

From: [Lisa](#)
To: [Office](#)
Subject: Secondary unit zoning meeting 2/8 - additional information
Date: Saturday, February 06, 2016 3:28:56 PM
Attachments: [major_transit_stops_buffers_minus_telegraph_20151209.pdf](#)

Hi Cluster Captains – please forward to your clusters. Thanks!

Hi - many neighbors have been asking for more information regarding the proposed changes to the zoning of secondary or “in-law” units and what the impact will be to LHA. Please read through the information below and plan to attend the meeting with our District 2 Councilperson, Abel Guillen, Monday 2/8 from 7-8:30 at Barnett Hall, Lakeshore Baptist Church, 3534 Lakeshores Avenue.

Lisa

Secondary Unit Housing (Background Info)

<http://blog.newavenuehomes.com/wp-content/uploads/2015/12/Oakland-Accessory-Dwelling-Report-Planned-Changes.pdf>

The City of Oakland seeks to amend the planning code to allow the construction of secondary unit housing. Traditionally, these were called “in-law” or “granny” units and today are commonly referred to as Accessory Dwelling Units (ADUs). The stated purpose of this law is to address the shortage of affordable housing, and housing for the elderly and disabled. The impetus for these proposed zoning changes comes from California State Law. Assembly Bill 1866 (AB-1866) mandated that cities facilitate the construction of Secondary Units. Mayor Libby Schaaf proposed the changes which were written by Rebecca Kaplan and then amended by a number of Council Members including District 1’s Dan Kalb, District 2’s Abel Guillen. Guillen’s specific change was to add the intersection of Lakeshore Avenue and Lake Park Avenue as a designated “Transit Hub”. With this designation, the planning commission is not allowed to consider parking in their decision to grant secondary housing permit for a property if it is within ½ mile. Since nearly all of Macarthur Blvd has been designated as a “Transit Hub”, Council Member Guillen’s amendment is largely symbolic since most of the LHA lies within a ½ mile radius of that street.

The proposed changes to the zoning code is considered approved in every way but final signature. On February 2nd, the City Council was supposed to have their “Second Reading” of the proposed change. That would have been the final consideration and would have been signed into law by Mayor Schaaf immediately after. Because of objections from the LHA Board and a number of LHA residents, Council Member

Guillen pulled the proposal from the agenda and scheduled a neighborhood Q&A meeting for this Monday February 8th at 7:00PM at the Lakeshore Baptist Church.

Video of the original City Council presentation:

http://oakland.granicus.com/MediaPlayer.php?view_id=2&clip_id=1880&meta_id=114744

Link to the City Council Agenda Item:

<https://oakland.legistar.com/LegislationDetail.aspx?ID=2519519&GUID=6F437733-7065-4EC6-96B0-9902D3A6EE88&Options=&Search=>

There are a number of conflicts between LHA CC&Rs and the proposed zoning changes

“Only one single family, private residence, plus a detached private garage (and other usual and appropriate out buildings), shall be erected, or maintained , on any Lot. “

“Buildings shall be located a minimum of 15 feet from the front Lot line; 10 feet from any side street Lot line; and 5 feet from any interior Lot line, except from the rear Lot line which must be a minimum of 15 feet. “

“Each Lot shall be improved and used as a residence for a single family and for no other purpose. “

“(g) Single Family. Any of the following categories:

Category One: A single person;

Category Two: Two or more persons who are married or are related by blood or adoption;

Category Three: Not more than three persons who are neither married or related by blood or adoption.

Single Family shall also include, for all three of the above categories, two servants, one student and guests.

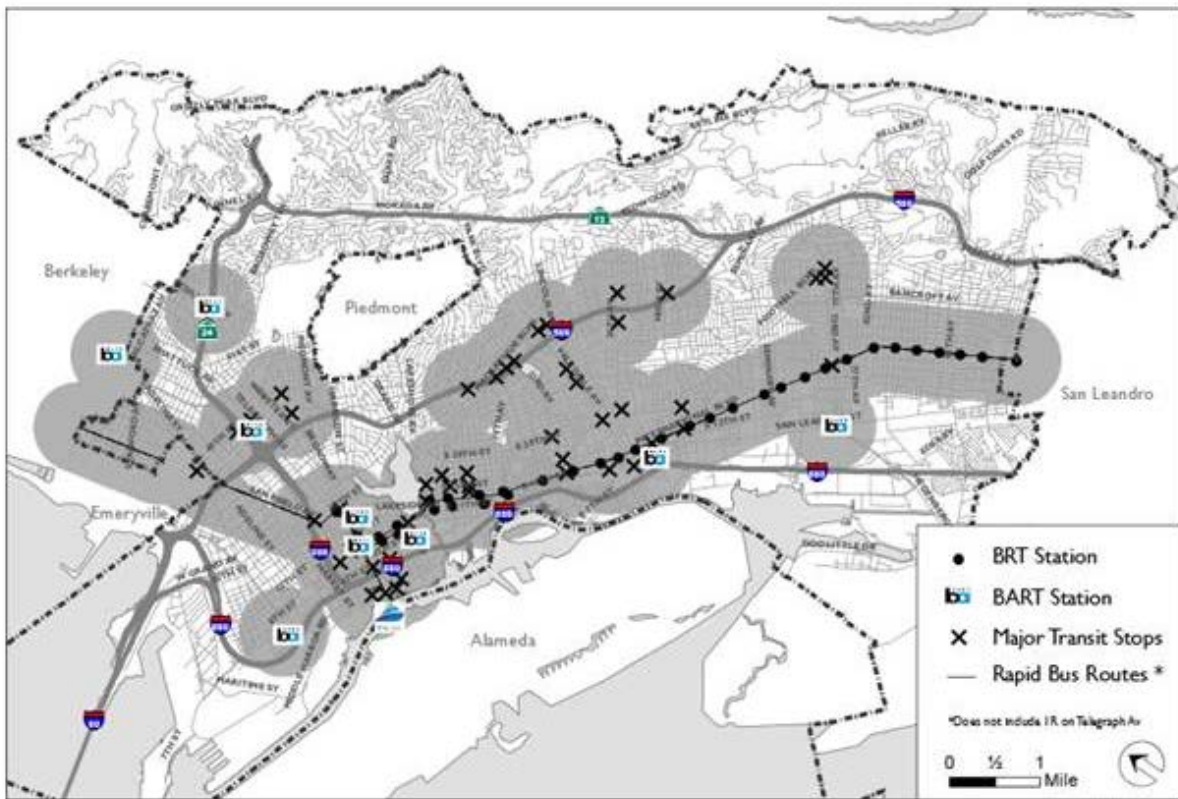
Single Family shall further include, for categories One and Two only, wards and conservatees of one or more persons making up such category.

(h) Servant. Any person who is employed and paid to render full-time personal services for an owner at the owners residence.

(I) Guest. A person living in a single family residence for not more than ninety (90) days in any consecutive twelve (12) month period.

(j) Student. Any person who is pursuing a full-time regular course of academic study in a generally recognized academic institution. “

Proposed Transit Hub Map (original high-resolution version is attached)



Areas 1/2 Mile from BART, BRT, Rapid Bus Routes* and Major Transit Stops

* Does not include IR on Telegraph Av

<http://www.rockridge.org/news/city-proposes-zoning-permits-secondary-units-and-cuts-parking-regs-near-bart>

<http://www.eastbayexpress.com/SevenDays/archives/2016/01/06/oakland-eases-rules-on-secondary-units-to-add-new-rental-housing>

<http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak040064.pdf>



AB-1866

[Government Code Section 65852.150](#)

This is the bill which was signed into law in 2003 which mandates that cities ease the approval of ADU construction. The original bill slipped through largely unnoticed. It was followed by AB-2702 which expanded on the ADU concept, but by then, opposition had organized and Governor Schwarzenegger Vetoed AB-2702. However, AB-1866 is here to stay. The key provision was to mandate that cities in California move the approval process for secondary units from zoning boards to “ministerial approval”. This means, that rather than be forced to have a public hearing to consider approving the creation of secondary units, that cities would only be allowed to have paper checklist (called “Development Standards”) which needed to be submitted for approval.

Proponents of AB-1866 claim that the streamlined process of “ministerial approval” is needed for ADU’s to have any impact on the housing crises. Opponents claim that this removes due process and limits the autonomy of neighborhood communities.

Currently, the issue of private zoning (HOA CC&Rs) versus public zoning (AB-1866) is untested. Several communities believe that private zoning trumps public zoning and that an HOA has the right to limit the construction of secondary units. Oakland’s own city attorney states this belief. However, that may not be the case – many cities disagree and believe that AB-1866 equally applies to an HOA’s private zoning.

Unfortunately, AB-1866 includes the provision that a developer suing for approval of the construction of secondary unit housing is also granted the ability to sue for legal costs. The risk posed to the LHA is that a developer will target the HOA as a way of testing AB-1866 and the HOA may be financially broken defending the suit. The HOA could choose to allow a developer to continue unimpeded, but then they dramatically limit their *raison d'être*. Enforcing their agreed upon covenants, conditions, and restrictions is the primary purpose of an HOA.



San Francisco and Berkley

<http://www.westsideobserver.com/news/in-laws.html>

http://www.sf-planning.org/ftp/files/plans-and-programs/planning-for-the-city/accessory-dwelling-units/2015_ADU_Handbook.pdf

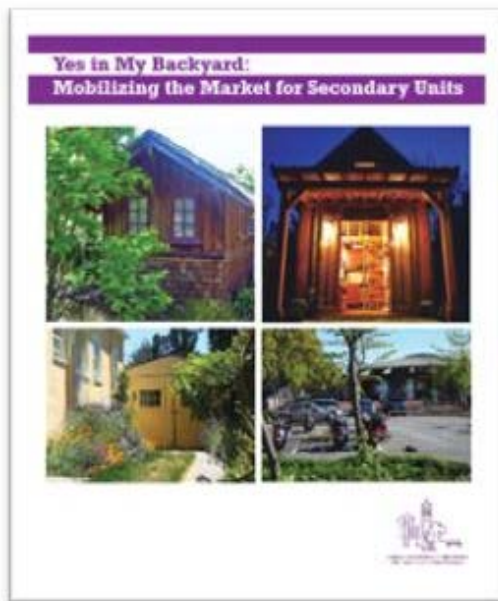
In 2014, Mayor Ed Lee signed into law an amendment written by David Chiu which overnight legalized tens of thousands of illegal in-law units in the City of San Francisco. The law was hotly contested by the Home Owners Associations of St. Francis Wood, A few of the objections which opponents raised:

- 1) These are existing illegal units which are already occupied so there is no net increase in available housing.
- 2) Not only does the city not limit the short term rental of secondary units (ala Airbnb, FlipKey, HomeAway, VRBO), the authors of this amendment are strong supporter of short term rental policy.
- 3) The argument that parking will not be impacted is spurious and completely unsupported by any facts.

The City of Berkeley specifically does not allow short term rental of ADUs. The proposed amendment in the City of Oakland does allow short term rental of ADUs.

The St. Francis Homes Association strongly opposed Mayor Lee. They focused most of their battle on the Environmental Impact Report and the comments and response document is notable in their listed objections:

http://sfmea.sfplanning.org/2007.1275E_CR.pdf



“Yes In My Backyard”

UC Berkeley, Center for Community Innovation 2012

<http://communityinnovation.berkeley.edu/reports/secondary-units.pdf>

This is the most cited study on the benefits of Secondary Unit Housing, also called “Accessory Dwelling Units (ADUs)”. Opponents claim that the study is flawed for several reasons:

- 1) The study claims that tenants of ADU’s will most likely not own a vehicle, thus parking space availability should not be considered in approving ADUs. Opponents say that this is untrue and that there is scant evidence supporting the claim. If parking availability were considered when approving ADUs, most likely very few would ever be approved.
- 2) The study claims that ADU’s will provide affordable housing and housing for the disabled. Opponents point out that there is no requirement for ADUs to be rented at a lower than fair market value. Additionally, ADUs are not required

to adhere to the American's with Disabilities Act.

- 3) The study make wide use of photographs of charming cottages. Opponents point out that ADUs smaller than 500sq.ft. are not required to have aesthetic characteristics considered in their approval. Most likely, a large number of ADUs will be built as a mechanism for generating revenue and use the cheapest construction techniques to maximize profits and limit initial capital expenditure.

Additional articles of interest:

<http://www.planningreport.com/2009/12/04/%E2%80%98granny-flats-decision-fuels-passions-over-la-housing-policies>

<http://www.48hills.org/2015/07/27/no-surprise-mayor-sides-with-airbnb/>

<http://ww2.kqed.org/news/2015/05/10/meet-your-new-in-laws>

http://www.bizjournals.com/sanfrancisco/morning_call/2015/04/in-law-units-wiener-diamond-heights-glen-park-noe.html

<http://www.sfbg.com/politics/2014/09/30/chius-airbnb-legislation-still-controversial-mess-moves-full-board>

<http://www.sfgate.com/bayarea/article/Tracking-evictions-from-city-funded-housing-who-5851281.php>