Section 65852.2 (second-unit law)* – Amendments require local governments with a local second-unit ordinance to ministerially consider second-unit applications as of July 1, 2003; and local governments without a local second-unit ordinance or a local ordinance not in compliance with subsections (a) or (c) of second-unit law should ministerially consider second-unit applications in accordance with State standards, established in subsection (b), as of January 1, 2003.
2. *Section 65583.1 (a portion of State housing element law)* – Amendments clarify existing housing element law to allow identification of realistic capacity for second-units in addressing a locality's share of the regional housing need. The identification of realistic capacity should be based on the development trends of second-units in the previous housing element planning period and other relevant factors. These amendments were effective as of January 1, 2003.

The following attachments are provided to inform localities of Chapter 1062 and to assist in evaluating how these new provisions of State law affect communities. This memo supplements prior technical assistance issued by the Department of Housing and Community Development (Department) on second-unit law. A copy of the legislation can be found on the Department's website at http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hpd_memo_ab1866.pdf. You may obtain copies of published bills from the 2002 session from the Legislative Bill Room at (916) 445-2323 or from the Senate's website at: www.senate.ca.gov. If you have any questions or would like additional information, please contact Paul McDougall, of our staff, at (916) 445-4728.

Attachments

Second Unit Law as Amended by
Chapter 1062, Statutes of 2002
(Assembly Bill 1866)

TABLE OF CONTENTS

Attachment 1: Second Unit Law (Government Code Section 65852.2)

| | |
|--|----|
| A. Implementation Discussion | 2 |
| Introduction | 2 |
| Intent of Second Unit Law | 2 |
| When Does a Local Second-Unit Ordinance Apply versus State Standards? | 3 |
| Does a Locality Have Flexibility in Adopting a Local Ordinance? | 3 |
| When Does Chapter 1062 Take Effect? | 4 |
| What is Ministerial Review? | 5 |
| Can a Locality Accept Appeals if a Second-Unit Application is Denied? | 6 |
| Can a Locality Consider an Additional Process to Consider Second-Units if the Standards Established by Chapter 1062 Have Been Met? | 6 |
| Is a Locality Required to Allow Second-Units in Multifamily Zones? | 6 |
| Are Second-Units Exempt from Local Growth Control? | 7 |
| What Kind of Environmental Review Is Required for Second-Units? | 7 |
| How Can a Locality Encourage Second-Units? | 7 |
| Can a Locality Have Occupancy Requirements on Second-Units? | 8 |
| Does Second Unit Law Apply to Charter Cities and Counties? | 8 |
| Does Second Unit Law Apply to Localities in the Coastal Zone? | 8 |
| Should a Locality Submit Their Second-Unit Ordinances to HCD? | 9 |
| B. Changes to Government Code Section 65852.2 | 10 |
| C. Other Pertinent Code Sections | 13 |
| Government Code Section 65901 | 13 |
| Government Code Section 65906 | 13 |
| CEQA Guidelines: Section 15369 | 13 |
| D. Resource and Contacts | 15 |
| Second-Unit Resource List | 15 |
| Tentative Contact List | 19 |

Attachment 2: Portion of State Housing Element Law (Government Code Section 65583.1)

| | |
|---|----|
| A. Implementation Discussion | 21 |
| Introduction | 21 |
| Resources and Incentives | 21 |
| The Need for Second-Units | 21 |
| Other Relevant Factors | 22 |
| Tracking Second-Units | 22 |
| B. Changes to Government Code Section 65583.1 | 23 |

ATTACHMENT 1

Government Code Section 65852.2

State Second Unit Law

Chapter 1062, Statutes of 2002

(Assembly Bill 1866)

A. IMPLEMENTATION DISCUSSION FOR SECOND UNIT LAW GOVERNMENT CODE SECTION 65852.2

Introduction

Second-units (i.e., in-law apartments, granny flats, or accessory apartments) provide an important source of affordable housing. By promoting the development of second-units, a community may ease a rental housing deficit, maximize limited land resources and existing infrastructure and assist low and moderate-income homeowners with supplemental income. Second-units can increase the property tax base and contribute to the local affordable housing stock. Government Code Section 65852.2 (a.k.a. second-unit law) was enacted in 1982 and has been amended four times (1986, 1990, 1994 and 2002) to encourage the creation of second-units while maintaining local flexibility for unique circumstances and conditions. Local governments may allow for the creation of second-units in residential zones, set development standards (i.e., height, setbacks, lot coverage), require minimum unit sizes and establish parking requirements. However, State standards apply if localities do not adopt a second-unit ordinance in accordance with the intent of second-unit law and subsections (a) or (c).

Chapter 1062 amends second-unit law to require ministerial consideration of second-unit applications to encourage the creation of second-units. For the text of Chapter 1062 (AB 1866) relating to Government Code Section 65852.2, see the second section of this attachment, titled "Changes to Government Code Section 65852.2". Following is a discussion of the new legislation to assist localities in carrying out the provisions of Chapter 1062:

Intent of Second-Unit Law (Government Code Section 65852.150)

The preparation, adoption, amendment and implementation of local second-unit ordinances should be carried out consistent with Government Code Section 65852.150:

The Legislature finds and declares that second units are a valuable form of housing in California. Second units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods. Homeowners who create second units benefit from added income, and an increased sense of security.

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.

When Does a Local Second-Unit Ordinance Apply versus State Standards?

Second-unit law contains provisions to guide the adoption of a local ordinance (subsections (a) and (c-g)) and describes State standards that apply in the absence of a local ordinance (subsection (b)). When a local second-unit ordinance is enacted in accordance with subsections (a) or (c), the local ordinance provides the criteria for approving and denying second-unit applications. In the absence of a local second-unit ordinance in accordance with subsection (a) or (c), the State standards contained in subsection (b) of Government Code Section 65852.2 establish the criteria for approving and denying second-unit applications. While the State standards, under subsection (b), do not necessarily apply to the preparation or update of a local ordinance, they are appropriate to use as a guideline.

Does a Locality Have Flexibility in Adopting a Local Second-Unit Ordinance?

Second-unit law was created and amended within the context of providing "...a minimum of limitation...", so localities "...may exercise the maximum degree of control over local zoning matters..." (Government Code 65800). Chapter 1062 requires localities to consider applications for the development of second-units ministerially with the intent to create second-units and not constrain their development. Second-unit law provides local flexibility to manage the opportunity for creating second-units. For example, Government Code Section 65852.2(a)(1) provides that:

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.*

A local government may apply quantifiable, fixed and objective standards, such as height, setback, and lot coverage requirements so the second-unit will be compatible with other structures in the neighborhood. A local government may designate areas appropriate for second-units based on criteria such as the adequacy of water and sewer services and the impact of second-units on traffic flow. At the same time, a locality must adopt an ordinance with the intent of facilitating the development of second-units in appropriate residential zones without arbitrary, excessive, or burdensome provisions and requirements.

Under limited circumstances, a locality may prohibit the development of second-units in single-family or multifamily zones (Government Code Section 65852.2(c)). This prohibition may only be enacted if a locality adopts formal written findings based on substantial evidence identifying the adverse impact of second-units on the public health, safety, and welfare and acknowledging such action may limit housing opportunities in the region (Section 65852.2(c)). Prior to making findings of specific adverse impact, the agency should explore feasible alternatives to mitigate and avoid the impact. Written findings should also acknowledge efforts to adopt an ordinance consistent with the intent of second-unit law.

A local government may also establish reasonable minimum and maximum unit size requirements for both attached and detached second-units according to Government Code Section 65852.2(d). Minimum and maximum unit sizes should be reasonable and should not arbitrarily and excessively restrict the development of second-units. For example, a maximum unit size of 400 square feet might be unduly restrictive on minimum lot sizes of 7,000 square feet, barring unusual circumstances, and would restrict the development of second-units. Minimum unit sizes should also uphold health and safety standards.

Also, localities should ensure parking requirements are consistent with standards set forth in subsection (e). This subsection limits parking requirements to one parking space per unit or bedroom, unless a locality makes specific findings.

When Does Chapter 1062 Take Effect for Second-Unit Law?

Government Code Section 65852.2(a)(3) requires where a local agency has a local ordinance in accordance with subsections (a) or (c), an application for a second-unit permit is to be considered ministerially without discretionary review or public hearing on or after **July 1, 2003**. Local jurisdictions without an ordinance must utilize the State second-unit standards set forth in Section 65852.2(b) and are required to ministerially consider second-unit applications after **January 1, 2003**.

Chapter 1062 does not necessarily require a local agency to adopt or amend a second-unit ordinance (Section 65852.2(a)(3)). If a locality has a second-unit ordinance in accordance with subsections (a) or (c) of second-unit law, an application should be considered ministerially. For example, if a locality has an ordinance with development standards in accordance with the intent of second-unit law and subsection (a) and requires a conditional use permit, the locality should consider a second-unit application ministerially according to the adopted development standards

and any provisions of the local ordinance which are in conflict with second-unit law, such as a conditional use permit, should be considered null and void. However, if a locality has a second-unit ordinance that does not meet the intent and subsections (a) or (c), the locality is required to ministerially consider a second-unit application in accordance with the State standards in subsection (b).

What is Ministerial Review?

Chapter 1062 requires development applications for second-units to be "...considered ministerially without discretionary review or a hearing..." or, in the case where there is no local ordinance in compliance with subsections (a) or (c), a local government must "...accept the application and approve or disapprove the application ministerially without discretionary review..." In order for an application to be considered ministerially, the process must apply predictable, objective, fixed, quantifiable and clear standards. These standards must be administratively applied to the application and not subject to discretionary decision-making by a legislative body (For clarification see the attached definition of ministerial under California Environmental Quality Act (CEQA) Guidelines, Section 15369.). The definition is generally accepted and was prepared pursuant to Public Resources Code.

An application should not be subject to excessively burdensome conditions of approval, should not be subject to a public hearing or public comment and should not be subject to any discretionary decision-making process. There should be no local legislative, quasi-legislative or discretionary consideration of the application, except provisions for authorizing an administrative appeal of a decision (see Appeal discussion below).

The intent of Chapter 1062 is to improve certainty and predictability in the approval process. Where special use or variances must apply, the locality should grant the variance or special use permit without a public hearing for legislative, quasi-legislative or discretionary consideration, as authorized by Government Code Section 65901. An application for consideration by a board of zoning adjustments or zoning administrator should apply a limited and fixed set of clear, predictable and objective standards without the application of discretionary conditions or public comment.

Chapter 1062 does not affect local government measures to keep the public apprised of pending applications and the status of the decision-making process. A local government should handle public noticing in the same manner as other ministerial actions. For example, if a local government allows new construction of a single-family residence by right or ministerially and public notice is not given for these applications, then a local government should employ the same procedures for second-unit applications. The appropriate point for public comment is the discretionary action adopting or amending a second-unit ordinance.

As explicitly stated in the provisions of 65852.2(a), a locality may require second-units to comply with development standards such as height, setback and architectural review. At the same time, architectural review should be handled in a ministerial fashion without discretionary public hearings or review. Architectural review in a ministerial fashion includes architectural standards and design guidelines with clear, fixed and objective standards. These standards should provide a

predictable concept of appropriate second-unit development. For example, the compatibility of the materials with the existing structure, exterior color, subordinate bulk or compatible exterior surface texture are architectural standards that can be applied in a ministerial manner, especially with the aid of design review guidelines. Architectural review standards should not impede the creation of second-units and should not detrimentally affect the feasibility or affordability of second-units.

Can a Locality Accept Appeals If a Second-unit Application Is Denied?

A locality can provide an appeal process for applicants whose second-unit proposal is denied. The appeal process should maintain predictable and fixed approval standards, consistent with the intent of Chapter 1062. Accordingly, an appeal should not include a public hearing with public comment as part of a discretionary decision. The appeal process should be handled in a ministerial and administrative manner and should be limited in scope, only considering the proposal's compliance with the objective standards of the second-unit ordinance.

Can a Locality Consider an Additional Process to Consider Second Units if the Standards Established by Chapter 1062 Have Been Met?

If a local ordinance is consistent with subdivisions (a) and (c-g) of second-unit law and consistent with the intent of the law, a local government could also adopt an ancillary set of broader standards under which second-units might be allowed under a discretionary review process as exceptions to existing zoning. While the statute does not preclude a broader and more flexible set of standards, localities must be very careful that any criteria or process for a secondary set of standards is only ancillary to the ministerial consideration required by Chapter 1062. Typical exceptions to zoning could be handled administratively or quasi-judicially.

Homeowners in the community are entitled to have a realistic opportunity to create second-units. If the locality fails to provide an adequate ministerial process pursuant to subdivision (a) and (c-g), applications for second-units should be subject to the State standards of subdivision (b) of Section 65852.2.

Is a Locality Required to Allow Second-Units in Multifamily Zones?

While second-units may be allowed in both single- and multi-family zones (Sections 65852.2(a)(1) and (b)(1)(B)), nothing in the statute requires more than one second-unit to be permitted on a single parcel. The State standards specifically require that the lot contain an existing single-family dwelling (Section 65852.2(b)(1)(C)) and localities could adopt a similar requirement. Alternatively localities could permit second-units on parcels containing, for example, a duplex. The guiding principle for the local ordinance should be to avoid provisions that are "...so arbitrary, excessive or burdensome so as to unreasonably restrict the ability of homeowners to create second-units in zones where they are authorized by local ordinance." (Section 65852.150). For example, second-units should not be arbitrarily excluded from appropriate geographic areas.

Are Second-Units Exempt from Local Growth Control?

Yes. Government Code Section 65852.2(a)(2) states second-units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth. Second-units must be exempt from growth control measures regardless of whether the growth control has been

enacted by local initiative or the legislative body. Local governments should take steps to address any inconsistency between the second-unit mandate and local initiatives, ordinances, policies, programs or any other regulations to limit residential growth.

What Kind of Environmental Review is Required for Second-Units?

Second-units approved ministerially are statutorily exempt from CEQA pursuant to Section 15268 (Ministerial Projects) of the CEQA guidelines and Section 21080(b)(1) of the Public Resources Code. In addition, second-units can be categorically exempt from CEQA pursuant to Sections 15301 and 15303 of the CEQA guidelines, authority cited under Public Resources Code Section 21083 and 21087.

How Can a Locality Encourage Second-Units?

Local governments can encourage second-unit development through a variety of mechanisms. For example, a locality could develop information packets to market second-unit construction. A packet could include materials for a second-unit application, explain the application process, and describe incentives to promote their development. A locality could also advertise second-unit development opportunities to homeowners on the community's web page, at community and senior centers, in community newsletters, and in local utility bills, etc. Some local governments establish and maintain a second-unit specialist in the current planning division to assist in processing and approving second-units. A local government can also establish flexible zoning requirements, development standards, processing and fee incentives that facilitate the creation of second-units (Government Code Section 65852.2(g)). Incentives include reduced parking requirements near transit nodes, tandem parking requirements, pre-approved building plans or design prototypes, prioritized processing, fee waivers, fee deferrals, reduced impact fees, reduced water and sewer connection fees, setback reductions and streamlined architectural review. For example, the City of Santa Cruz established pre-approved design prototypes to encourage and stimulate the development of second-units.

Localities can also monitor the effectiveness of ordinances, programs and policies encouraging the creation of second-unit development. Some localities monitor implementation of second-unit strategies through the annual general plan progress report (Government Code Section 65400). Evaluating the effectiveness of a second-unit ordinance can assist the local government in determining appropriate measures to improve usefulness and further facilitate the development of housing affordable to lower- and moderate-income families.

See the second-unit bibliography in the Resources section for additional resources on the development of second-units.

Can a Locality Have Occupancy Requirements on Second-Units?

Requirements restricting the occupancy of a second-unit may be susceptible to legal challenge. In a 1984 decision, the Superior Court (Hubbart vs. County of Fresno, Superior Ct. No. 309140-2, 10/3/84), voided a Fresno County zoning ordinance which required that occupancy of a second-unit be limited to persons related to the main unit's owner. The Court stated that the ordinance violated the plaintiff's right to privacy guaranteed by Article I, Section I of the California Constitution.

In a 2001 decision (*Coalition Advocating Legal Housing Options v. City of Santa Monica*), a second-unit ordinance preventing non-dependent adult children or relatives, as well as unrelated persons while permitting dependents and caregivers, was declared unconstitutional under the right to privacy and equal protection clause of the California Constitution.

A local ordinance could include income restrictions on the occupancy of a second-unit to ensure the creation of housing affordable to low- and moderate-income households. A local ordinance could also require one of the dwellings on the property to be owner-occupied. However, an ordinance with these restrictions and requirements should be developed in a manner that encourages the creation of second-units as opposed to restricting the development of second-units.

Does Second-Unit Law Apply to Charter Cities and Counties?

Yes. Charter cities and counties must particularly give way to State general laws such as second-unit law when there are matters of Statewide concern (*Coalition Advocating Legal Housing Options v. City of Santa Monica* (2001) 105 Cal. Rptr. 2d 802), as stated by the Legislature in Government Code Sections 65580, 65852.150 and 65852.2(i)(2). Further, second-unit law explicitly applies to “local agencies” which are defined as general law or charter (Government Code Section 65852.2(i)(2)).

Does Second-Unit Law Apply to Localities in the Coastal Zone?

Yes. The California Coastal Act was enacted to preserve our natural coastal resources for existing and future Californians. While second-units utilize existing built areas and usually have minimal environmental impact, the need for second-units should be balanced against the need to preserve our unique coastal resources. For these reasons, second-unit law shall not supersede, alter or lessen the effect or application of the California Coastal Act (Division 20 of the Public Resources Code), except that local governments shall not be required to hold public hearings for coastal development permit (CDP) applications for second-units (Government Code 65852.2(j)). As stated in correspondence, dated January 13, 2003 from the California Coastal Commission to all coastal communities, local governments in the coastal zone should amend their Local Coastal Program (LCP) to not require a public hearing in the consideration of second-unit applications. Further, local appeals should be handled in an administrative manner.

Should a Locality Submit Their Second-Unit Ordinances to HCD?

Yes. Government Code Section 65852.2(h) requires submittal of an ordinance adopted pursuant to subsection (a) and (c) to the State Department of Housing and Community Development (Department) within 60 days of adoption. The Department will establish a clearinghouse of local ordinances to assist local governments in developing effective and meaningful ordinances. The Department is also available to provide technical assistance in the preparation of second-unit ordinances. Local governments are encouraged to send electronic copies of their ordinance to the Department at pmcdouga@hcd.ca.gov.

Chapter 1062, Statutes of 2002 (Assembly Bill 1866)

B. CHANGES TO GOVERNMENT CODE SECTION 65852.2

Government Code Section 65852.2 was amended by Chapter 1062 (AB 1866) as follows:

Government Code Section 65852.2 (additions or changes in italics/underlined and deletions indicated by asterisks with substantive changes italicized in parentheses)

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.

***** *(Provisions to establish a process for the issuance of conditional use permits deleted)*

(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 ***** (*conditional use deleted*) 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 ***** (*conditional use deleted*) 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.

Chapter 1062, Statutes of 2002 **(Assembly Bill 1866)**

C. OTHER PERTINENT CODE SECTIONS

Government Code Section 65901

(a) The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefore and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance. The board of zoning adjustment or the zoning administrator may also exercise any other powers granted by local ordinance, and may adopt all rules and procedures necessary or convenient for the conduct of the board's or administrator's business.

(b) In accordance with the requirements for variances specified in Section 65906, the legislative body of the city or county may, by ordinance, authorize the board of zoning adjustment or zoning administrator to decide applications for variance from the terms of the zoning ordinance without a public hearing on the application. That ordinance shall specify the kinds of variances which may be granted by the board of zoning adjustment or zoning administrator, and the extent of variation which the board of zoning adjustment or zoning administrator may allow.

Government Code Section 65906

Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits.

CEQA Guidelines: Section 15369 Ministerial

"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding

whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080(b)(1), Public Resources Code; *Johnson v. State of California*, 69 Cal. 2d 782; *Day v. City of Glendale*, 51 Cal. App. 3d 817.

Discussion: This definition draws upon earlier judicial definitions of "ministerial" and discretionary governmental actions and provides examples. Neither term is technically precise.

Chapter 1062, Statutes of 2002 **(Assembly Bill 1866)**

D. RESOURCES AND CONTACTS

Second-Units Resource List (Arranged alphabetically by title)

Accessory Apartments: Are They A Realistic Alternative for Ageing in Place? -- [London, UK]: Taylor & Francis Group. **Housing Studies - Vol. 16, No. 5, p. 637-650 (Sept. 10, 2001)**
Chapman, Nancy J.; Howe, Deborah A (2001)

Abstract: The accessory apartment in North America - defined as the addition of a small, separate living unit within a detached single-family house - has been advocated as a housing alternative allowing older people to 'age in place'. Based on a survey of owners of accessory units built in Seattle, Washington State, that were developed since legalization in 1994 and a literature review, this research explores the extent to which accessory apartments are benefiting the elderly. Although only 14 percent of the owners and 11 percent of the tenants in Seattle were over 65, there is evidence that such apartments serve a higher proportion of older persons over time. Forty-three percent of the apartments were perceived to be accessible to people with disabilities. Advocates of older adults are advised to target middle-aged and young-old to encourage the development of accessory apartments. Age restrictions within zoning ordinances may be counterproductive by prohibiting their development by owners who have the energy and resources to undertake such a task.

Accessory Apartments in Single-Family Housing -- New Brunswick, NJ: Center for Urban Policy Research. *Gellen, Martin (1985)*-Monograph includes bibliographical references and index. Introduction - "This book examines accessory apartment conversions as an emerging trend in American housing. It also assesses their potential as an instrument of local and national housing policy. As the reproduction cost of housing has increased, consumers have begun to make more intensive use of existing dwellings. Accessory apartment conversions represent one form of this response..." (p. xiii)

Accessory Rental Units in the Portland Area: A Guide for Design, Development and Management/Institute of Portland Metropolitan Studies--Portland, OR: Portland State University, School of Urban and Public Affairs. *Seltzer, Ethan; Perry, Theodis (1995)*

Introduction - "...Since we are long past the era when government could be looked to for the provision of large numbers of affordable housing units, we need to collectively explore new or alternative methods that augment the efforts that government bodies will be making. Hence the purpose for this publication. One of the fastest ways to double the housing supply would be to allow every single-family house to serve as a duplex. Surely not all homeowners would be interested. However, for those that are, the rules ought to be clear and the goal of creating an additional unit achievable."

Accessory Units Resource Guide: The State of the Art -- Los Angeles, CA: Hare Planning & Design, 1993. *National Resource and Policy Center on Housing & Long Term Care (1993)*

Full text also available at: <http://www.aoa.gov/Housing/accunits.html>

"What are Accessory Units? The term 'accessory unit' is a general term used to refer to separate units typically created in the surplus space within a single family home. Accessory units include accessory apartments, accessory cottages, and elder cottage housing opportunity housing." - (p. 2)

Aging and Smart Growth: Building Aging Sensitive Communities/Funders' Network for Smart Growth and Livable Communities -- Miami, FL: Collins Center for Public Policy (Funders Network Translation Paper; no. 7). *Howe, Debra (2001)*

Full text also available at: <http://www.publichealthgrandrounds.unc.edu/urban/agingpaper.pdf>

Abstract: This report posits that the sprawling, automobile-dominated landscape so prevalent throughout the United States seriously limits the continued mobility and independence of older people, a reality that is of enormous consequence to the aging experience. In the years ahead, the growing number of seniors, a result of the aging of baby boomers, stands to overwhelm the system of care relied on by most seniors—family members, friends, and the social service system. The report underscores the importance of transforming our communities so that they are aging-sensitive, making it possible for people to maintain their health and independence even as needs change. Leadership is needed to support planning processes and implementation efforts that improve the interface between the aging experience and the built environment. Public education, training, research, and investment are necessary components of the action agenda that must be put into place if elders are to be full participants in—and not cut off from—our society in the coming decades.

Allowing Accessory Apartments: Key Issues for Local Officials / U.S. Dept. of Housing and Urban Development -- Washington, DC: HUD - Office of Policy Development and Research (Report no. HUD-PDR-747). *Hodges, Samuel J.; Goldman, Ellis G. (1983)*

Introduction – “A combination of factors, including smaller households, sharply rising housing costs, and general economic conditions has led to a growing interest in the creation of accessory apartments in single-family homes. Accessory apartments are self-contained dwelling units created from existing space, including separate kitchen and bath facilities and a separate entrance.” (p. 3).

Alternative Housing Arrangements: A Selected Information Guide / U.S. Dept. of Housing and Urban Development--Washington, DC: HUD-Office of Policy Development and Research. *Hare, Patrick (1985)*

Introduction - "Alternative living arrangements is the collective name for shared housing, household matching services, accessory apartments, and ECHO housing or granny flats -- a new name for old ideas with new relevance. As the demographics in the United States change, these forms of housing can become attractive options for the growing numbers of single persons, small families, and older persons seeking housing to fit their needs and their budgets..." (p. 1).

A Cottage for Sale: Low-Cost ‘Granny Flats’ Combine Proximity with Privacy. *The Washington Post - 118, 330 - Tues. ed., col. 1, p.WH9- Hamilton, M. (1996 Oct 31)*

Abstract: "This might offer an opportunity for people to take care of their older relatives without huge expenses," said George Gaberlavage, a senior analyst in the American Association of Retired Persons Public Policy Institute. "What if you could put one of these housing units on your land and it was tastefully done and the community was assured that it's going to be for a relative and not for

rental purposes? It might be a great way of helping families." [Marlys] Marshall had a unit installed in her garage that allows her mother and father to live nearby. Her mother became disabled after falling and breaking a hip in 1991. Marshall's father was able to care for his wife until last March, when spinal degeneration left him confined to a wheelchair...

E.C.H.O. Housing: A Review of Zoning Issues and Other Considerations -- Washington, DC: American Association of Retired Persons - Report includes bibliographical references. *Hare, Patrick H.; Hollis, Linda E. (1983)*

Introduction - "This booklet represents a review of the technical zoning issues raised by Elder Cottage Housing Opportunity (ECHO) units, small temporary units placed in side or rear yards to enable adult children to take care of aging parents..." (p. 4).

Everything's Relative. Builder - Vol. 22, no. 13 - p. 200(1) *Weber, C. (1999, October)*

Abstract: Planned community development Amelia Park in Amelia Island, FL, combines conventional land planning and architecture inspired by history. The popularity of the development reflects in the fact that more than 50% of its units have already been sold. All Amelia Park homes including the townhouse models have a standard detached rear-loaded garage. However, the granny flats above are zoned as rental units and can be used for home offices, studios or extra living space.

Great Expectations. Builder - Vol. 23, no. 7 - p. 124-134 *Weber, C. (2000, June)*

Abstract: A booming economy and buyers with more sophisticated tastes have compelled the home building industry to provide innovative plans and design details usually reserved only for custom houses. Demographic shifts are creating new family situations and a need for niched products to accommodate those lifestyles. One solution to maintaining household peace is providing what used to be called a granny flat or in-law suite. Today's updated version of this old-fashioned idea is a flexible bonus space with a separate entrance that can perform multiple functions. Most households now have 2 computers, and people from 8 to 80 need home space to work, surf, and play. In smaller square footages, Internet alcoves are sufficient.

How to Make Housing Affordable: Let People Subdivide Their Homes. U.S. News & World Report - Vol. 121, no. 26 - p. 51-(2) *Maass, P. (1996, Dec 30)*

Abstract: The high cost of housing can drive people to poverty as they pay more than half of their gross income for a roof over their heads. Zoning laws in many cities should be changed to allow people to build accessory apartments to lower costs for themselves as well as others and provide a form of security.

Installations of Accessory Units In Communities Where They Are Legal -- Washington, DC: Hare Planning & Design. *Hare Planning & Design (1990)*

Introduction: Accessory units as used here includes both accessory apartments and accessory cottages. Accessory apartments are complete, separate living units installed in the surplus space in single family homes. The potential of accessory apartments to provide housing stems from the fact that the baby boom has been followed by an empty nester boom, or more technically, by underutilization of single family housing stock.

New Urban and Standard Suburban Subdivisions: Evaluating Psychological and Social Goals / American Planning Association -- Chicago, IL: APA, 2001. Article includes bibliographical references. **Journal of the American Planning Association - Vol. 67, no.4, Autumn 2001 (p. 402-419)** *Brown, Barbara B.; Cropper, Vivian L. (2001)*

"Residents of both subdivisions were interviewed about their sense of community, neighborliness, neighborhood uses, attitudes toward diverse neighborhoods, and support of distinctive New Urbanist residential design strategies: accessory apartments, reconfigured house/garage siting, and narrow alleys behind homes." - (p. [1]).

Second Units -- Sacramento, CA: The Dept. - Division of Housing Policy Development. June 1995 reprint of December 1990 technical assistance paper. *California. Dept. of Housing and Community Development (1995)*

"Second units, also referred to as 'in-law apartments', 'granny flats', or 'accessory apartments', may offer an additional source of affordable housing to homeowner and the community. By promoting the development of second units, a community may ease a rental housing deficit, enable homeowners with declining incomes to supplement their incomes, and make more economical use of land and existing infrastructure." - (Cover).

Second Units: An Emerging Housing Resource – San Francisco, CA: People for Open Space (POS Housing/Greenbelt Program technical report; no. 2-E). Report includes bibliographical references. *Verrips, Bert (1983)*

Summary: The conversion of existing single-family dwellings to add secondary units is a potentially effective, environmentally sensitive, and economically feasible response to the Bay Area's serious housing problem. However, because of resident concerns with the impacts of second units on existing neighborhoods, the development of such units is either illegal or severely restricted in most communities. The purpose of this report is to evaluate the costs and benefits of second units, and consider what regulations might be appropriate to respond to the impacts of second units while still encouraging their development.-(p. iii).

Secondary Units (Accessory Apartments and ECHO Housing: A Step-by-step Program Development Guide -- Albany, NY: Rural Aging Services Partnerships (R.A.S.P. Resource manual; no. 6). *Pollak, Patricia B. (1986)*

"Installing an accessory apartment in a single-family home can provide an older homeowner with a source of income. In addition, tenants can often provide assistance with home maintenance and other chores. The presence of a tenant can also add a sense of security for an older homeowner. Yet privacy and independence need not be sacrificed. For the community, accessory apartments represent an increased supply of small apartments created by more intensively using existing housing resources."- (p. 5).

Small Solutions: Second Units as Affordable Housing: The Evaluation of The Double Unit Opportunity Program -- San Francisco, CA: The Fund. *San Francisco Development Fund (1988)*

For many California residents, suitable housing at an affordable level is simply unavailable. One potential source of affordable rental housing is to use under-utilized space in single-family neighborhoods to create second units. These small dwelling units, also known as accessory apartments, in-law apartments, or granny flats, involve no land acquisition costs and minimal new infrastructure." - (p. 1).

Two-By-Two: A Status Report on Accessory Apartments in the Bay Area -- Chicago, IL: American Planning Association. **Planning - Vol. 54, no. 11 - p. 22-23** *Lawrence, J.; Watson, L. (1988, November)*

"After three years of experience with accessory apartments, or "second units" as they are called in the Bay Area, the San Francisco Development Fund has concluded that this is an innovation that works." - (p. 22).

Your New Neighbor: Mom - Instead of Scattering, More Extended Families are Living in the Same Town... or on the Same Block: June Fletcher Reports on 'Granny Flats,' In-laws Next Door and Big Brother Down The Street. **Wall Street Journal - (Eastern ed.) Fri. ed., col. 2, W1-Fletcher, J. (2002, Dec 20)**

Abstract: Well, sometimes. At first, Jo Ann and John Wydra were delighted when his sister, Betty O'Connor, decided to move in next door to their Huntley, Ill., home. They even put her up for a couple of months, until she got settled. But then she started going through their messy closets and "straightening up" Mrs. Wydra's exuberant cottage-style garden (her own flowers are all lined up in neat rows). "She's a perfectionist; we're not," says Mrs. Wydra, whose husband is now joking about putting in an electric fence. All this togetherness is a big change from the years when generations tended to move farther apart. But with the nation's retired population growing sharply, more older parents started moving into the same neighborhood as the kids. Now these multigenerational communities are moving to a new level as more families pull together in slow times.

Tentative List of Contacts

The Department is in the process of creating a list of organizations and local governments to assist in the implementation of Chapter 1062. The following list consists of a few local governments that have adopted second unit ordinance to meet the intent of Chapter 1062, including submittal to the Department. If you have any suggestions for potential organization or local governments to be added, please contact Paul Mc Dougall at (916) 322-7995.

| | | |
|--------------------|--------------------|---------------------|
| City of Claremont | City of Healdsburg | City of Livermore |
| City of Pleasanton | Sacramento County | Town of San Anselmo |
| City of Santa Ana | City of Santa Rosa | City of Santee |
| City of Saratoga | City of Larkspur | |

ATTACHMENT 2

Government Code Section 65583.1

A Portion of State Housing Element Law

Chapter 1062, Statutes of 2002 **(Assembly Bill 1866)**

A. IMPLEMENTATION DISCUSSION FOR GOVERNMENT CODE SECTION 65583.1

Introduction

Chapter 1062, Statutes of 2002 (AB 1866), clarified how second-units can be counted toward the adequate sites requirements in housing element law.

A housing element must identify adequate sites with zoning and development standards for a variety of housing types to meet a locality's share of the regional housing need in total and by income group (Government Code Section 65583(c)(1)). Local governments employ many techniques to identify adequate sites, including an inventory of vacant and underutilized land with a variety of zoning and development standards, upzoning, rezoning and mixed-use zoning. Chapter 1062 clarifies existing law and practice for local government's to identify the realistic capacity of new second-unit development to meet a portion of the adequate sites requirement.

In essence, local governments may count the *realistic* potential for new second-units *within the planning period of the element* considering the following factors: (1) the number of second units developed in the prior planning period; (2) an estimate of potential increase due to new policies, programs and incentives that encourage the development of second-units; and (3) other relevant factors.

The following is a discussion of the new legislation to assist localities in carrying out the provisions of Chapter 1062 (AB 1866). For an identification of the text of AB 1866 and changes to Government Code Section 65583.1, see the second section of this attachment, titled "Changes to Government Code Section 65583.1".

Resources and Incentives

The statute enables existing and proposed policies and programs, including incentives and regulatory relief, to support a local government's estimate of the realistic capacity of second-unit development in the planning period as part of the adequate sites requirement. Policies and programs encouraging the development of second-units can help to achieve realistic capacity of second-units in the planning period (see Attachment 1 for a discussion of ways to encourage the development of second-units).

The Need for Second-Units

In considering the need for second-units, a local government should evaluate household characteristics such as tenure, family type, household sizes, and other factors in relation to the types of units (i.e., number of bedrooms and minimum unit size requirements) allowed under the second-unit ordinance.

Other Relevant Factors

To demonstrate the realistic capacity for second-units to fulfill a portion of the adequate sites requirement, local governments should discuss and analyze other relevant factors that affect the potential for second-units in the planning period. For example, a housing element should provide an analysis of the anticipated affordability of second-units. The purpose of this analysis is to determine the housing need by income group that could be accommodated through second-unit development. Second-units are not required to be deed restricted for certain income groups.

The anticipated affordability of second-units can be determined in a number of ways. For example, a community could survey existing second-units for their rents and include other factors such as square footage, number of bedrooms, amenities, age of the structure and general location. The survey could be supplemented with analysis that describes the general range of rents and an estimate of rents for new second-units based on the variables within the survey. Another method could examine market rates for reasonably comparable rental properties to determine an average price per square foot in the community. This price can be applied to anticipated sizes for second-units to estimate the anticipated affordability of second-units.

Another relevant factor that should be analyzed is the impact of development standards in the second-unit ordinance (e.g. impact on the cost and supply of second-units). An analysis should address development standards (i.e., heights, setbacks, minimum unit sizes, lot coverage, parking standards, etc.), what zones allow second-units, architectural review standards, fees and exactions, any other components of the ordinance potentially impacting or constraining the development of second-units.

Finally, a community should analyze the extent to which physical and environmental constraints and infrastructure capacity influence its ability to accommodate the proposed capacity for second-units in the planning period.

Tracking Second Units

A community should track second-unit construction to monitor the effectiveness of their efforts to promote second-units and to facilitate the next housing element update. The first step in tracking second-units is to ensure that second-units are being counted as they are constructed. Most localities would count second-units as part of normal functions for building permit data. In any case, a locality should have some function that records the number of second-units built and an estimate of affordability at the time of occupancy, where feasible. Consistently maintained records will reveal trends in second-unit construction that may support a locality's efforts to count realistic capacity for second-units or may identify limitations that should be addressed to better promote additional second unit development.

In addition, a locality could annually summarize the number of second-units built; by which income group they are estimated to be affordable, as part of the annual general plan progress report (Government Code Section 65400). An annual summary will ensure a complete record and facilitate future updates of the housing element.

Chapter 1062, Statutes of 2002 (Assembly Bill 1866)

B. CHANGES TO GOVERNMENT CODE SECTION 65583.1

Government Code Section 65583.1 was amended by Chapter 1062 (AB 1866) as follows (additions or changes in italics/underlined and deletions indicated by asterisks):

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) *Omitted – Chapter 1062 did not have changes to this subsection*

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) *Omitted – Chapter 1062 did not have major changes to this subsection, only minor clean up*