

ORDINANCE NO. _____
ORDINANCE OF THE MARIN COUNTY BOARD OF SUPERVISORS
READOPTING A SECOND UNIT AMNESTY PROGRAM UNTIL DECEMBER 31, 2008 AND
AMENDING THE FOLLOWING SECTIONS OF THE MARIN COUNTY CODE UNTIL
DECEMBER 31, 2008: SECTION 22.32.140 REGARDING EXISTING SECOND UNITS;
SECTION 19.04.065 REGARDING BUILDING CODE AUTOMATIC FIRE EXTINGUISHING
SYSTEMS; SECTION 3.52.020 REGARDING PLANNING-RELATED FEES; SECTION
19.04.032 REGARDING BUILDING PERMIT, PLAN CHECK, AND OTHER RELATED FEES;
SECTION 7.24.050 REGARDING FEES FOR ENVIRONMENTAL HEALTH SERVICES; AND
SECTION 3.48.020 REGARDING DEPARTMENT OF PUBLIC WORKS FEES.

SECTION I. FINDINGS

The Board of Supervisors of the County of Marin ordains as follows:

- A. Second dwelling units have been permitted in Marin County since 1982, when the Board of Supervisors adopted Ordinance 2681, which established Chapter 22.98 of Marin County Code allowing the registration or legalization of existing second units and the development of new second units through a discretionary Use Permit process. The provisions of Chapter 22.98 were subsequently amended in 1987, through the adoption of Ordinance 2935. Between FY2000 and FY2007 to date, the County has approved approximately 127 second dwelling unit applications.
- B. Marin County's Housing Element, adopted June 3, 2003, includes as a goal the encouragement of second units in all residential neighborhoods as a way to meet the County's required housing needs. Housing Policy H3.28, *Legalization of Existing Second Units* states: "The County will establish an amnesty program for illegal second units that provide a period of time for owners of unpermitted units to register their units and make them legal. In exchange for the property owner meeting specified health and safety standards, there should be assurances of the continued affordability of the unit."
- C. The Housing Element Implementing Program H3.Z, *Establish an Amnesty Program for Unpermitted Second Units*, states: "Establish an amnesty program for non-permitted second units in order to increase the legal housing stock while assurances are made of continued affordability of the unit as low income housing, such as agreement to accept Section 8 vouchers or other mechanisms to assure affordability to low income households. A specific period of time will be allowed for owners of illegal units to register their units and make them legal without incurring fines, along with assurances of long-term affordability of the unit."
- D. The purposes of the Second Unit Amnesty Program are to:
 - a. Ensure that existing second units are safe and habitable;
 - b. Implement the Countywide Plan's Housing Element, including Policy H3.28 and Program H3.Z;
 - c. Assist in meeting the County's housing needs by increasing the stock of legal and affordable housing; and
 - d. Encourage the development and permitting of second units by reducing second unit permit fees for the duration of the Second Unit Amnesty Program.

- E. The Second Unit Amnesty Program will ensure that existing second units are safe and habitable by requiring compliance with standards based on tenant health and safety and appropriate for existing structures. These standards include conformance with the Uniform Housing Code, compliance with fire safety standards, provision of adequate potable water and sanitary sewer or septic system capacity, and conformance with floodplain management standards.
- F. The Second Unit Amnesty Program will implement Housing Element Policy H3.28 and Program H3.Z by providing a period for owners of unpermitted units to register their units and legalize them, without incurring fines, by meeting specified health and safety standards. Second units provide the most affordable private, unsubsidized market rentals, with approximately 80% affordable to low and moderate income households. Assurances of continued affordability are provided by restricting unit size and by limiting required improvements to health and safety standards to reduce costly repairs that may drive up rents. Based on the experience of other communities, requiring affordability covenants could discourage applications to legalize existing second units, and the units could be lost entirely at a later date through code enforcement actions. Consequently, the most effective means to ensure continuing affordability is to encourage legalization of existing second units in a cost-effective way.
- G. The Second Unit Amnesty Program will increase the County's stock of legal and affordable housing by creating incentives to legalize the most affordable housing stock in the County.
- H. The Second Unit Amnesty Program will encourage the creation of new second units and the legalization of unpermitted units in all neighborhoods by reducing fees for all second unit applications for the duration of the Second Unit Amnesty Program. Completed applications for new second units received during the program period will be assessed fees equal to those for Second Unit Amnesty Permit applications, but development standards for new applications will not be altered from current standards found in Section 22.32.140 of the Marin County Code.
- I. On December 18, 2007 and January 8, 2008, the Marin County Board of Supervisors held duly- noticed public hearings to consider this Ordinance adopting a Second Unit Amnesty Program and amending various Marin County Code sections for a one-year period to encourage the legalization of existing second units.
- J. This ordinance provides for the permitting and development of second units and establishes specific standards and criteria , (including density, dwelling unit size, service provisions, parking and permit fees), to legalize existing unpermitted second units in all areas of Marin County where County zoning designations permit single family and multifamily residential units. State CEQA Guidelines Section 15282.h statutorily exempts from environmental review the adoption of an ordinance regarding second units in single family and multifamily residential zones by a county to implement the provisions of State Government Code 65852.2 as set forth in Section 21080.17 of the Public Resources Code, (The California Environmental Quality Act, CEQA). State Government Code 65852.2 provides for the adoption of an ordinance which encourages the creation of second units in residentially zoned areas, and includes ordinance provisions for the adoption of specific standards for second units including unit size, parking provisions, fees, and density. Therefore, pursuant to CEQA Guidelines Section 15282.h, this ordinance is statutorily exempt from environmental review.

SECTION II. ACTION

- A. Until December 31, 2008, owners of existing illegal residential second units which were constructed or otherwise in existence prior to June 3, 2003 may apply for a "Second Unit Amnesty Permit" ("Permit") pursuant to the "Second Unit Amnesty Program" attached as Exhibit "A" to this ordinance. If approved, as provided in Exhibit "A," the Permit shall convey legal nonconforming status on the second unit pursuant to Marin County Code, Chapter 22.22.112.
- B. Except as specifically provided in Exhibit "A" hereto, Second Unit Amnesty Permits shall not be subject to the normal requirements for "residential second units" specified in Marin County Code section 22.32.140, nor the requirements for "Automatic Fire Extinguishing Systems" specified in Marin County Code section 19.04.065, but instead shall be subject to the specific requirements contained in Exhibit "A" hereto.
- C. Until December 31, 2008, the fees specified in Marin County Code sections 3.48.020, 3.52.020, 7.24.050 and 19.04.032 shall be reduced by 50 per cent for both Second Unit Amnesty Permits specified in Exhibit "A", as well as standard Residential Second Unit Permits pursuant to Marin County Code section 22.32.140.

SECTION III: EFFECTIVE DATE

- A. This Ordinance shall be and is hereby declared to be in full force and effect from thirty (30) days from adoption and shall be published once before the expiration date of fifteen (15) days after its passage, with the names of the Supervisors voting for and against the same in the *Marin Independent Journal*, a newspaper of general circulation published in the County of Marin.

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this ___th day of _____ 2008 by the following vote:

AYES: SUPERVISORS

NOES:

ABSENT:

PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

CLERK

Exhibit A

SECOND UNIT AMNESTY PROGRAM (proposed readoption 1/8/08)

1. Summary

Marin County is proposing to extend the Second Unit Amnesty Program until December 31, 2008. This program will offer incentives for property owner/applicants to register existing unpermitted units by demonstrating safe and habitable dwelling conditions. The program also offers incentives for the development of new second units through a comparable reduction in fees. The basic components of the proposed program are as follows:

1. Second Unit Amnesty Permit. Unpermitted second units in existence prior to June 3, 2003 will be eligible to apply for a Second Unit Amnesty Permit provided the unit meets all requirements of the Second Unit Amnesty Permit ordinance. Existing second units eligible for a Second Unit Amnesty Permit may comply with the requirements of this Second Unit Amnesty Program rather than the requirements for existing second units included in Section 22.32.140 of the Marin County Code. Second Unit Amnesty Permit applications submitted and found to be complete during the prescribed period will receive a 50% reduction of all associated Community Development Agency permit fees, and Department of Public Works Site Check and Encroachment permit fees.
2. New Second Unit Permit Applications. All new second units or units constructed or established after June 3, 2003, may apply for a Second Unit Permit, and shall be required to comply with all developments standards included in Section 22.32.140 of the Marin County Code. New Second Unit Permit applications submitted and found to be complete as of December 31, 2008 will receive a 50% fee reduction of all second unit-associated Community Development Agency permit fees, and Department of Public Works Site Check and Encroachment permit fees.
3. Fee reduction applicability. Second Unit Amnesty Permits issued after December 31, 2008 will adhere to the requirements of this Second Unit Amnesty Program only if complete applications are received during the period of January 1, 2008 and December 31, 2008. New Second Unit Permits will receive a fee reduction as outlined in this program only if complete applications are received during the period of January 1, 2008 and December 31, 2008.

2. Second Unit Amnesty Permit

- A. Purpose. The Second Unit Amnesty Permit process is intended to encourage the legalization of existing residential second units that were not built or established with proper permits. The purpose of this effort is to:
 1. Ensure that existing second units are safe and habitable;
 2. Implement the Countywide Plan's Housing Element, including Policy H3.28 and Program H3.Z;
 3. Assist in meeting the County's housing needs by increasing the stock of legal and affordable housing; and
 4. Encourage the development and permitting of second units by reducing second unit permit fees for the duration of the Second Unit Amnesty Program.
- B. Time Frame. The Amnesty period will be in effect until to December 31, 2008, before which time owner/applicants of existing residential second units created on or before June 3, 2003, may submit a completed Second Unit Amnesty Permit application to legalize their units. Permits issued after December 31, 2008 will adhere to the provisions of this Amnesty Program only if complete applications are received during the period from January 1, 2008 to December 31, 2008.

C. Applicability

1. General geographic areas. The requirements of this Amnesty Program shall apply to single-family and multifamily residential zoning districts, including the R1, R2, RA, RR, RE, RSP, C-R1, C-RA, C-RSP, C-RSPS, A, A2, ARP, C-ARP, RMP, and C-RMP districts in the unincorporated portions of the County. Nothing in this program shall supersede or alter Coastal Zone permit requirements and development standards pursuant to Marin County Code Titles 20.I (Subdivisions) and 22.I (Zoning).
2. Applicable units. This Amnesty applies to non-permitted residential second units established or constructed prior to June 3, 2003, when the current Housing Element was adopted. A non-permitted second unit is one not constructed or established in conformity with appropriate County codes at the time it was established. No more than one residential second unit per lot, as defined in Section 22.130.030 of the Marin County Code shall be permitted under the provisions of this program.

D. Eligibility. In order to grant a Second Unit Amnesty Permit, an existing non-permitted residential second unit shall comply with the following standards.

1. The existing residential second unit proposed for legalization was constructed or established prior to June 3, 2003 when the current Housing Element was adopted. Acceptable means of documenting compliance with this standard include, but are not limited to, the following:
 1. County Assessor's records;
 2. Rental contracts and/or receipts;
 3. Income tax records;
 4. Utility bills; and/or
 5. Written affidavits from former owners, tenants, or neighbors, signed and notarized under penalty of perjury.
2. The unit shall provide a minimum of 220 square feet of floor area and shall not exceed a maximum of 750 square feet of floor area. Units in existence prior to March 27, 1987, or the effective dates of resolutions establishing second unit standards for specific communities (September 29, 1983 in Bolinas, January 10, 1984 in the Tamalpais Area, and June 25, 1985 in Stinson Beach) may exceed the size limitation, to a maximum size of 1,000 square feet of floor area.
3. The property owner shall maintain either the residence or the residential second unit as a primary residence. The occupancy requirement does not apply to second units in the communities of Bolinas and Inverness, and an exemption may be granted for second units in the Tamalpais Area pursuant to the provisions of Marin County Code Section 22.32.140.F.2.a.
4. Satisfactory completion of a Second Unit Housing Inspection by a Building & Safety Division Inspector shall be required.
 - a. The existing second unit shall comply with the Uniform Housing Code (UHC), including the following minimum standards:
 - i. The unit shall have independent heating controls.
 - ii. The unit shall have adequate light and ventilation.
 - iii. The unit shall have kitchen amenities including a sink, refrigerator, and stove.
 - iv. The unit shall have at least one bathroom with a sink, tub or shower, and toilet.

A complete checklist of requirements will be available from the Building and Safety Division. The Chief Building and Safety Official may make interpretations of the Housing Code consistent with the Code's intent and purpose.

b. If building or electrical work is necessary to bring the unit into compliance, a Building Permit will be required.

5. The unit shall comply with all current Marin County fire safety standards, including Section 19.04.065 of the Marin County Code, with the following exception:

Units with a floor area less than 600 square feet, located at least 6 feet from any adjacent structure, and within a 500 foot proximity to a fire hydrant capable of flowing 500 gallons-per-minute for a duration of 2 hours shall be exempt from required automatic fire sprinklers. All other fire safety requirements shall apply.

6. The owner/applicant shall demonstrate that there is an adequate amount of water (combination of supply and storage) for fire suppression purposes, in compliance with local and State fire code regulations.

7. One parking space shall be provided, in addition to the required or existing parking for the primary residence. Exceptions to this standard can be made through the Design Review process outlined in Marin County Code Title 22.

8. The potable water supply must be adequate to accommodate the second unit in regards to water quality and system capacity, in accordance with Chapter 7.28 of the Marin County Code and applicable State water codes. If a local water district serves the property, the owner/applicant must show evidence that the district has issued an approval for the water supply to the second unit.

9. Sewage disposal services must be shown to be safe and adequate. If a local Sanitary District serves the property, the owner/applicant must show approval of the second unit from the District. If the property is served by an onsite wastewater system, the owner/applicant shall comply with the safety standards in D.10 below.

10. If the property is served by an onsite wastewater (septic) system, the owner/applicant shall demonstrate compliance with the provisions of the County's Remodel and Additions Policy and adhere to Class I, II or III standards.

a. The following exceptions to the Remodel and Additions Policy and Marin County regulations shall apply to a Second Unit Amnesty Permit, as permitted by the Health Officer.

i. The qualifying second unit may exceed 500 square feet without a requirement to meet current codes, subject to conformance with the size limits contained in the Second Unit Amnesty Program in Section D.2.

ii. Sewage flow will be calculated based on the actual number of bedrooms in the qualifying second unit and not based on Section 204C or the table included on Page 8 of the Remodel and Additions Policy.

iii. The septic system size and allowable floor area contained in the table on Page 8 of the Remodel and Additions Policy shall not apply.

All other sections of the Remodel and Additions Policy shall remain in effect.

- b. A Septic Permit is required if repair work is necessary to comply with the Remodel and Additions Policy.
 - c. In order to prolong the life of the wastewater system and ensure its proper functioning, an owner/applicant is required to install low-flow plumbing fixtures in both the residence and the residential second unit.
11. The second unit and building shall comply with the current Marin County Code Chapter 23.09, Floodplain Management requirements.
12. Regardless of the governing zoning, the second unit and building shall be subject to the Streamside Conservation Area (SCA) and wetland policies of the Countywide Plan and LCP.
- E.** Review Procedure. Second Unit Amnesty Permits shall be approved ministerially by the Community Development Agency Director without discretionary review or public hearing except where discretionary permits are required by Marin County Code Title 22 for construction required to meet the eligibility requirements included in Section D.
- F.** Fees.
- 1. All required Community Development Agency fees for Second Unit Amnesty Permit applications, including fees for planning-related services; building permit, plan check, and other related services (pursuant to section 19.04.032 of the Marin County Code); and environmental health services (pursuant to section 7.24.050 of the Marin County Code) shall be assessed at 50% of the then-applicable fees.
 - 2. The second unit-related Building Permit Site fee and Encroachment Permit fee (if required) will also be assessed by the Department of Public Works at 50% of the then-applicable fees.
 - 3. Complete Amnesty Permit Applications must be received during the period from January 1, 2008 to December 31, 2008 for all fee reductions to apply.
- G.** Reconstruction after Damage or Destruction. A residential second unit that is legalized with a Second Unit Amnesty Permit will be considered a nonconforming unit. The reconstruction of a nonconforming residential second unit damaged or destroyed by natural disaster or as the result of an emergency may be allowed subject to compliance with the requirements of Marin County Code Section 22.112.020.D. If the damage represents 75 percent or more of the fair market value of the residential second unit in the fiscal year when the damage occurs, the replacement unit shall meet the standards for a new second unit, including compliance with current planning, building, and septic codes.
- H.** Assessment. Properties in receipt of a Second Unit Amnesty Permit may be subject to re-assessment of the property tax by the County Assessor's office.
- I.** Recordation of Second Unit Amnesty Permits. A Second Unit Amnesty Permit granted in compliance with the above sections shall be recorded in the County Recorder's Office in reference to the subject property.

3. New Second Unit Permit Applications

- A.** Applicability. All new second units (including units constructed or established after June 3, 2003) may apply for a Second Unit Permit and shall be required to comply with all development standards included in Section 22.32.140 of the Marin County Code.

B. Fees.

1. All required Community Development Agency fees for Second Unit Amnesty Permit applications, including fees for planning-related services; building permit, plan check, and other related services (pursuant to section 19.04.032 of the Marin County Code); and environmental health services (pursuant to section 7.24.050 of the Marin County Code) shall be assessed at 50% of the then-applicable fees.
2. The second unit-related Building Permit Site fee and Encroachment Permit fee (if required) will also be assessed by the Department of Public Works at 50% of the then-applicable fees.
3. Complete Second Unit Permit Applications must be received during the period from January 1, 2008 to December 31, 2008 for all fee reductions to apply.