



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: September 13, 2019

Approved

D. D. Syl

Date

9/13/19

**SUBJECT: CITY COUNCIL PRIORITY #7: ACCESSORY DWELLING UNIT
AMNESTY PROGRAM**

RECOMMENDATION

Accept staff analysis of a potential amnesty program for unpermitted accessory dwelling units as required by City Council Policy Priority #7, and provide additional input to staff.

OUTCOME

Receive Council input on program goals, elements, and framework.

EXECUTIVE SUMMARY

Consideration of an Accessory Dwelling Unit (ADU) amnesty program is Council Priority Item #7. Staff has conducted research—including best practices and an analysis of types of existing unpermitted ADUs—and developed potential elements for an ADU amnesty programs and three potential program paths: (1) permit unauthorized units under existing code, (2) permit unauthorized units with the code from the year the unit was built, or (3) improve safety standards without permitting units. Staff has outlined key considerations for a potential ADU amnesty program to solicit input from Council prior to staff completing the program design.

BACKGROUND

Council Engagement

The City Council originally proposed an amnesty program for Accessory Dwelling Units and Garage Conversions in 2016. The Council adopted this proposal as a City Council Policy Priority on March 7, 2017; it is currently ranked No. 7 on the priority list. The City Council Priority included four major items:

- (a) Eliminate any impediments to the conversion of detached garages or other accessory units to residential use;
- (b) Consider changes that would increase the number of potential lots in R-2 zones;
- (c) Study an amnesty program that would legalize illegal non-conforming accessory dwellings provided they are brought up to the standards included in the City's ordinance;
- (d) Encourage a robust public information effort to help residents understand the potential for second units, and the process for development.

Staff have completed Items (a) and (b) above and are currently completing item (d) through the parallel work to streamline the ADU permitting process and promote the ADU program.

What is Amnesty?

Government agencies typically have created amnesty programs to encourage residents to come into compliance with the requirements of a particular program or code. For example, in 2015, the State of California implemented a one-time statewide amnesty for unpaid traffic tickets and suspended driver licenses. For a limited time period, eligible drivers received relief (amnesty) from the fines, fees, and penalties for being delinquent in paying the original ticket. Similarly, San José has implemented amnesty programs in the past for unpaid Business Tax and past due library fines.

Such amnesty programs are time-limited and short-term. In the examples above, an individual had a window of time to pay an original ticket, tax, or fine, without having to pay late fees. This approach incentivizes compliance.

In other jurisdictions, ADU amnesty programs have provided property owners with a period of time in which they could bring an unpermitted ADU up to code and obtain permits without fear of code enforcement action. When the amnesty period ends, property owners who have not brought their ADUs into compliance are subject to enforcement.

Current Process for Unpermitted ADUs: Current Code

Before exploring the potential ADU amnesty program framework and paths, it is important to understand what is currently available to applicants through the City's existing voluntary process.

Currently, property owners may submit an application to legalize their unpermitted ADU voluntarily without Code Enforcement action or Building Permit fee penalty. The Code Enforcement Building Code Compliance team creates a violation folder in the permitting system and conducts an Investigative Survey for a fee to identify the various options and corrections that would be required to legalize the ADU as well as an estimate of the potential cost to the applicant. Following the Investigative Survey, the applicant can choose to a) continue the path forward to legalize the unit, b) obtain a permit to remove the unpermitted work and return the building back to its originally permitted state, or c) demolish the building altogether. The current process requires the applicant to meet current regulations ensuring the highest level of safety for permitted units. Should the property owner decide not to pursue legalizing the unpermitted unit, the violation folder is retained in the property record of the City's permitting system.

Since 1999, Code Enforcement has opened approximately 1,800 cases regarding various types of unpermitted ADU units. While Code Enforcement provides all available options to the property owner to address the unpermitted ADU, such as obtaining a permit to legalize the unit, approximately 50 percent of property owners are unable to obtain a permit either because it is cost prohibitive or the existing building cannot meet current code regulations. In these instances, the property owner usually obtains a permit to revert the unit back to its originally permitted use or demolishes it to reach compliance.

ANALYSIS

ADU Amnesty Program Goals

Following Council direction, staff clarified the overall aims of the ADU Amnesty program into two simple goals. Staff used these two goals to inform and guide the analysis of a potential amnesty program structure that follows in this memorandum.

1. **Safety:** Reduce risk to health and safety of occupants, owners, and property.
2. **Housing:** Expand the city's housing stock, particularly of safe, affordable housing.

Types of Unpermitted ADUs

In staff's analysis of existing unpermitted ADUs, four types of structures were identified: (1) Attached Garage Conversion, (2) Detached Garage Conversion, (3) Shed or Other Accessory Building, and (4) Addition to Existing Building. Each type can have a variety of issues that may create significant hurdles for the property owner to legalize their ADU unit. The following issues identify the three major categories of issues staff encounter most often and that must be addressed for a unit to receive a permit:

Building Structural Issues

This issue category generally faces the greatest impediment to legalization. Buildings in this category were often constructed without the intention to ever be used for habitation. These units are generally well below standards for foundation and structural requirements. Retrofitting the foundation is generally cost prohibitive for property owners and demolishing and rebuilding the structure from scratch is not an uncommon remedy for legalization. Based on Code Enforcement's case history, only about 50% of the units in this category can be legalized. In some cases, these buildings may pose imminent safety hazards.

Egress and Fire Safety Issues

This issue category is found in all typologies. Some fire safety and egress issues can be resolved fairly easily, for example by installing appropriate smoke and carbon monoxide detectors. Others may require more substantive improvements like adding fire rated walls; adding a secondary point of egress such as a door or window to the exterior; or ensuring there are no gas powered equipment such as water heaters or furnaces in sleeping rooms. Regardless of how large or small, fire safety and egress issues are a top priority and cannot be overlooked. Due to the configuration

and characteristics of some unpermitted units, the unit may be unable to meet these crucial safety requirements

Basic Fixtures Issues (Electrical, Plumbing, and Mechanical)

This issue category represents units that are missing basic features of an ADU including sink, kitchen, and bathroom, or have hazardous or substandard electrical, mechanical, or plumbing. Buildings in this category can add the missing required fixtures to their unit to qualify as an ADU at relatively minor cost compared to the other categories. In the case of hazardous or substandard electrical, plumbing, and mechanical, more costly corrections and extensive overhauls may be required.

Applicant Motivation to Apply for ADU Amnesty Program

A critical element of a successful amnesty program is ensuring property owners of unpermitted ADU units are informed and sufficiently motivated to apply for the program. This section outlines the value proposition for customers to legalize their unit and what factors might discourage them from applying.

Motivations include:

- Safety improvements for the owner, occupants and property;
- Reduced risk of enforcement;
- Increased ease selling property with permitted construction;
- Less difficult to obtain insurance with permitted construction (reduced liability);
- Increased income opportunity; and
- Increased property value.

Property owners can be discouraged from permitting their unit for the following reasons:

- Status quo;
- Fear of enforcement beyond what they can remediate;
- Permit and process costs (time and money);
- Architect, engineer, and construction costs;
- Inability to legalize (and perceived risks);
- City requirement to pay business tax for earned business income; and
- Property tax increase and back taxes.

ADU Amnesty Program Elements

Working with the Housing Trust of Silicon Valley, Staff identified several elements that are commonly found in an amnesty program and compared amnesty programs of surrounding municipalities: San Mateo County, Santa Cruz County, Marin County, City and County of San Francisco, and City of San Carlo. This section defines the key program elements and briefly discusses how other jurisdictions chose to address them. Staff's full comparative analysis of these amnesty programs is found in the table attached to this memorandum, Attachment A.

- *Program Timeframe* - Typically an amnesty program has a defined timeframe with a predetermined, marketed start and end date. The defined timeframe is intended to

encourage owner participation, expedite safety improvements to ADUs, and expand the housing stock while balancing demands on staff resources. Generally other jurisdictions instituted a program timeframe between one and three years with an option to amend the timeframe based on level of interest/participation.

- *Estimated Date of Unit Construction* - To qualify for amnesty, an ADU is required to be a constructed and established residential unit prior to a specified date. This would preclude owners attempting to build new ADUs and apply for the benefits in the amnesty program. All jurisdictions included in staff's research required that ADUs be built or in existence prior to a specified date ranging from 2003 to 2017.
- *Permit and Impact Fees* – Identify minimal plan check and inspection fees for amnesty units to encourage greater amnesty participation and application submissions. Other jurisdictions generally reduced their fees by offering a flat fee or a percentage reduction.
- *Planning, Building and Fire Standards* – Clearly determine and convey ADU health and safety requirements to prospective applicants. While local jurisdictions generally establish most zoning ordinances, Building and Fire Codes are determined at the State level. Most municipalities' ADU Programs included some level of modified standards. It is unclear what modification were made but it is not possible to waive or modify health and safety code below the minimum level of protection prescribed by the California Fire Code.

Other key amnesty program elements addressing implementation and process:

- *Self-Assessment Checklist* – Amnesty programs should have a comprehensive checklist that property owners can use to determine if their unpermitted unit qualifies for amnesty. Marin County's amnesty program utilized this program best practice.
- *ADU Inspection Only* – All information gathered during the amnesty process and inspection should focus on the code violations relating to the unpermitted ADU. The other jurisdictions' amnesty programs had clear expectations that the inspection scope would include the ADU only. This would encourage owners to bring forward their applications without fear of enforcement. Exceptions would include any imminent threat to health and safety.
- *Single Point of Contact* – Best practice for an amnesty program includes identifying a single City resource to act as the point person for ADU amnesty applicants to help this customer group through the process. San Mateo County was the only jurisdiction that publicized a single point of Contact.
- *Streamlined Process* – Identify steps to streamline the process to encourage submission of amnesty applications and approvals.

ADU Amnesty Program Considerations

1. Zoning Code Considerations

While the State of California sets Building and Fire Codes, cities set Zoning Ordinance standards. Some unpermitted ADU units cannot be legalized because they are unable to meet the Zoning standards in their existing configuration. While the Zoning Ordinance has been amended several times to accommodate the building of more ADU units, there still could be

several standards that restrict potential amnesty units, for example, rear yard coverage, setbacks, height, square footage, or number of bedrooms. While an ordinance amendment to reduce or waive zoning requirements for unpermitted units would benefit some owners of unpermitted ADUs, it poses questions of parity for those applicants who had to meet these standards when they obtained permits to build their unit legally. If we pursue this policy option, staff will draft amendments to the Zoning Code and identify the standards that may be loosened to provide amnesty for ADUs.

In 2016, the California Legislature established a Junior ADU program under AB 2406 that allows municipalities to permit Junior ADUs. A Junior ADU is a smaller version of an ADU with fewer requirements to be permitted. Junior ADUs are limited to 500 square feet in size. These units must be constructed within the existing walls of a single family residence, and must have a door to the inside of the house as well as a door to provide direct access outside. The Junior ADU must have a basic kitchenette with a sink, counter, and plug-in appliances, but cannot have an oven or range. The Junior ADU can have its own bathroom or share a bathroom with the main house. State law specifies that Junior ADUs are only permitted on properties that are owner-occupied and requires that a deed restriction is recorded on the property requiring owner occupancy. While San José has *not* adopted a Junior ADU ordinance, the Zoning Ordinance *does* allow a bedroom in a house that contains a sink, counter, plug-in appliances, and a door directly to the outside. The Zoning Ordinance differs from a Junior ADU authorized by AB 2406 in that State law specifically states that the door from the main house to the Junior ADU may be locked and the Junior ADU may be rented separately from the main house, which is currently prohibited by the City's Zoning Ordinance. This means that while many houses in San Jose have rooms that meet the parameters of a Junior ADU, the City does not recognize them as independent units.

Amending the Zoning Ordinance to allow Junior ADUs and to remove the requirement for covered parking when a garage is converted to a Junior ADU would expand the scope of what kind of unpermitted construction could qualify for amnesty. Allowing a garage to be converted into a Junior ADU without requiring replacement parking would likely enable many applicants to qualify for the amnesty program. Covered parking is not required if a garage is converted to a full ADU pursuant to state law; however, this exemption is not applied to Junior ADUs and is up to the discretion of City Council. Should the Council pursue this policy option, it should consider whether to limit the covered parking for garage conversions exception only to Junior ADUs within the amnesty program, or to allow this exception for both new Junior ADU constructions as well as amnesty applicants.

2. Building and Fire Code Considerations

Staff have developed three potential program paths that serve different customer segments and accomplish the program goals in varying degrees. These programs vary in their ability to accomplish the overall program goal and consideration of which program best furthers the goals be addressed. Given the general nature of the original Council direction, additional input will be helpful in designing the program.

Amnesty Path A: Legally Permit ADU: Current Code

This program path would allow applicants to submit an application for their unpermitted ADU voluntarily without any Code Enforcement action or Building Permit fee penalty. The unit would be required to meet current regulations but any information provided during the application process would not result in a Code Enforcement case unless an imminent threat to health and safety was identified. The applicant would have amnesty for all information brought forward in the amnesty application process even if the applicant were to withdraw the application. While this path would likely be more difficult for applicants to bring their units through the amnesty program, it would ensure the highest level of safety for permitted units. This would also provide the greatest level of parity for customers who proceed through the normal permitting process for a legal ADU unit. This path is very similar to the City's existing voluntary process, but has the added benefits of including access to the ADU Ally, potential financial assistance, reduced permit fees, etc.

Amnesty Path B: Legally Permit ADU for Year Built

This program path would utilize SB 1226 which enables the Building Official for a municipality to permit existing units based on the building code that existed at the time the building was constructed. In most cases, this option would greatly reduce the cost of retrofitting an ADU. This program path would also apply the benefits of Amnesty Path A. Despite these benefits, this program may create confusion among applicants as well as pose challenges to staff who must determine the date of construction and apply different building codes to each amnesty unit. The variability in each unit could cause delays in issuing permits for amnesty units.

Amnesty Path C: Minimum Health and Safety Program

This program would focus on improving safety for units that are unable to gain amnesty through any of the paths outlined above. A deeper dive into the motivations and hurdles for potential amnesty applicants are outlined below but generally an applicant may be restricted by retrofit cost or the characteristics of their ADU. As with Amnesty Paths A and B, applicants who utilize this path would be exempt from enforcement during the process, unless an imminent threat to health and safety is identified above. Successful applicants would not receive a permit at the end of the amnesty process, but rather would have their unit officially registered with the City. These units would still be required to meet minimum health and safety standards. This program would not meet the amnesty program goal of expanding the legally permitted housing stock in the City, but would improve the overall safety of residents. It is important to note that such a program would potentially increase the City's level of risk and liability by acknowledging units that do not fully meet all Building and Fire regulations. Units in this category would not meet Title 24 – California Code of Regulations and would no county towards the City's Regional Housing Needs Allocation (RHNA).

3. Other Considerations

The table below outlines elements of the amnesty program that require consideration and input prior to staff developing the complete program framework.

	Element	Description
1	Staff Resources and Funding	Key program elements outlined above help with implementing the program to make it easier for customers to advance through the process. These elements include: a single point of contact, amnesty team for review and inspection, streamlined process and communication/promotion. If these amnesty program elements are required, funding and staff resources will need to be requested.
2	Permit and Impact Fees	If permit and impacts fees are reduced, staff will start to identify which fees should be reduced.
3	Enforcement	If property owners are not subjected to enforcement as a result of information obtained during the amnesty process, staff will only address any imminent hazards to health and safety identified in the process or any <i>future</i> complaints brought to Code Enforcement.
4	Parity	It is anticipated that customers who, a) legally obtained permits for an ADU, b) completed the existing process to legalize an unpermitted ADU, or c) demolished or reverted an ADU that could not meet previous requirements, may raise concerns of parity in light of an ADU amnesty program. Consideration should be given to how parity should be addressed.
5	California Legislation	In the 2019 California Legislative session there is current pending ADU legislation that would impact the City's potential ADU amnesty program. Senate Bill 13 (Wieckowski) would authorize the owner of an ADU unit in violation of local ordinance to request the enforcement of the violation be delayed for five years if correcting the violation is not necessary to protect health and safety, as determined by the enforcement agency. In addition, AB 68 (Ting) would require that cities allow Junior ADUs.

Based on staff's analyses, it is recommended that Path B "Legally Permit ADUs for Year Built" should be pursued for the City's ADU Amnesty program. In addition, staff recommends amending the Zoning Ordinance to allow Junior ADUs and to remove the requirement for covered parking when a garage is converted to a Junior ADU. Staff also suggests undertaking a Zoning Ordinance amendment to further reduce or waive zoning requirements, including rear yard coverage, setbacks, height, and square footage, so that more unpermitted ADUs would qualify for amnesty.

EVALUATION AND FOLLOW-UP

Staff will return to Council in early 2020 with a full program design incorporating Council input. Remaining program design work will move forward in parallel with Zoning Ordinance update as required. Future work will also consider pending State Legislation that may impact program design.

PUBLIC OUTREACH

Staff collaborated with the Housing Trust of Silicon Valley for early considerations in the design of an ADU amnesty program.

COORDINATION

This item has been coordinated with the City Manager's Office, Fire Department, Public Works Department, and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, PP17-007, preliminary direction to staff and eventual action requires approval from decision-making body.

/s/
ROSALYNN HUGHEY
Director
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Enforcement

For questions, please contact Rachel Roberts, Deputy Director of Code Enforcement, at (408) 535-7719, or Alex Powell, Chief of Staff, at (408) 535-1258

Staff Analysis: ADU Amnesty Program Municipal Comparison

Attachment A

	Program Element	San Mateo County	Santa Cruz County	Marin County
	Program Name	Second Unit Amnesty	Safe Structures Program	
Scope	Program Timeframe	One and three years (pending extension), beginning in early 2019	No timeframe identified	2-year program (50 legalizations in year 1)
	Date of Construction Eligibility	Unit built prior to 2017	Unit completed prior to 2014	In existence prior to June 3, 2003
	Other Factors for Eligibility	In a residential zone and occupied by a resident past or present	Active code compliance cases eligible on a case by case basis	Unit size of 220 -750 square feet
Development Standards	Planning Standards	“Alternative, more easily achievable compliance standards”	[no information]	“Reduced Planning Requirements”
	Permit and Impact Fees	\$688 (includes plan check and inspection fees) Potential financial assistance in the form of very low interest loans	Special inspection fee of \$500, as well as a zoning check fee of \$300 “...certain impact fees are waived or reduced, and Code enforcement penalty fees are waived for the unpermitted construction”	50% reduction in fees
	Building Code	“Alternative, more easily achievable compliance standards”	“Any structure that can feasibly be modified to meet current building and zoning code standards is not eligible” “meeting minimum requirements”	Chief Building and Safety Official could make interpretations of the Housing Code consistent with the Code's intent and purpose
	Fire Code	“Alternative, more easily achievable compliance standards”	[no information]	Established additional requirements covering the following: (a) Fire Safety Standards; (b) Fire Safety (Water); (c) Potable Water; (d) Sewage Disposal; and, (e) Onsite Wastewater
Process	Self-assessment checklist	“Coming soon”	[no information]	Checklist application
	Waivers	[no information]	[no information]	[no information]
	2nd Unit Inspection only	Can withdraw at any point without any penalty or risk of code enforcement action. Information gathered will not be used for future code enforcement actions.	If necessary improvements too expensive, the county will not follow-up on the code violations identified in the inspection, unless a serious, “imminent hazard to health and safety” issue was identified	Code enforcement “firewall” unless there is a clear and imminent danger
	Single point of contact	William Gibson wgibson@smcgov.org 650-363-1816	[no information]	Dedicated staff
	Streamlined Process	[no information]	[no information]	Ministerial action by the Community Development Agency Director

	Program Element	San Francisco	San Carlos
	Program Name	Dwelling Unit Legalization Program	Secondary Living Unit Amnesty Program
Scope	Program Timeframe	[no information]	[no information]
	Date of Construction Eligibility	January 1, 2013	[no information]
	Other Factors for Eligibility	[no information]	(1) Certain residential zones, (2) Owner must live in the main dwelling or ADU, (3)
Development Standards	Planning Standards	Applies current planning standards	Uses current planning standards
	Permit and Impact Fees	Waives plan review and monitoring fee and offers free screening inspection	[no information]
	Building Code	Applies current code	Applies code in effect at the time the unit was built
	Fire Code	Applies current code	[no information]
Process	Self-assessment checklist	Publicly available: http://sfdbi.org/sites/default/files/IS%20G-17.pdf	Publicly available: https://www.cityofsancarlos.org/home/showdocument?id=88
	Waivers	Waivers may be granted for planning standards	Waivers may be granted for planning standards (subject to public hearing)
	2nd Unit Inspection only	[no information]	[no information]
	Single point of contact	Dedicated email address: Unilegalization@sfgov.org	Christopher Valley cvalley@cityofsancarlos.org
	Streamlined Process	Pre-screening process but otherwise normal permit process	[no information]