



*Prepared for the August 26, 2013
Housing Element Steering Committee Meeting*

Secondary Dwelling Unit Amnesty

Intent of Secondary Dwelling Unit Amnesty Program

Program H4.F in the recently adopted City of Menlo Park Housing Element calls for undertaking an amnesty program for secondary dwelling units that do not have permits. The purpose of the program is to increase the city's stock of legal and affordable housing that is both safe and habitable. By design, secondary dwelling units are smaller than the principal residence, and are sited in a way to preserve the single-family character of a neighborhood. The City recently adopted a revised secondary dwelling unit ordinance, effective July 11, 2013, covering new secondary dwelling unit standards and permit procedures (Chapter 16.79 of the Zoning Ordinance). An FAQ sheet on the new secondary dwelling unit standards and a handout on accessory buildings and structures are attached to this memo for reference. In addition, the memo includes a summary table comparing the relevant development regulations for each of the single-family zoning districts, detached secondary dwelling units, and accessory structures.

Background on Secondary Dwelling Unit Amnesty Programs

"Amnesty Programs" permit owners of illegal secondary dwelling units to come forward during a certain time period and legalize their units. One of the most successful programs elsewhere, in terms of legalizing and upgrading such units was undertaken by the City of Daly City. Daly City made a conscientious effort to reduce and clearly define the standards that would need to be met to legalize a unit and to find ways for the units to meet those standards (such as allowing required onsite parking to be located in widened driveway areas). The primary objective was to improve the health and safety conditions within these units. There was strong political support for the program and a major marketing effort to inform people about the program and to convince owners to legalize second units. All owners were provided with a brochure that described the exact standards that would need to be met, and offered substantially reduced fees to voluntarily apply. There was also wide press coverage and door-to-door efforts by volunteers.

Other programs have had different objectives and have resulted in fewer units being legalized. In some cases, a less successful amnesty program set standards which either could not be met

or which added more restrictions. The challenge is to develop standards that will not discourage owners from seeking legalization of the units voluntarily. Jurisdictions implementing amnesty programs within the last 10 years include the Town of Fairfax, County of Marin, City of San Carlos, City of San Rafael and the City of Ventura. A comparison table developed by the City of Malibu in 2012 is attached to this document.

Based on the amnesty programs reviewed, it appears that a high percentage of amnestied secondary dwelling units are likely to have health and safety violations that put tenants at risk. Amnesty Programs provide an opportunity to substantially reduce these problems and provide additional lower cost legal units in a tight housing market. Even without Amnesty Programs, illegal units are discovered routinely, and cities must either legalize these units or eliminate them. Providing standards and processes that make it easier for new small second units to be permitted would also make it easier for illegal units to be legalized and upgraded. (See the [Marin County Second Unit Amnesty Program](#) for another successful amnesty program).

Possible Approach to Secondary Dwelling Unit Program

There have been a number of cities in the Bay Area and elsewhere throughout California that have undertaken amnesty programs. All of the amnesty programs reviewed as part of this effort strive to balance incentives for owners to want to legalize their unit with requirements and standards for the unit that must be met as part of the legalization process. Below are preliminary ideas for Menlo Park's Secondary Dwelling Unit Amnesty Program to be reviewed and discussed with the Housing Element Steering Committee at its meeting on August 26, 2013:

1. **Safety.** Ensure that all second units are safe and habitable.
2. **Limited Timeframe.** Create a window of time during which owners of illegal second units may apply for amnesty and legalization of their unit.
3. **Publicity.** A substantial effort should go into the publicity for the program. Citywide noticing as well as targeted notices in neighborhoods with potential illegal units.
4. **Assistance.** Provide information and technical assistance to people who want to learn more about the program and understand the process, apply for amnesty and gain approval.
5. **Enforcement.** Establish an enforcement mechanism after the amnesty program has expired to take action on non-compliant second units.

Key Issues and Options for Discussion by the Steering Committee

Below is a table of potential topics, related questions and possible options to address the issue for discussion with the Housing Element Steering Committee at the August 26, 2013 meeting.

POTENTIAL SECONDARY DWELLING UNIT AMNESTY PROGRAM CRITERIA		
Topic	Question	Options
1. Date of Construction	Should the program eligibility be based on when construction occurred?	<p>Factors to consider:</p> <ol style="list-style-type: none"> 1. Did the construction occur prior to incorporation of the City (1927)? 2. Did the construction occur prior to annexation into the City (varies)? 3. Did construction occur prior to adoption of zoning (1957)? 4. Did construction occur prior to the establishment of Floor Area Limit (1989)? 5. Did construction occur prior to the first secondary dwelling unit ordinance (1983)?
2. Permits	Was the construction done with a permit (issued either by the City or County)?	<ol style="list-style-type: none"> 1. Establish different criteria for permitted versus unpermitted structures. 2. Keep the review process the same.
3. Purpose	What was the original intent of the structure (e.g., garage, garden shed, pool house, home office, workshop, etc.)?	<ol style="list-style-type: none"> 1. Create a different review process for structures that received building permits (but not for conversion to a secondary dwelling unit) than unpermitted structure. 2. Keep the review process the same. 3.
4. Zoning Ordinance Compliance	How does the structure comply with the recently modified Zoning Ordinance requirements for secondary dwelling units?	<ol style="list-style-type: none"> 1. Only structures that comply with the current secondary dwelling unit ordinance requirements can be eligible for the amnesty program. 2. Structures that do not comply with the current secondary dwelling unit ordinance should be removed.

POTENTIAL SECONDARY DWELLING UNIT AMNESTY PROGRAM CRITERIA

Topic	Question	Options
		<ol style="list-style-type: none"> 3. Structures that do not comply with the current secondary dwelling unit ordinance may proceed through a new process and be reviewed under new development regulations created as part of the amnesty program (e.g., allow one development regulation to be non-compliant, subject to review and approval of the Community Development Director).
<ol style="list-style-type: none"> 5. Building Code Compliance 	<p>How does the structure comply with the current Building Code requirements for secondary dwelling units?</p>	<ol style="list-style-type: none"> 1. The structure will need to meet all current Building Code requirements. 2. The structure will need to meet, at a minimum, all code requirements related to the following: <ol style="list-style-type: none"> a. Life Safety (electrical, emergency egress, and fire-rated walls) b. Structural c. Sanitation Facilities d. Habitable (ventilation, minimum room dimensions, minimum ceiling heights) 3. The structure will need to meet the building code requirements in effect at the time the structure is determined to have been built.
<ol style="list-style-type: none"> 6. Enforcement 	<p>What are the triggers for action on non-compliant uses and/or structures?</p>	<ol style="list-style-type: none"> 1. Require a zoning compliance letter for all single-family zoned properties prior to the sale of a property. 2. Establish a period of time which the amnesty program is in effect and then take a pro-active stance on code enforcement for a certain period of time instead of current practice of responding to complaints.
<ol style="list-style-type: none"> 7. Incentives/Tools 	<p>What are the incentives/tools to encourage legalization of secondary dwelling units?</p>	<ol style="list-style-type: none"> 1. Reduce permitting fees. 2. Relaxation of requirements (e.g., undergrounding of utilities, sidewalk repair, etc.). 3. Modify the existing development regulations of accessory structure to more clearly distinguish

POTENTIAL SECONDARY DWELLING UNIT AMNESTY PROGRAM CRITERIA

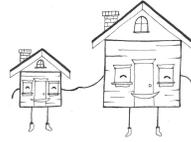
Topic	Question	Options
		<p>between how accessory structures are used (e.g., limit the number of plumbing fixtures, increase the setbacks for certain types of accessory structures like pool houses, etc.).</p>
<p>8. Garage Conversions and Other Illegal Construction</p>	<p>What should be done about properties that inquire about the amnesty program but are unable to comply with the current secondary dwelling unit requirements or amnesty program?</p>	<ol style="list-style-type: none"> 1. Active code enforcement. 2. Require removal/conversion of the structure or parking compliance (for garage conversions) within a certain time period. 3. Allow the structure to remain so long as life safety requirements are met and a deed restriction is placed on the property which requires that the property come into compliance upon sale of property.



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FAQs



SECONDARY DWELLING UNITS

What is a secondary dwelling unit?

A secondary dwelling unit, also sometimes called a “granny unit,” is an ancillary residential dwelling unit that provides independent living facilities and includes permanent provisions for living, sleeping, cooking and sanitation independent of the main dwelling unit on the lot.

What are the requirements for a secondary dwelling unit?

On June 11, 2013, the City Council adopted an ordinance to amend the Secondary Dwelling Unit ordinance (Chapter 16.79) of the Zoning Ordinance. The proposed modifications are intended to provide greater flexibility in design and function of the living unit. Please see the reverse side of this handout for a summary of the revised development standards, which become effective on July 11, 2013.

Where are secondary dwelling units permitted?

Secondary dwelling units are permitted on all single-family zoned residential lots that are 6,000 square feet or greater in area. Only one secondary dwelling unit is permitted per qualifying lot.

Is a secondary dwelling unit an accessory building?

No. Secondary dwelling units and accessory buildings each have their own development regulations. Secondary units and accessory buildings, however, are both counted towards the maximum floor area limit permitted on a lot.

What permits are needed to build a secondary dwelling unit?

Secondary dwelling units that are designed in compliance with the development regulations established in Chapter 16.79 of the Zoning Ordinance are not subject to discretionary review. Modifications to certain development regulations may be permitted subject to approval of a use permit by the Planning Commission. In all cases, building permits are required prior to any construction.

What should I do if I have a lot with a secondary dwelling unit and I am not sure if it has the proper permits?

Contact the Menlo Park Planning or Building Divisions for research on the property. The County of San Mateo Assessor’s Office can also be a good resource for historical property information.

In addition, this Fall the City will be initiating an amnesty program for secondary dwelling units that do not have permits. Details of the program are to be determined. To keep informed about the process, please subscribe to the Housing Element project webpage at www.menlopark.org/athome.

Questions?

If you have additional questions or are proposing to construct a secondary dwelling unit, please contact Planning staff at (650) 330-6702 or stop in during counter hours, Monday-Thursday, 1 p.m. – 5:30 p.m. and alternate Fridays, 1 p.m. – 5 p.m. to help ensure that your project will comply with applicable Zoning Ordinance requirements.

Summary of Secondary Dwelling Unit Regulations
Chapter 16.79 of the Zoning Ordinance
(Effective July 11, 2013)

Unit Type		Attached to main dwelling unit or detached
Minimum Lot Size		6,000 sf
Density		No more than 1 secondary dwelling unit per lot
Minimum Yards	Attached	Comply with minimum yard requirements for zoning district
	Detached	Comply with minimum yard requirements for zoning district, except minimum rear yard requirement is 10 feet and interior side and rear yards may be reduced to five (5) feet, subject to written approval of the owner(s) of the contiguous property abutting the portion of the encroaching structure.
Unit Size		Maximum of 640 sf
Number of Bedrooms and Bathrooms		1 bedroom (maximum) 1 bathroom (maximum)
Height	Attached	Comply with the height requirement for the zoning district
	Detached	9 ft. (maximum wall height)* 17 ft. (maximum overall height) *When a secondary dwelling unit is located within a flood zone, the maximum wall height can be increased proportionally to the minimum amount needed to meet the flood zone requirements for a habitable structure
Parking		1 (covered or uncovered); tandem ok; permitted within required interior side yard and within the front yard if no more than 500 sf of the front yard is paved for motor vehicles and a minimum side setback of 18 inches is maintained
Consistency		Comply with all applicable development regulations for the single-family zoning district and building code requirements
Aesthetics		Unit shall have the colors, materials and textures and architecture similar to main dwelling unit
Tenancy		Property owner shall occupy either the main or secondary dwelling unit
Process		Projects that comply with all of the development regulations are not subject to discretionary review. A modification to the development regulations may be granted through the use permit process by the Planning Commission. Building permits are required prior to any construction.

For the full Zoning Ordinance language, please visit the Housing Element webpage at www.menlopark.org/athome



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ACCESSORY BUILDINGS AND STRUCTURES

Accessory buildings and structures are subordinate buildings and structures, the use of which is incidental to that of the main building or buildings on the same lot or building site. The regulations for accessory buildings and structures are located in Sections 16.04.110 and 16.68.030 of the Zoning Ordinance.

Examples of accessory buildings and structures include garages and carports, storage sheds, built-in barbeque grills, play structures, and detached arbors. Secondary dwelling units are not considered accessory buildings, and are regulated separately under Chapter 16.79 of the Zoning Ordinance. In addition, garden features as defined in Section 16.04.322 of the Zoning Ordinance are not considered accessory structures.

If structurally attached to the main building, accessory buildings and structures must comply with all development regulations that apply to the main building, with the additional requirement that all garage or carport entrances facing a property line must be located at least 20 feet from that property line.

If detached from the main building, accessory buildings and structures must comply with the following development regulations:

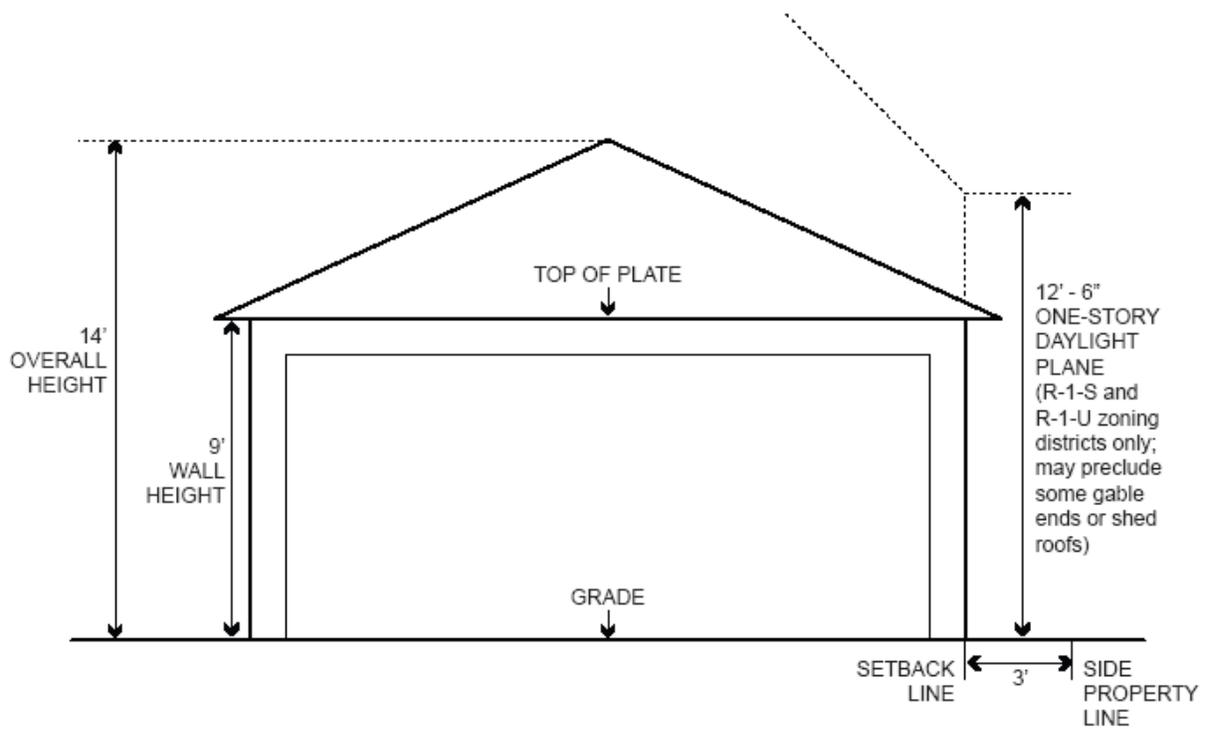
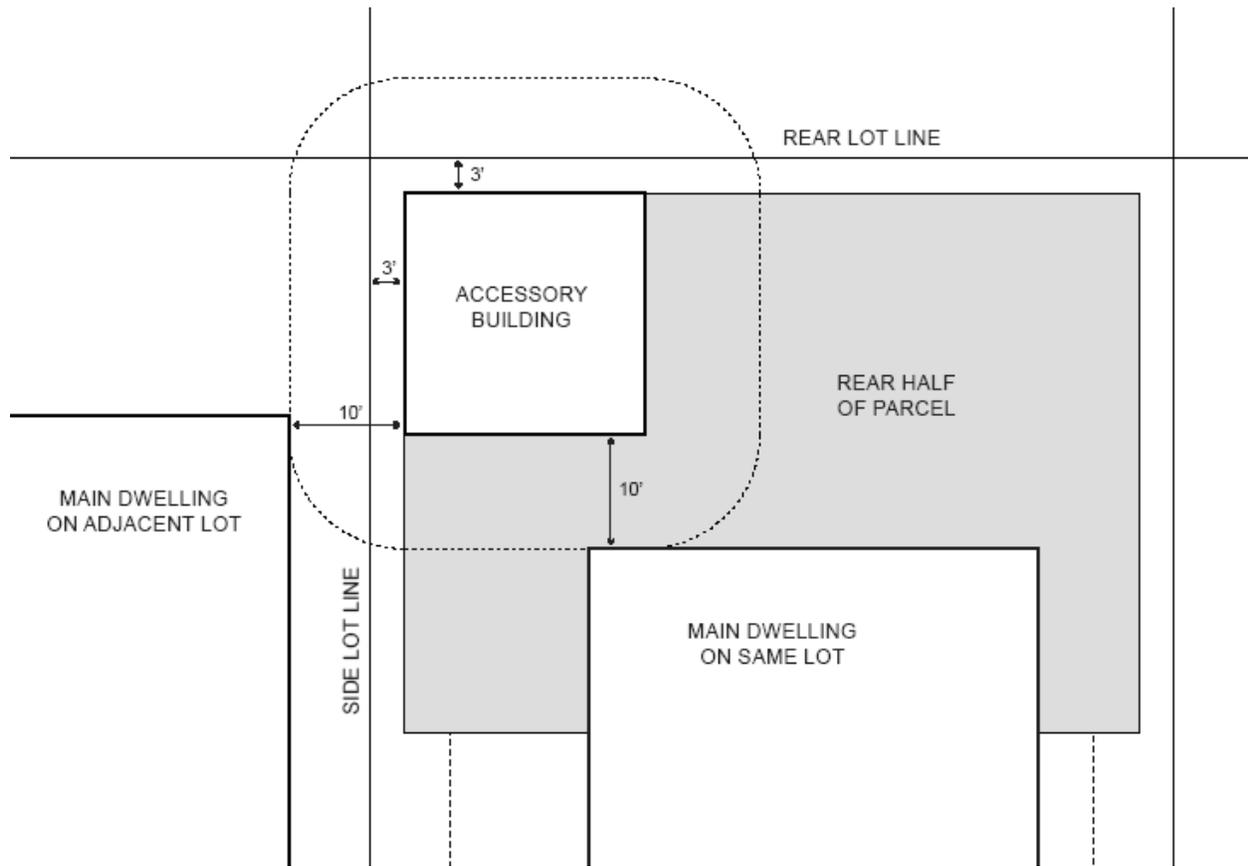
Gross Square Footage Limit (Total per Parcel)	700 square feet or 25 percent of the gross square footage of the main building (whichever is greater) ¹
Location	Rear half of lot
Setback, Side (Interior)	3 feet ^{2,3}
Setback, Side (Corner)	Equal to the required main building setback of adjacent street-facing lot
Setback, Rear	3 feet ²
Setback, Alley	5 feet ⁴
Setback from Any Dwelling Building	10 feet
Height, Overall	14 feet
Height, Wall	9 feet
Daylight Plane (One Story)	See Section 16.67.020 of the Zoning Ordinance (R-1-U and R-1-S zoning districts only)

¹ Higher gross square footage limits may be allowed, subject to use permit approval by the Planning Commission.

² Some parcels have public utility or other easements along rear and/or side property lines that prohibit the construction of structures within them. If you are not certain whether such easements exist on your property, please review the parcel's title report and ask to see the original subdivision or parcel map at City offices.

³ Parking is not permitted within the main building side yards, so detached garages and carports are required to meet the main building setback requirements, unless the garage or carport is located at its absolute rear-most location.

⁴ If the garage or carport entrance faces the alley, a greater setback may be required to meet Transportation Division guidelines regarding total backup distance.



Single-Family Zoning District Summary

	R-E	R-E-S	R-1-S & R-1-S (FG)	R-1-U	R-1-U (LM)	
Minimum Lot Area	20,000 sf	15,000 sf	10,000 sf	7,000 sf	4,900 sf (before 6/1/06) 7,000 sf (after 6/1/06)	
Minimum Lot Width/Depth	110 ft./130 ft.	100 ft./100 ft.	80 ft./100 ft.	65 ft./100 ft.	40 ft./75 ft.	
Main Dwelling Unit						
Minimum Yard	Front	20 ft.				
	Rear	20 ft.				
	Side, Interior	30 ft. total; minimum 10 ft. on one side	25 ft. total; min. 10 ft. on one side	10 ft	10% lot width; min. 5 ft., max. 10 ft.	5 ft.; 3 ft. with neighbor approval or use permit
	Side, Corner	min. 15		12 ft		
Height		Lots >20,000 sf – 30 ft. Lots < 20,000 sf – 28 f			One-story – 20 ft. Two-stories – 28 ft.	
Detached Secondary Dwelling Units						
Minimum Yard	Front	20 ft.				
	Rear*	10 ft.				
	Side, Interior*	30 ft. total; minimum 10 ft. on one side	25 ft. total; min. 10 ft. on one side	10 ft.	10% lot width; min. 5 ft., max. 10 ft.	5 ft.; 3 ft. with neighbor approval or use permit
	Side, Corner	min. 15 ft.		12 ft.		
Height		9 ft. wall height; 14 ft. total height				
Detached Accessory Structures						
Minimum Yard	Front	Varies (must be on rear half of lot)				
	Rear	3 ft. (5 ft. from an alley)				
	Side, Interior	3 ft. (5 ft. from an alley)				
	Side, Corner	Varies; cannot project beyond setback required on adjacent lot				
Height		9 ft. wall height; 17 ft. total height				

* Interior side and rear yards may be reduced to 5 feet, subject to written approval of the owner(s) of the contiguous property abutting the portion of the encroaching structure.

Single-Family Zoning District Summary

		R-E	R-E-S	R-1-S & R-1-S (FG)	R-1-U	R-1-U (LM)
Floor Area Limit (FAL)	Lots less than 5,000 sf	The FAL will be determined by the Planning Commission through the review of a use permit.				
	Lots Between 5,000-7,000 sf	2,800 sf				
	Lots greater than 7,000 sf	For all single-family districts except R-1-S (FG) = 2,800 square feet + 25% (lot area - 7,000 square feet) For R-1-S(FG) = 2,800 square feet + 20% (lot area - 7,000 square feet)				
Unit Size	Secondary Dwelling Unit	640 sf**				
	Accessory Building/ Structure	700 square feet or 25 percent of the gross square footage of the main building (whichever is greater)**				

**Additional square footage may be granted, subject to approval of a use permit by the Planning Commission.

Definitions

16.04.110 Building and/or structure, accessory. "Accessory building and/or structure" means a subordinate building and/or structure, the use of which is incidental to that of the main building or buildings on the same lot or building site; but not including any building used for living or sleeping quarters.

16.04.270 Dwelling, single family. "Single family dwelling" means a building, containing not more than one kitchen, designed for, or used to house not more than one family, including all necessary employees of such family.

16.04.295 Dwelling unit, secondary. A "secondary dwelling unit" means a dwelling unit on a residential lot which provides complete independent living facilities for one or more persons, and shall include permanent provisions for living, sleeping, eating, cooking and sanitation independent of the main dwelling existing on the residential lot.

16.04.314 Floor area limit. "Floor area limit" means the maximum permitted floor area for a property within the single-family residential or R-2 zoning districts. For the purpose of determining the floor area limit, neither the panhandle extension of a panhandle lot, nor a private driveway or access easement across another lot to a panhandle lot, shall be included as part of the panhandle or other lot.

	PROGRAM TERM & number of units legalized	PROGRAM SUCCESS	ELIGIBILITY REQUIREMENTS	SECOND UNIT SIZE	SECOND UTILITY METERS
FAIRFAX	<p><u>2 years</u> July 2007- August 2008, March 2009 - March 2010</p> <p>2 units were legalized during this period</p>	<p>According to Jim Moore, Director of Planning & Building Services: The program was not very successful due to the sprinkler and parking requirements.</p> <p>Will re-draft the ordinance over the next year with relaxed requirements for parking and sprinklers in the downtown area.</p>	<ul style="list-style-type: none"> Second units must have been constructed prior to December 31, 2006 (adoption of the current Housing Element). 	320 ft ² - 700 ft ²	No separate metering requirements
MARIN COUNTY	<p><u>2 years</u> 2007-2008 (1 year + 1 year extension)</p> <p>~50 units were legalized during this period</p>	<p>Initial program extended for an additional year; success/high number of units legalized due to this being a county-wide program.</p>	<ul style="list-style-type: none"> Property owner must be a resident of the primary or secondary unit. Second units must have been constructed prior to June 3, 2003 (adoption of the current Housing Element). Units built after June 2003 receive the 50% fee reduction, but must comply with the County Code. 	220 ft ² - 750 ft ² (units exceeding 750 ft ² may be considered if established prior to 1987)	Recommended, but not required
SAN CARLOS	<p>Ongoing (indefinite) program; <i>emphasis on safety</i>, not increasing number of affordable housing units</p> <p>slow trickle of applicants (in effect for 8-10 years, according to Chris Valley, Building Official)</p>	<p>This program is considered successful, but is markedly different from other programs as it:</p> <ol style="list-style-type: none"> is ongoing; is concerned with safety (not affordable housing); and does not waive / reduce fees. 	<ul style="list-style-type: none"> Provide evidence that the second unit was construction prior to January 1, 2003 (adoption of the current Housing Element). Property inspection. Correct health and safety defects. Pay all required fees. Demonstrate compliance with standards at the time of first use. 	Not to exceed 640 ft ²	Optional
SAN RAFAEL	<p><u>1 year</u> (Sept. 2003-Sept. 2004)</p> <p>4 units were legalized during this period</p>	<p>Modest program success. Additional units were legalized as part of Marin County's 2007-2008 program.</p>	<ul style="list-style-type: none"> Property owner must be a resident of the primary or second unit. Second units must have been established prior to June 3, 2003 (adoption of the current Housing Element). Units built after June 2003 receive the 50% fee reduction, but must comply with the current code. 	1,000 ft ² maximum	No separate metering requirements
VENTURA	<p><u>Ongoing</u> ~1.5 years Summer 2011- December 2012</p> <p>21 applications filed as of June 15</p>	<p>According to Andrew Stuffer, Housing Authority of the City of San Buenaventura: The city is already considering the program a success. They are anticipating 10-20 additional applicants by the end of the year.</p>	<ul style="list-style-type: none"> Units in use before 1978 are exempt from most fees—can be legalized for ~\$600. Units in use before 2004 are exempt from most other City regulations. Units built after 2004 must meet current codes. 	--	No separate metering requirements

<u># OF UNITS ALLOWED</u>	<u>USE OF SECOND UNIT</u>	<u>NON-CONFORMING SECOND UNITS</u>	<u>ONSITE WASTEWATER TREATMENT SYSTEMS</u>	<u>PARKING</u>	<u>PERMIT REVIEW AUTHORITY</u>	<u>FEES</u>
1 residential second unit per lot	Residential	--	--	1 parking space required	<ul style="list-style-type: none"> Residential Second Unit Amnesty Permits shall be approved ministerially by the Planning and Building Department Director. Permits that do not comply with applicable requirements to be reviewed by the Planning Commission. 	<ul style="list-style-type: none"> Fees reduced by 50% for Second Unit Amnesty Permits and for new applications. Fines for unpermitted second units are waived.
1 residential second unit per lot	Residential	--	<ul style="list-style-type: none"> Septic systems required to pass performance tests. Redwood tanks require replacement. During amnesty period, may adhere to Class I, II, or III system. Must adhere to Remodel & Additions Policy (with 3 exceptions). 	1 8.5' x 18' parking space required or 1 9' x 20' parking space for a constrained area (garage)	<ul style="list-style-type: none"> Second Unit Amnesty Permits shall be reviewed ministerially by the Community Development Agency Director without discretionary review or public hearing (except where such hearings are required). 	<ul style="list-style-type: none"> Fees reduced by 50% for Second Unit Permit applications and for new unit applications. Fines waived.
1 residential second unit per lot	Residential	Conformance required	--	1 parking space		<ul style="list-style-type: none"> Permit fees <u>not</u> waived.
1 residential second unit per lot	Residential	Conformance required	--	1 parking space	<ul style="list-style-type: none"> Varied review process, depending on the size and location of a second dwelling unit—the City's ministerial second dwelling review process (which requires the review of a proposed unit for compliance with the adopted development standards). 	<ul style="list-style-type: none"> Investigation fee waived during program's duration (fees were doubled following the project's end).
1 residential second unit per lot	Residential	Zoning modification may be sought for an additional fee	--	1 parking space	<ul style="list-style-type: none"> The Chief Building Official is responsible for review an decision-making (appeals to the local appeals board). Second Dwelling Unit Zoning Modifications are decided by the Director of Community Development (appeals to the Planning Commission and City Council). 	<ul style="list-style-type: none"> \$580 application fee plus development related fees.