Planning Commission
Agenda Item

April 2, 2012

TO: **Chair Steiner and**
Members of the Planning Commission

THRU: **Leslie Aranda Roseberry**
Planning Manager

FROM: **Anna Pehoushek, Principal Planner**

SUBJECT

PUBLIC HEARING: An Ordinance Amendment amending Title 17 of the Orange Municipal Code relating to accessory second housing units and multi-family uses made non-conforming by the 2010 General Plan.

SUMMARY

The draft Ordinance Amendment contains modifications to Title 17 whereby 1) detached accessory second units would no longer be counted toward the 50 percent cap on floor area for detached accessory structures in relation to the floor area of the principal single family residence; and 2) pre-existing duplex and multi-family residential structures on properties re-zoned to Single Family (R-1) due to land use changes in the 2010 General Plan Focus Areas would be classified as "permitted" rather than "legal non-conforming" uses. In conjunction with these changes, Section 17.17.065 of the Code recognizing historic duplex and multi-family structures as permitted uses in the Old Towne Historic District would no longer be needed, and would therefore be deleted in its entirety.

RECOMMENDED ACTION

Adopt Planning Commission Resolution No. PC 16-12 entitled:

> **A RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE AMENDMEING TITLE 17 OF THE ORANGE MUNICIPAL CODE RELATED TO ACCESSORY SECOND HOUSING UNITS AND MULTI-FAMILY USES MADE NON-CONFORMING BY THE 2010 GENERAL PLAN**

AUTHORIZATION/GUIDELINES

Orange Municipal Code (O.M.C.) Section 17.10.020 requires City Council approval of ordinance amendments, but also establishes procedures by which the Planning Commission reviews ordinance amendments and makes recommendations to the City Council. This section also authorizes the Planning Commission and City Council to approve guidelines that carry forth the intent of the ordinance amendment.

PUBLIC NOTICE

Public notice of the proposed Ordinance Amendment was published in the Orange City News newspaper on March 22, 2012. Individual properties were not posted due to the area-wide nature of the Ordinance Amendment. Hearing notices were also posted at City Hall and Library posting locations.

ENVIRONMENTAL REVIEW

Categorical Exemption: The draft Ordinance Amendment is exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15305 (Class 5, Minor Alterations in Land Use Limitations) because it involves a modification to area-wide standards rather than a specific development project. There is no public review required.

PROJECT BACKGROUND

The City has initiated a series of zone changes with the purpose of establishing consistency between the 2010 General Plan land use designations and property zoning. As part of this process, most recently the City Council approved Zone Change No. 1261-11 (February 14, 2012) to establish Single Family (R-1) zoning on parcels with a Low Density Residential (LDR) General Plan land use designation in the southeast residential quadrant of Old Towne. Establishing consistency between the General Plan land use designation and zoning is required by California Government Code Section 65860.

During the public hearing process for Zone Change No. 1261-11, there was discussion and deliberation surrounding issues concerning accessory second housing units and the ultimate status of properties that were developed with duplex or multi-family residences. For both issues, the Council wanted to eliminate potential barriers to constructing accessory second housing units and also to property financing in light of the down-zoning.

As a result, the Council directed staff to bring forward Code amendments to address the floor area limitation on detached accessory structures in relation to the size of the principal structure, and also to recognize existing duplex and multi-family structures as permitted uses on properties located within any of the eight 2010 General Plan Land Use Focus Areas being re-zoned to R-1 (Attachment 2). The only Focus Area where this actually occurs is the Old Towne Focus Area.

The attached draft Ordinance (Attachment 1) responds to the Council direction, given on February 14, 2012, to amend Chapter 17.17 of the Orange Municipal Code accordingly.

PROJECT DESCRIPTION

The proposed Ordinance Amendment serves two purposes. The first is to relieve proposed detached accessory second housing units from the provisions of Section 17.14.170.D which require that the total floor area of detached accessory structures of any kind not exceed 50 percent of the principal single family residence. This change would facilitate the development of accessory second housing units on properties with a small principal residence that may also have other detached accessory structures such as a garage or storage shed on the property.

The second objective of the proposed Ordinance Amendment is to recognize existing duplex and multi-family structures developed on lots re-zoned R-1 in a General Plan Land Use Focus Area as "permitted" rather than "legal non-conforming" to avoid complications for home loans, refinancing, or other transactions where "legal non-conforming" status might be an obstacle to the property owner from getting the desired financing, or subjects the property owner to a higher interest rate.

O.M.C. Section 17.17.065 would be deleted from the Code as part of the Ordinance Amendment. This Section was added to the Code following adoption of the General Plan (Ordinance 14-10) in November 2010. The Section recognizes historic duplex and multi-family development as "permitted" uses in Old Towne. It would no longer be needed, as the proposed Ordinance Amendment would recognize duplexes and multi-family development on any Focus Area parcels experiencing a zone change to R-1 brought about by the 2010 General Plan update as "permitted," regardless of whether or not the development is historic.

APPLICATION(S) REQUESTED/ REQUIRED FINDINGS

The proposed Ordinance Amendment revises provisions of Title 17 of the Orange Municipal Code related to accessory second units and duplex and multi-family uses made non-conforming by the 2010 General Plan. It also deletes Code provisions related to historic duplex and multi-family structures, as they would no longer be needed.

> *Required Findings:* Although there are no required findings for an Ordinance Amendment since it is considered a legislative action, per Orange Municipal Code Section 17.10.020 the Planning Commission shall address the following in its Resolution recommending approval of the Ordinance Amendment to the City Council:
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> - Reasons for the recommendation.
> - The relationship of the proposed amendment to the General Plan.
> - Environmental determination.

ANALYSIS/STATEMENT OF THE ISSUES

Issue 1: Detached Accessory Second Units

Section 17.14.170.D of the O.M.C. limits the floor area of detached accessory structures on a residential lot to no more than 50 percent of the floor area of the principal structure. Given the small size of many single family residences in Old Towne, in some instances this threshold prevents development of an accessory second unit, or causes a property owner to make an addition to a home that increases the size of the principal structure in order to create conditions where a detached accessory second unit can be built and comply with the 50 percent floor area limitation. While these circumstances are more common occurrences in Old Towne due to the small size of many of the historic homes, they are also possible in Orange neighborhoods outside of Old Towne.

The accessory second unit provisions of the Code are intended to accommodate small units on single-family property to accommodate multi-generational family living arrangements or provide supplemental rental unit income for property owners. Accessory second units also provide opportunities for new small-scale housing units in built-out neighborhoods that provide a more affordable alternative to traditional rental units and serve small-sized households.

Resolution 1:

The proposed Ordinance Amendment replaces Section 17.14.050.A.5 with new language that allows a property owner to construct an accessory second unit that meets City development standards, irrespective of the whether its construction would cause the property to exceed the square footage limitation for the property set forth in Section 17.14.170.D. This Code provision would apply to R-1 zoned property citywide.

It should be noted that the floor area ratio provisions of the Code will continue to apply to all structures on a lot. The revised Section 17.14.050.A.5 only addresses the issue of accessory structure floor area in relation to the size of the principal residence. Proposed detached accessory second units would still be subject to a maximum size limit of 640 square feet, and all other development standards applicable to the site, i.e. height limit, setbacks, overall site floor area ratio limit, open space, design issues, etc.

Issue 2: Duplex and Multi-family Structures in R-1 Zone

A number of properties in the General Plan Land Use Focus Areas that fall under the LDR land use designation have had zoning other than R-1 and are developed with duplex or multi-family residential structures. As indicated in Table LU-3 of the General Plan Land Use Element, R-1 is the zoning category consistent with the LDR General Plan land use designation. In order to establish the state-required consistency with the General Plan, the City is systematically re-zoning inconsistent LDR properties in the General Plan Land Use Focus Areas to R-1. Duplex or multi-family residential development on the re-zoned lots would ordinarily become “legal non-conforming” under the current provisions of the Code.

As defined in Chapter 17.04 of the O.M.C., a duplex can be either an attached or detached building containing two dwelling units, with the occupants of each unit functioning as an independent household from one another. A similar description is provided in the Code for accessory second housing units (definitions provided in Attachment 4). As a starting point, the factors in the Code that distinguish between an accessory second unit and a duplex unit are size and parking requirement. In the case of accessory second units, size is limited to 640 square feet, and the required parking is one uncovered parking space in addition to the two enclosed spaces required for the principal residence (three spaces total). With respect to duplexes, the size of the units is not limited to 640 square feet, and there is one enclosed plus one uncovered parking space required for each unit (four spaces total).

The floor area ratio (FAR) applied to accessory second units and duplexes is dependent upon the underlying zoning and lot size. In the case of an accessory second unit on an R-1 zoning, the maximum site FAR ranges from 0.4 to 0.6, while development in an R-2 zone is subject to a maximum FAR of 0.7.

During the public hearings for Zone Change No. 1261-11, the City Council expressed significant reservations about making a change to zoning that would render properties "legal non-conforming," and potentially cause property owners to encounter difficulties with property financing for mortgages or home improvements. While there is community debate over the extent to which "legal non-conforming" status of property interferes with residential property financing, the Council wanted to exercise caution on this matter so as not to create conditions with unintended property owner consequences.

This issue was raised as a concern during the General Plan update, which resulted in Council adoption of Ordinance No. 14-10, which added a new Section 17.17.065 to the Code that recognized historic duplex and multi-family structures documented as "contributing" in the City's Historic Resources Inventory as "permitted" uses in the Old Towne Historic District. With the February 2012 adoption of Zone Change No. 1261-11, the Council directed staff to bring forward a Code amendment to expand this "permitted" status beyond contributing historic structures, and recognize all legally constructed existing duplex and multi-family structures as "permitted" uses on properties located within any of the eight General Plan Land Use Focus Areas where zoning is being changed to R-1.

<u>Resolution 2:</u>

The proposed Ordinance Amendment reflects the direction provided by the City Council. Any existing, legally established duplex or multi-family residential structures on properties re-zoned to R-1 within the eight General Plan Land Use Focus Areas will be recognized as "permitted" uses per the new content of Section 17.14.050.G. Additions and alterations to these properties may be undertaken provided that no additional units are created and that the development otherwise conforms to City development standards.

The proposed Ordinance Amendment does not affect the "legal non-conforming" status of duplex and multi-family structures on properties within the Land Use Focus Areas that were zoned R-1

prior to adoption of the 2010 General Plan. Those properties would continue to be subject to Chapter 17.38 of the Code.

ADVISORY BOARD RECOMMENDATION

The proposed Ordinance Amendment were not reviewed by either the Staff Review Committee or the Design Review Committee due to the fact that specific direction was provided to staff by the City Council, and also because the changes to the Municipal Code do not involve a specific development project.

ATTACHMENTS/EXHIBITS

Attachments to Report:

1. Draft Planning Commission Resolution No. PC 16-12 (including clean copy of Ordinance Amendment)
2. February 14, 2012 City Council Minutes (excerpt)
3. February 14, 2012 City Council Agenda Report
4. O.M.C. Section 17.04, Definitions for Accessory Second Unit and Duplex