

To: Mayor and City Council

From: Irene Borba

Reviewed By: Mary Neilan
Emily Longfellow

Subject: Introduction of an ordinance of proposed amendments to the Belvedere Municipal Code, including amendments to Title 19, Zoning, of the Belvedere Municipal Code establishing a permit process, procedures, and standards for review and approval of Junior Second Units in existing single family dwellings

Recommended Motion/Item Description

That the Council conduct the required public hearing and discuss the proposed ordinance amendments to the Belvedere Municipal Code, including, amendments to Chapters 19.08 (Definitions), 19.24 (R-1 Zones), Chapter 19.26 (R-15 Zone), and Chapter 19.78 (Second Kitchens and Second Units). The amendments would establish a permit process, procedures, and standards for review and approval of Junior Second Units in existing single family dwellings (refer to Attachment 1, draft ordinance).

1. Motion to read the ordinance by title only. The City Clerk will read aloud the full title of the ordinance.
2. Motion to approve first reading of the ordinance and to waive future reading of the ordinance in its entirety.

Background

The passage of Assembly Bill 1866 (effective July 2003) required local governments to use a ministerial process for second unit applications for the purpose of facilitating production of affordable housing. The statute expressly prohibits discretionary review of, and public hearings on, such applications. In order to comply with the AB 1866, the Belvedere City Council adopted Ordinance No. 2003-4 (June 2003), Ordinance No. 2005-10 (September 2005), and Ordinance No. 2011-4 (September 2011) amending the Zoning Ordinance to allow second units as a permitted use in all residential zoning districts.

The following summarizes Belvedere's current second unit development standards:

- Unit allowed on any residentially-zoned parcel that has a single-family residence; newly constructed second units (that is, a unit created as part of the construction of a

new structure detached from the main dwelling unit or created as part of the construction of an addition to an existing structure than would increase the floor area and/or footprint of the existing structure) allowed on any residentially-zoned parcel 8,000 SF or larger that has a single-family residence;

- Setback 20' from front, rear, side property lines for newly constructed units;
- House with newly constructed second unit cannot exceed lot coverage or floor-to-area ratio requirements for the zoning district;
- Maximum unit size is 750 square feet;
- Maximum height for a newly constructed second unit is one story, fifteen feet;
- One off-street parking space per bedroom in unit;
- Privacy-enhancing techniques to be included in design of newly constructed second units;
- Primary views of neighboring properties cannot be blocked by newly constructed second unit;
- Newly constructed unit needs to meet development and location standards and be architecturally compatible, but no requirement for design review or public hearing; and
- If the unit does not meet standards, can go to Planning Commission for review and approval.

The City issued 12-second unit permits during the prior planning period, an average of nearly two units per year, which is higher than most cities in Marin County with much larger populations. Second unit production was also sufficient to meet the City's 2009-2014 regional housing need for lower income units. Additionally, in 2011, the City relaxed development standards to encourage residents to consider constructing a second unit, including:

- Reduced minimum lot size to 8,000 square feet;
- Increased the maximum unit size to 750 square feet; and
- Removed the requirement for a deed restriction requiring that the owner live on the property

In the City's previous Housing Element and in the City of Belvedere's 2015-2023 Housing Element, two specific types of housing needs are identified for the City: housing for seniors and small units for affordability and convenience. To help meet these needs, Goal 3 of the Housing Elements states, "Assist in the Development of Affordable Housing to Meet the Needs of the Community," and Housing Program 3.3: Junior Second Units states:

"Review and consider adopting standards to allow the creation of junior second units. Standards to consider should include, but not be limited to, the following:

- *Conversion of existing bedroom required – no building expansion;*
- *Maximum 500 square-foot size;*

- *Wet-bar type kitchen only with limitations on size of sink, waste line and counter area;*
- *Cooking facility limited by electrical service (110v maximum) and prohibition of gas appliances;*
- *Required bathroom;*
- *Required external access;*
- *Parking; and*
- *Deed restriction.*

Work with special districts to reduce or waive fees for junior second units. Coordinate with the Tiburon Fire Protection District to discuss relaxing fire sprinkler requirements for junior second units, as well as the primary residence.”

Similar JSU programs have been included in the Housing Elements of other Marin jurisdictions and a number of jurisdictions have adopted implementing ordinances.

Planning Commission Review

On May 17, 2016, the City of Belvedere Planning Commission held a public hearing to consider the proposed amendments to the Zoning Code.

The Planning Commission unanimously voted to recommend to Council approval of the proposed Zoning Ordinance amendments to Chapters 19.08 (Definitions), 19.24 (R-1 Zones), Chapter 19.26 (R-15 Zone), and Chapter 19.78 (Second Kitchens and Second Units) (refer to Attachment 2, correspondence and the draft Planning Commission meeting minutes of May 17, 2016). At the public hearing members of the public spoke both in favor of and in opposition to the proposed amendments. Concerns raised included: a) lack of parking in residential areas and parking congestion, b) number of people living in units, c) the use of the units as short term rentals (e.g. Airbnb), and d) that the ordinance was not properly vetted through a subcommittee and the meeting was not properly noticed.

As discussed at the Commission meeting, short term rentals are not a permitted or conditional use within our zoning district and therefore they are prohibited. Just as the city does not regulate the number of people in a single family home, the ordinance as proposed does not regulate the number of people that might occupy a Junior Second Unit. The public hearing was noticed in the local paper and notice mailings were sent citywide.

The Commission determined that additional language should be included in the ordinance pertaining to parking. The following language has been added:

“The Junior Second Unit shall be located on a lot where the primary dwelling unit complies with current parking standards and there is adequate on or off street parking to accommodate the additional use as determined in the Director of Planning and Building’s discretion.”

Findings

Junior Second Units are an attempt to create smaller, less impactful, semi-shared living situations within an existing home. The most common problems with creating a second unit include providing an additional parking space, cost-prohibitive fire-sprinkler systems, and cost-prohibitive utility hook-up fees that can approach \$20,000 for water and sewer services alone.

As proposed in Attachment 1, JSU would be limited to the conversion of an existing bedroom, incorporating a small wet-bar kitchen, an exterior entrance and be limited in size from 150 to 500 square feet. The wet-bar kitchen sink would be limited to a maximum size of 16 inches in length and width, the drain line would be limited to a maximum size of 1.5 inches to preclude the installation of a dish washer and/or garbage disposal, associated counter and cabinets would be limited to a maximum of 6 feet in length, and the installation of a dedicated electrical circuit, gas line, and plumbing stub-out would be prohibited to preclude future service expansion. As an existing bedroom would be used, no additional parking beyond that required for the single-family home would be required. Pursuant to Planning Commission direction, language proposed (above) would allow for a review of existing parking availability and give the Director the discretion to deny the JSU in areas where parking is already deficient.

Further, the attached draft amendment requires that either the main portion of the house or the JSU be occupied by the property owner as a principle place of residence, and requires that either a regular Second Unit or a Junior Second Unit be allowed where appropriate, but not both on a single property.

The proposed JSU's are intended to provide a lower cost option for property owners to create and will, by design, provide a more affordable option for various user groups including singles (particularly adult children of home owners), seniors, caregivers, local service and retail employees, and/or part-time accommodations for long-distance commuters into Marin.

Counting Junior Second Units towards Regional Housing Needs Allocation

Staff from the State Department of Housing and Community Development (HCD) has confirmed that they base their determinations on whether units count towards a jurisdiction's Regional Housing Need Assessment (RHNA) numbers on the definitions in the California State Building Code. The 2010 California Building Code defines "Dwelling Unit" as, "a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation." HCD staff have indicated that the proposed provisions for JSUs would meet the CBC definition and would therefore count towards RHNA allocations if the unit is "independent," meaning that it has a dedicated, private bathroom, such as would be the case in conversion of a master bedroom suite. Staff recommends that the ordinance require JSUs to have a dedicated bathroom in order to count towards our RHNA numbers.

Fee Reductions

The City of Belvedere staff has contacted a number of utility districts in Marin to determine connection fees that would be associated with the creation of a Junior Second Unit. The districts confirm that connection or meter fees for installation of a wet-bar within a single-family

residence would not be charged. However, when defined as a separate unit, the utility districts would impose the same connection fee as those associated with a typical Residential Second Unit. Some utility district staff and board members have indicated a willingness to consider a reduced fee for JSUs based on the unit(s) smaller size and the requirement that an existing bedroom be used. District staff has requested that cities and towns adopt new zoning regulations for JSUs prior to requesting reconsideration of associated fees by the utilities.

Staff has provided the draft Ordinance for review and comment to the Tiburon Fire Protection District (TFPD), Sanitary District #5 and to Marin Municipal Water District.

Pursuant to discussions with TFPD, the fire district has indicated that fire sprinklers would be required for JSU's unless it is determined there is sufficient vehicle access and fire flow to the property to warrant a waiver. Additionally, the TFPD has a "rule" that a home that is "partially sprinkled" is required to sprinkle the whole house, which suggests that if a JSU is required to be sprinkled, the entire house would need to have sprinklers installed as well. The fire district will make that determination on a case by case basis. Staff will continue discussions with the TFPD.

It is staffs understanding that Marin Municipal Water District (MMWD) will be considering waiving connection fees and their own policy for JSU's at one of their future board meetings. MMWD has indicated that our draft ordinance is nearly identical to their draft policy.

Environmental Review

Staff has determined that the amendments are ministerial and exempt from the requirements of the California Environmental Quality Act (CEQA) under Public Resources Code Section 21080.17, and are categorically exempt from CEQA based on Sections 15061(b)(3), 15301 and 15305 of the CEQA Guidelines and therefore no further environmental review is required.

Conclusion

Staff and the Commission find that the proposed amendments are consistent with the language and intent of the General Plan and the Belvedere Municipal Code. The proposed amendments will give clear direction to applicants and staff, and address concerns that have been raised. The amendments will provide an opportunity for elderly residents to have an in-home caregiver with minimal expense, for homeowners to create a lower cost living unit for a family member or repurpose an unused portion of a home for additional rental income and creates affordable housing opportunities for retail and services workers.

Recommendation

That the Council conduct the required public hearing and discuss the proposed ordinance amendments to the Belvedere Municipal Code, including, amendments to Chapters 19.08 (Definitions), 19.24 (R-1 Zones), Chapter 19.26 (R-15 Zone), and Chapter 19.78 (Second Kitchens and Second Units). The amendments would establish a permit process, procedures, and

standards for review and approval of Junior Second Units in Existing Single Family Dwellings (refer to Attachment 1, draft ordinance).

1. Motion to read the ordinance by title only. The City Clerk will read aloud the full title of the ordinance.
2. Motion to approve first reading of the ordinance and to waive future reading of the ordinance in its entirety.

Attachments

1. Draft ordinance.
2. Correspondence and draft meeting minutes of the May 17, 2016, Planning Commission meeting.

CITY OF BELVEDERE

ORDINANCE NO. 2016-

AN ORDINANCE OF THE CITY OF BELVEDERE
AMENDING TITLE 19, "ZONING," OF THE BELVEDERE MUNICIPAL CODE
TO ESTABLISH A PERMIT PROCESS, PROCEDURES, AND
STANDARDS FOR REVIEW AND APPROVAL OF
JUNIOR SECOND UNITS IN EXISTING SINGLE FAMILY DWELLINGS

THE CITY COUNCIL OF THE CITY OF BELVEDERE DOES ORDAIN AS FOLLOWS:

SECTION 1. **Findings.**

A. The City of Belvedere (the "City") has initiated text amendments to the City's Zoning Ordinance, codified as Title 19, of the Belvedere Municipal Code related to the establishment of junior second units (the "Code Amendments").

B. The Code Amendments are categorically exempt from the provisions of the California Environmental Quality Act ("CEQA") per CEQA Guidelines pursuant to Sections 15301, 15305, and 15061(b)(3) and pursuant to Section 21080.17 of the Public Resources Code.

C. The current Belvedere Municipal Code allows for Second Units.

D. A Junior Second Unit differs from a Second Unit in that a Junior Second Unit is accessory to and included within the existing walls of a single-family dwelling and is created by the conversion of an existing bedroom, subject to different standards of approval from a second unit.

E. The City of Belvedere Housing Element includes housing goals, policies and programs that promote a variety of housing choices including second units, as an important way to promote affordable rental housing opportunities, especially for senior households, single persons, single parents, and young households.

F. The Housing Element identifies the need for flexibility and incentives in development standards to create affordable housing that responds to changing demographics and needs in the community, including a large projected increase in seniors over the next twenty years, an increase in the number of young children over the next several years, and an increase in the purchase and rental prices for housing in Belvedere.

G. Given the need for small, affordable housing units to meet the City's changing demographic and economic conditions as set forth in the Housing Element, Junior Second Units provide an additional affordable housing option within unused portions of existing single family dwellings by allowing small rental units to serve as independent living space for caregivers for elderly residents, or for small rental units to provide additional income to homeowners while creating below-market rate rental housing for segments of the local workforce.

H. The proposed Code Amendments are adopted to protect and promote the public health, safety, and general welfare of residents, and to preserve and enhance the environmental setting, unique characteristics, and aesthetic quality of the City of Belvedere.

I. The Planning Commission of the City of Belvedere held a duly noticed and advertised public hearing on May 17, 2016, and considered evidence in the record and any testimony received during the public hearing.

J. At said meeting, the Planning Commission approved the Code Amendments and determined that they are consistent with the goals, policies, and programs of the Belvedere General Plan Housing Element and are consistent with the objectives of the Zoning Ordinance.

SECTION 2. **Amendment.** Section 19.08.127, “City Planner,” of the Belvedere Municipal Code is hereby amended and renumbered to read as follows:

19.08.138 Director of Planning and Building City Planner. The titles “Director of Planning and Building.” “Planning Director,” “City Planner,” “Planning Manager,” and “Planning Consultant” mean the staff member of the City directly responsible to the City Manager for managing all planning functions, or any consultant hired to perform those duties.

SECTION 3. **Amendment.** The word “City Planner” shall be replaced by the word “Director of Planning and Building” in the following Titles of the Belvedere Municipal Code:

Title 18, “Subdivisions.”

Title 19, “Zoning.”

Title 20, “Architectural & Environmental Design Review.”

Title 21, “Historic Preservation.”

SECTION 4. **Addition.** Section 19.08.283 is hereby added to the Belvedere Municipal Code to read as follows:

19.08.283 Junior Second Unit. “Junior Second Unit” means a dwelling unit that is accessory to and included within the walls of a single-family dwelling created by the conversion of an existing bedroom in an existing residence. A Junior Second Unit may also be created as part of a structure of a new main dwelling unit on a lot or building site, but the application shall be subject to all the requirements of Titles 19 and 20, and all otherwise applicable construction standards of the new main dwelling unit, in addition to the Junior Second Unit Development and Location Standards set forth in Chapter 19.78. A Junior Second Unit is an alternate version of a Second Unit subject to different standards of approval, which provides independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, and cooking.

SECTION 5. **Amendment.** Subsection B of Section 19.24.010, “Permitted uses,” of the Belvedere Municipal Code is hereby amended to read as follows:

B. Second ~~u~~Units and Junior Second Units as permitted pursuant to Chapter 19.78;

SECTION 6. **Amendment.** Subsection B of Section 19.26.010, “Permitted uses,” of the Belvedere Municipal Code is hereby amended to read as follows:

B. Second ~~u~~Units and Junior Second Units as permitted pursuant to Chapter 19.78;

SECTION 7. **Amendment.** Section 19.78.040 of the Belvedere Municipal Code is hereby amended to read as follows:

19.78.040 Second ~~u~~Units and Junior Second Units—Location. A. Second ~~u~~Units or Junior Second Units may be located on any parcel zoned R-1 or R-15, or on any other residentially-zoned parcel upon which is situated only one single-family residence.

B. A ~~s~~Second ~~u~~Unit or Junior Second Unit shall not be allowed where it will not be adequately served by roadways and/or public utilities and services, as determined by the City in its discretion.

SECTION 8. **Renumber.** Existing section 19.78.080 is hereby renumbered to 19.78.070. Existing section 19.78.070 is renumbered to 19.78.110 as amended herein below. Existing section 19.78.085 is hereby renumbered to 19.78.120 as amended herein below. Existing section 19.78.090 is hereby renumbered to 19.78.130 as amended herein below.

SECTION 9. **Addition.** Section 19.78.080 is hereby added to the Belvedere Municipal Code to read as follows:

19.78.080 Junior Second Units—Permit required. A. It shall be unlawful for any person to construct or maintain a Junior Second Unit on property within the City without obtaining a Junior Second Unit Permit as required by this Chapter. The maintenance, ownership or use of any Junior Second Unit except as permitted by this Chapter shall constitute a nuisance, subject to abatement at the direction of the City Council, or any other remedy provided by this Code.

B. 1. Notwithstanding any other provision of this Code, any Junior Second Unit Permit application that meets all of the location and development standards contained in this Chapter shall be approved ministerially, without complying with the design review requirements of this Code, and without any other discretionary review or public hearing.

2. An application for a Junior Second Unit Permit that does not meet the Junior Second Unit —Location and Development Standards contained in this Chapter shall be denied. Provided, however, that an application for a Junior Second Unit Permit that does not meet all of the location and development standards contained in this Chapter may be submitted for approval by the Planning Commission, but shall be accompanied by an application for Design Review approval of the entire project pursuant to Title 20 of this Code, and by such applications as may be required under Title 19 for any second unit standards that are not met.

SECTION 10. Addition. Section 19.78.090 is hereby added to the Belvedere Municipal Code to read as follows:

19.78.090 Junior Second Units—Submittal requirements. An application for a Junior Second Unit Permit shall include the following:

- A. A completed application form, signed by the property owner;
- B. Site plan. A site plan, one-eighth inch scale, or approximated equivalent engineering scale, showing the following:
 1. All property lines, setback lines, rights-of-way, and easements;
 2. Outlines of existing and proposed structures;
 3. Distances from existing and proposed structures to property lines, and dimensions of the parcel. A boundary survey may be required if the Director of Planning and Building is unable to determine compliance with setback requirements;
 4. Driveways and off-street parking places;
 5. Existing and proposed contours in areas where they in any way affect the placement of structures;
 6. A detailed computation table, indicating the square footage of the property and the square footage of the lot coverage of all existing/proposed buildings, including garages and all other covered structure, but excluding roof overhangs. Indicate the existing and proposed values for lot coverage and total floor area.
- C. Floor plans. A floor plan, one-eight inch scale or one-quarter inch scale (as requested by City staff), showing floor plans of all floor levels, indicating the gross square footage of each floor, (including any unfinished space), and indicating the existing and proposed values for lot coverage and total floor area, as those terms are defined in this Code.
- D. Kitchen plan. A dimensioned plan drawn to scale indicating proposed kitchen improvements, including a kitchen sink, cooking appliance(s), food preparation counter, and food storage cabinets.
- E. Materials. Except for Junior Second Units involving only an internal conversion of an existing structure with no exterior changes, indicate exterior building materials and colors of existing and proposed structures, and submit samples if different from the main dwelling unit on the site.

SECTION 11. **Addition.** Section 19.78.100 is hereby added to the Belvedere Municipal Code to read as follows:

19.78.100 Junior Second Units—Location and development standards.

A. Quantity. There shall be no more than one Junior Second Unit per parcel or building site. Where a parcel or building site already contains any attached or detached structure or unit that provides a second independent living facility in the manner of a Second Unit (i.e. a separate and distinct kitchen, and bedroom(s)), whether denominated as a Second Unit or not, no additional Junior Second Unit shall be permitted.

B. Location. The Junior Second Unit shall be located on a parcel that contains only one single-family dwelling and shall be created within the existing walls of a single-family dwelling and must include the conversion of an existing bedroom. Junior Second Units may be prohibited by the terms of approval of any Planned Unit Development District.

C. Development standards. The existing single-family dwelling shall meet all development standards applicable to that dwelling at the time it was built.

D. Unit size. No Junior Second Unit shall be less than 150 square feet and more than 500 square feet in size.

E. Off-street parking. The Junior Second Unit shall be located on a lot where the primary dwelling unit complies with current parking standards and there is adequate on or off street parking to accommodate the additional use as determined in the Director of Planning and Building's discretion.

F. Access. The Junior Second Unit shall have a separate exterior entry from that of the primary dwelling and internal access to the primary dwelling.

G. Kitchen. The Junior Second Unit shall include an efficiency or wet-bar kitchen, requiring and limited to the following components:

1. A sink with maximum width and length dimensions of sixteen (16) inches and with a maximum waste line diameter of no more than one-and-a-half (1.5) inches.

2. A cooking facility or appliance that does not require electrical service greater than one hundred-ten (110) volts. Gas appliances are not permitted.

3. A food preparation counter and storage cabinets which do not exceed six (6) feet in length.

4. A dedicated electrical circuit, gas line, and plumbing stub-out is prohibited to preclude future service expansion.

H. Sanitation facilities. A Junior Second Unit is required to include individual sanitation facilities to serve the junior second unit.

I. Building codes. The Junior Second Unit shall comply with all City building, fire, and health and safety codes.

J. Design standards. Any modification to the exterior of the building shall be strictly in keeping with the architectural character of the principal dwelling, and shall maintain the scale and character of the existing residence within the neighborhood in which the junior second unit is situated.

SECTION 12. Amendment. Existing section 19.78.070 of the Belvedere Municipal Code is hereby renumbered to 19.78.110 and amended to read as follows:

19.78.110 Second ~~u~~Units and Junior Second Units —Action on application. A. Upon the filing of a complete application for a Second Unit Permit or Junior Second Unit Permit, the Director of Planning and Building shall review the application and shall determine whether the application complies with the development standards and location requirements of this Chapter. Within five (5) working days following the filing of the application, written notice of the application filing shall be posted on the City Hall bulletin board and a courtesy notice shall be delivered or mailed to each owner of property within 100 feet of the property for which the Second Unit Permit or Junior Second Unit Permit is to be granted. The notice shall indicate:

1. that the Director of Planning and Building has received an application for a Second Unit Permit or Junior Second Unit Permit at a specified address and is reviewing it for consistency with the location and development standards as required by this Chapter;
2. that not sooner than ten (10) days nor more than fifteen (15) days following the posting and delivery of such notice, the Director of Planning and Building will make a final determination of the application's consistency with the requirements of this Chapter and if consistent, the application shall not be subject to design review or other public hearing and shall be approved;
3. that public comments concerning only the application's consistency with the standards may be submitted in writing within ten (10) days from the date of the notice; and
4. that the Director of Planning and Building is not required to respond to public comments received, but may consider them prior to taking action to approve or deny the application.

B. If the Director of Planning and Building determines that the application does not comply with the development standards and location requirements of this Chapter, the Director of Planning and Building shall deny the Second Unit Permit or Junior Second Unit Permit application. If the Director of Planning and Building determines that the application complies with the development standards and location requirements of this Chapter, the application shall be approved by them and the Second Unit Permit or Junior Second Unit Permit shall be issued, without design review or any public hearing. If the

Director of Planning and Building finds that the application requires the consideration of a conditional use permit for an exception to the setback and/or height requirements, the applications for Second Unit or Junior Second Unit and use permit as a whole shall be scheduled before the Planning Commission at a public hearing, pursuant to ~~Chapter 19.80~~, the “Conditional use permits,” section of this Code.

C. The applicant or other interested party may file an appeal from any denial or approval of a Second Unit Permit or Junior Second Unit Permit by the Director of Planning and Building. The grounds for such an appeal shall be

limited to compliance or non-compliance with the applicable sSecond uUnit or Junior Second Unit location and development standards set forth ~~in Section 19.78.080 or elsewhere~~ in this Chapter, as applicable to the proposed unit type. Any such appeal shall be in writing and filed, along with an appeal fee in an amount set by resolution of the City Council, within seven (7) working days following action on the application. Upon the filing of an appeal hereunder, a hearing on the appeal shall be set before the Planning Commission Chairman or, if he or she is not reasonably available, before the City Manager, upon not less than seven (7) working days notice to the applicant and the appellant, unless a shorter notice period is agreed to by both the applicant and the appellant. The applicant and the appellant shall be notified in writing of the decision of the hearing officer after the hearing, and such decision shall be final.

SECTION 13. Amendment. Existing section 19.78.085 of the Belvedere Municipal Code is hereby renumbered to 19.78.120 and amended to read as follows:

19.78.120 Conditional use permit for a Second Unit and Junior Second Unit. An applicant or property owner may apply for a conditional use permit to allow a sSecond uUnit or Junior Second Unit to encroach up to five (5) feet into the required side and/or rear setbacks and an increased height of up to 17 feet as measured from existing grade to respond to site conditions and constraints so long as the requested exception(s) will not, under the particular circumstances, be detrimental to the health, safety, morals, comfort, convenience and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be injurious or detrimental to the property and improvements in the neighborhood of such proposed use, or to the general welfare of the City. Application for exceptions to the side and/or rear yard setbacks is referred to the Planning Commission for review and consideration.

SECTION 14. Amendment. Existing section 19.78.090 of the Belvedere Municipal Code is hereby renumbered to 19.78.130 and amended to read as follows:

19.78.100 Deed restrictions. A. Before obtaining a building permit for a sSecond uUnit or Junior Second Unit, the record property owner shall file with the County Recorder a declaration or agreement of restrictions, in a form approved by the City Attorney, identifying the property and stating that:

1. The sSecond uUnit or Junior Second Unit on the parcel shall not be sold separately; ~~and~~
2. The restrictions shall be binding upon any successor in ownership of the property; ~~and~~

3. For Junior Second Units only, either the primary dwelling or the Junior Second Unit shall be owner-occupied. The Junior Second Unit shall be considered lawful only as long as either it or the primary dwelling is occupied by the owner of record as his or her principal place of residence.

B. In any case where a building permit will not be required for the ~~s~~Second ~~u~~Unit or Junior Second Unit, the executed declaration or agreement of restrictions required herein shall be submitted to the City for recordation, along with the applicable recordation fees, prior to issuance of the Second Unit Permit or Junior Second Unit Permit.

SECTION 15. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 16. Effective Date. This ordinance shall take effect and be in force thirty (30) days after the date of its passage. Within fifteen (15) days following its passage, a summary of the ordinance shall be published with the names of those city council members voting for and against the ordinance and the deputy city clerk shall post in the office of the city clerk a certified copy of the full text of the adopted ordinance along with the names of the members voting for and against the ordinance.

INTRODUCED AT A PUBLIC HEARING on _____, and adopted at a regular meeting of the Belvedere City Council on _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED: _____

Claire McAuliffe, Mayor

ATTEST: _____

Alison Foulis, City Clerk

WENDY MILLER

MAY 10 2016

Ms. Irene Borba, City Planner
City of Belvedere
450 San Rafael Ave.
Belvedere, CA 94920

City of Belvedere May 9, 2016

Re: Opposition to Junior Second Units

Dear Irene,

As a long-time Belvedere resident and homeowner, I am very concerned about the City's pending decision to make it easier to convert bedrooms into rental units, the so-called junior second units. I fear this will put undue pressure on our parking and noise levels.

While I understand the City is obligated to meet certain State-mandated housing standards, junior second units are not the answer. The addition of these rentals to our densely packed island and lagoon areas will compromise our already limited street parking. It will also increase the density of people living in a given area with a fixed number of homes.

City representatives have said the intent is for these units to be used by a single caretaker who would likely have a low impact on the surrounding neighborhood. However, with today's high rents, it is highly probable that renters paying market rate will use these units.

I live on Bella Vista, which already has densely packed homes and very little street parking. Over the last several years I have had firsthand experience with the impact of renters within the six properties nearest to my home on my street alone:

- 234 Bella Vista is a 720-sf cottage that, until last week, had 4 people and 3 cars
- 206 Bella Vista has 1 rental home and 1 rental cottage with 7 people, 3 motorbikes, and 5 cars
- 172 Bella Vista has 1 rental home and 1 rental cottage with 3 people and 5 cars
- 166 Bella Vista has 1 rental home and 1 rental room with at least 4 people and 4 cars
- 158 Bella Vista has 1 rental home with at least 3 people and 3 cars

Additionally, second units with kitchenettes and separate entrances will encourage short-term rentals and make it harder for the City to track and monitor illegal short-term Airbnb, VRBO and Craig's List rentals.

Many of us choose to own homes and live in Belvedere because of the quietude, incredibly beautiful setting, and generally respectful neighbors. I am very concerned that the propagation of junior second units will chip away at the small town quality of life we so love. If, however, this is like fighting a rising tide and these extra rental units are indeed sanctioned and encouraged, then there should be (1) a strict permitting process whereby neighbors are given prior written notice and a chance to comment on the applications before they are approved, and (2) an incremental penalty system whereby the rental permit is revoked for a designated amount of time if the rental unit receives a certain number of complaints from City officials and/or neighbors.

Respectfully,



Wendy Miller

ATTACHMENT 4

8. **Junior Second Units** Consideration of Amendments to Title 19, Zoning, of the Belvedere Municipal Code (BMC). The purpose of said amendments is to accommodate Junior Second Units. The Amendments would establish a permit process, procedures and standards for review and approval of Junior Second Units in existing single family dwellings. (*no recusals*).

City Planner Irene Borba presented the staff report. A slide show accompanied her remarks¹. She stated that a letter was received after the report was written from Wendy Miller which raised concerns about parking and the possibility of these units becoming short term rentals. Ms. Borba stated that our Zoning Ordinance does not speak to short term rentals so technically those are prohibited.

Commissioner Mark asked why is internal access required?

Ms. Borba replied that we used a model ordinance that is being used throughout Marin and this was a part of those requirements. It could be optional.

Commissioner Mark asked whether, instead of altering an existing bedroom to a Jr. Second Unit (JSU) could someone build an approved addition, and then later convert it to a JSU?

Ms. Borba stated that she sees nothing that would prohibit that from happening.

Commissioner Mark asked is it a City requirement for separate utility metering, or is that a requirement generated by the utilities who see a JSU as an additional unit?

Ms. Borba stated the utility companies would see it as a separate unit. MMWD is going to discuss a possible policy regarding the JSUs in the future. Hopefully in the future the Fire Department would take up this consideration as well.

Commissioner Mark stated that given the limitations of size, we would like to do away with separate metering.

Commissioner Hart asked would the definition of a Junior Second Unit allow someone who has a garage to convert the upper floor to a JSU, or similarly a conversion of a pool house, where these areas are not included within the walls of the main house?

Ms. Borba stated that as written, that type of conversion would not qualify, but this could be reconsidered.

Commissioner Carapiet asked why there would be a \$150 fee for a JSU but none for a regular Second Unit? What is the philosophy behind charging for one but not the other?

Ms. Borba replied that it is a minimal fee and charging it would be up to the discretion of the City Council. The City Council has already determined some time ago that there should not be a fee for Second Units. In any case, we are trying to encourage both Second Units and JSUs as much as we can.

Vice-Chair Rosenlund asked is it correct that the way our Zoning Ordinance is already written, the short-term rental is simply not allowed by our present zoning rules?

Ms. Borba replied it is not spoken to in the Code, so therefore it is prohibited.

¹ The slide show is archived with the record of the meeting.

Vice-Chair Rosenlund asked in regards to the distinction between JSUs and regular Second Units in regards to the utility hookups. He understands those hookup costs are very high, in particular the water, sewer, and fire fees which just pile up. Has any thought been given to rolling the full size Second Units into those requests to the utilities to dial back their fees? This would allow more people to create Second Units, which is the purpose of this proposed Ordinance.

Ms. Borba replied that she is not aware that those discussions have yet taken place. They have their own requirements and definitions. In some of our meetings with local planning directors, that has not been brought up.

Vice-Chair Rosenlund stated it is not in City control, but rather in the hands of those agencies.

Open public meeting.

Rachel Ginis, Lilypad Homes, complimented the City of Belvedere for their success in achieving the recent Second Units. She stated that her company has been very involved in the creation of the proposed model Ordinance for this new type of unit. She stated that there are many families who are asset rich and cash poor and in Belvedere it is not inexpensive to maintain a home here. Earlier on the Agenda tonight there was an example of a family who wants to expand their Belvedere home to accommodate their growing family with 3 teenage children. Those kids will all have their cars of course, but then, they will all go off to college and leaving their parents in Belvedere to rattle around that 3000+ square foot home all by themselves. Would it not be nice for those parents to have the opportunity to create a private Junior Second Unit which would not be redefining their single family home? The interior door remains as that is why you do not need fire attenuation (because you are not going to put sprinklers in any bedroom). Right now you can create a wet bar in a bedroom which is often found in affluent communities. Also right now you can park as many cars as you want in front of your house. She would encourage the City to go forward with this Ordinance, and also to have the conversation with the Fire department. She has been getting a lot of cooperation from Fire departments. If you have been following the ads from the Marin Environmental Housing Collaborative but they state that there are 68,000 people commuting into Marin County every work day. Of those, 16,000 travel more than one hour each way. In that home in Belvedere, there is a perfect opportunity to house the caregiver for the kids. Let's house the people who serve your community, in your community. You have a beautiful community and you should be able to make the best use of your most important investment to its fullest extent.

Steve Block, 213 Golden Gate Avenue asked how will this Ordinance get into the recently Housing Element? Will it be put in the next round of the Housing Element? Will it help with the current requirements? Is it not correct that the requirements for a kitchen in the Building Code are not the same as a wet bar. You should make sure the JSU's count with HCD as living units towards the 16 unit requirement.

Margaret Jones, stated she has lived in Belvedere for 50 years. She stated these units are great and in a time when it is getting harder and harder for people, especially seniors, to find a place to live. When they leave their big house, and look for a little place, there are not any around. This is Belvedere's opportunity for people who have lived and worked here all their lives to be able to live in this community. When a teacher retires from the Reed School District they might not

want to go to Petaluma to live, but rather could have the opportunity to live here in the community that they may have served for more than 40 years. We need to think about those people; such as the librarians, who seldom get to live in Belvedere; even if it is a small place they may like to live here. These people are important to our community. If you walk around the streets you see great big four bedroom homes occupied by one elderly person. That seems to be a waste of good solid housing space. That person inside might be kind of lonely, or they might wish to have someone there in the case that they might fall down the stairs. They might wish to have someone else around. She would agree with Ms. Miller regarding the parking problem. Perhaps there could be a limit of one car for the person who is living in a JSU. Finding a place to park in Belvedere is a tough situation under the best circumstances. Belvedere made a good decision and should be proud of building all those senior units. This is something that is going to help other people find a place to live. It is quite conceivable that some of the people in Belvedere would like to get to get into something with a smaller size so they can continue to live in their community. In the big four bedroom homes that used to have several teenagers living there, the neighbors will find that the person in the JSU will make a lot less noise than those teenagers who have gone on to other places. She also thinks that Belvedere has always been a community where people care about each other and she hopes that the City will proceed with this and that people understand we are trying to do the right thing.

Wendy Miller, 226 Bella Vista Avenue, stated that she has already submitted a letter. The situations described in the report are the ideal ones; the nice neat wet bar areas, families whose kids have moved out and caregivers who will be brought in. Then you have reality, and she stated her house is surrounded by reality. As she mentioned in her letter there are one property after the other in her area with rentals, and some even have two rental units. Some of those may be Second Units but parking on Bella Vista Avenue is one of the most restricted in Belvedere. She is most concerned about the proliferation of extra people and increased density especially in our neighborhood. She stated that she did not even list the rentals in her letter that are directly above her and directly below her of which there are some. She has ample evidence of the detrimental impacts of rentals. This is not to say that there is just one person in those rental units. There are 4 people living next to her in a 720 square foot cottage and they have 3 cars in a single carport. She stated we have many people in Belvedere who are house rich and cash poor and she is afraid there will be a lot of people taking advantage of this. Above all, her concerns are with the parking. There is no requirement in this proposal for additional parking for these units so she is extremely concerned about the pressure we would have on our neighborhood with these units. If there is no 220v electricity or gas allowed with these units with these wet bars, there would be a lot of electric kettles and hot pots and these are fire dangers. If there is no requirement for fire sprinklers in those rooms that would also be a concern to her. Primarily the parking impacts and increased density are her concerns.

Marcia McGovern, 170 Madrona Avenue, stated she agrees with the comments that housing is important. She stated that the situation with this particular ordinance is that most of the people of Belvedere have not been properly noticed about what is happening. We know one notice has gone out but there has not been an Ad Hoc Committee convened like we did for the deer or for Design Review and there was one very small notice in The Ark. She stated she finds it very unusual that there would be an Ordinance drafted and sent to the Fire Department, Sanitary District 5 and MMWD prior to any public comment at all. Obvious problems not addressed in

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the ordinance include parking because, as anyone who lives here knows, you cannot park as many cars as you want in Belvedere. The staff report says bedrooms already exist so parking would not be a problem. We are not talking about bedrooms, but rather the people who rent them and their friends, so this would be the renters' vehicles and their friends' vehicles. Everyone who lives in Belvedere knows we have a strange situation and this does need to be addressed. The most significant problem with this particular change and with the Housing Element as it is proposed is the lack of inclusiveness for seniors and for the disabled. It also does not meet with Housing Element Program 3.3 in that aspect which specifically directs it to seniors. There is no addressing of ADA compliance or handicap access. While I understand we mean to get housing for teachers and librarians, this is meant to provide affordable housing for all people who need affordable housing and particularly if it is going to satisfy state mandates. She would recommend that the City convene an Ad Hoc Committee to really study this. It sounds like even the Planning Commission does not have a full understanding of what is happening and they do not understand what our AirBnB laws are. We have a wonderful person who gave a great report but it does not address things like seniors, ADA/handicap access or parking in our unique community. She stated she would also recommend that there be a limitation on the number of units that are allowed, to respect the parking situation, and even potentially doing an EIR report if it turns out that the numbers of units are going to be more than what we can already handle. She stated her neighborhood cannot sustain any more parking. She stated that a redrafting of this ordinance is in order and it needs to be wholly inclusive, not exclusive, and it needs to comply with the ADA act and to have handicap access, and it really needs to comply with Belvedere's own Program 3.3 in its latest Housing Element.

Ellen Nocosia, Lilypad Homes, stated she would like to comment on some of the provisions of the draft Ordinance. The prohibition of having a dedicated electrical circuit is to preclude future unpermitted expansion of the kitchen area. Typically, what these kitchens would include would be an under-counter refrigerator, a microwave or convection oven, and a portable induction cooktop, all of which would not be a fire hazard. There might be a coffee maker and a toaster and a couple of can lights for lighting. These would probably require a dedicated circuit. Perhaps limiting to one dedicated circuit would make sense. The other issue is the bathroom. In Belvedere the proposal is to require a private bathroom, for the unit to count for RHNA. In other municipalities a shared bathroom is allowed. If you also allowed for shared bathrooms this might create a few additional units to help house people even if those did not count for the RHNA requirement. People ask why a JSU needs to be a bedroom. It does need to be a bedroom because then you are not changing the planned occupancy of the home; when the home was built it might have been a 3 bedroom house. If you convert one bedroom to an apartment it is still a 3 bedroom home. That is how the JSUs have gotten past the sewer and water connection fees (in Novato about \$20,000) because it is just part of the original requirement for the home and was not an extra load; it is still just a bedroom. Otherwise this Ordinance looks great and she supports it. She stated she hope the Commission will also support this and take it to the next step.

Fernando Cruz, 28 Windward Road, congratulated the Planning Commission for their service to all of us. He stated the Commission has a wonderful opportunity in front of you to decide for the future of many, many people who need housing. With all due respect to the opposing views and with all due respect that could be worked out in the future, whether it is electricity or transportation or cars. He stated how much my wife and I would love to be able to have a Junior

Second Unit. We don't have one and they are thinking about it because we could then house a person that we are taking care of in another city near here, because she is suffering from dementia. We would love to have her in our house but we cannot because we do not have this Junior Unit. He stated it is up to the Commission and he highly recommends they think about it positively and use this opportunity.

Close public hearing.

Ms. Borba stated that in terms of the Housing Element and how it fits in with the proposed Ordinance: this Ordinance helps to implement the goals and programs of the recently adopted Housing Element. If units are created after this is adopted, they could count for our housing numbers. In terms of noticing, the Ordinance was noticed in The Ark and we also did a City-wide mailing of a notice of this Zoning Ordinance. In regards to parking issues, we are not requiring any additional parking because the JSU would be in the existing structure and would be a conversion of an existing bedroom. In other jurisdictions who have adopted this Ordinance, they also did not require additional parking. Some places may have different circumstances from Belvedere, but in order to try and get some of these units done this could be one of the larger issues that some of the residents face in addition to connection fees. That could be a part of the Commission's discussion.

Commissioner Carapiet asked is there any requirement in the BMC that requires ADA access for such units?

Deputy City Attorney Longfellow replied there is not.

Commissioner Carapiet stated she read the proposed code. She knows of people who are looking for a way to have a caretaker, for example a young family that wants someone in the house, but in a separate space. This is a great opportunity to offer this kind of housing in our community. With all good things there are also some problems that come with it. Parking will probably be the biggest issue, depending on how popular this is and in what locations. Parking anywhere in Belvedere is tight, even on the Lagoon. How can that be addressed? Other than those concerns she could make a motion to adopt the Resolution.

Commissioner Hart asked is there a limit to the number of occupants in a JSU? Could it be a couple?

Ms. Borba replied yes there could be a couple.

Commissioner Hart said in a rental unit, alarms are required in a bedroom or at least in a hallway leading to a bedroom by the Fire Department. She does not think that would be too big of a burden for a homeowner to provide a battery operated alarm. She stated that this is a wonderful opportunity for people like herself who have lived here for a long time. When her 3 sons grew up and moved out, their bedrooms just became guest rooms. She can definitely make the findings to approve this though the parking problem is apparent. She does not think we can solve the parking problem by not allowing people to use their homes. When her kids were around they each had a car, although she had a lot of room for them at her property. Despite this issue she can make the findings.

Commissioner Mark stated the biggest obstacles are out of our control, which are the added utilities. Perhaps that is why the internal door is a requirement so those agencies might not see it

as a separate unit. The occupancy is a question, and the presumption is that it would be for one person, but that probably cannot be regulated. He understands there still is a review process. An application would be approved by staff. If a property is deficient in parking for the size of the house can it be not approved on that basis? We would not want to take a deficient situation and make it worse. This might be a review condition or parameter.

Ms. Borba replied the review is ministerial. Staff could make sure the house meets current parking requirements as part of the process. She believes that there is a notice of approval that goes out, there is still an allowance for appeals from applicants or neighbors. That is what is currently done for regular Second Units.

Commissioner Mark stated this might not need to be included in the Ordinance but it could be an important safety net. He can make this recommendation because this is a good addition to steps towards achieving our Housing Element requirements.

Vice-Chair Rosenlund thanked the Commissioners and all the presenters here tonight. We have heard some heartfelt comments today about helping out a lot of people and improving our community. He shares those thoughts. The Second Unit Ordinance has helped; the Junior Second Unit Ordinance would be even more helpful. Parking is a concern, certainly in Ms. Miller's neighborhood and walking through there he can see that parking is tough. This needs to be looked at and perhaps there needs to be some way to limit a unit to one car or something that can be done to limit potential parking impacts. However, we cannot tell people they cannot have a car. The only other consideration that he thinks is worthy to potentially change what we have, and in response to Mr. Block's comments about the kitchen, he does not know why we would have to limit the kitchen facilities as they are. Maybe it is just an American thing, but certainly in New York City, London, Paris, and elsewhere in the world, people have figured out how to do a whole lot more than this. It is possible to do a real 2-burner stove, and under-counter washer-dryer, and he would not want to prevent people from doing that if it can be fitted into such a unit in a feasible fashion. He would support this Ordinance with those changes, to soften those requirements to provide for greater flexibility to the creators of these units. He would propose that we adopt the Resolution passing this proposal but with direction to staff to change the unit requirements along these lines.

Commissioner Mark asked would not that provision bump someone up to a Second Unit instead of a Junior Second Unit? Is this not in sense already covered?

Vice-Chair Rosenlund replied it's really a part of the size: what can you fit into a 500 square-foot box in your house?

Commissioner Mark replied that a Second Unit could be small such as 450 square feet. With that type of kitchen you could apply for a Second Unit instead of a Junior Second Unit. It would not hurt to add that but it is already covered.

Vice-Chair Rosenlund stated that it might be true, especially if provisions are being made for Junior Second Units that are not being made for full Second Units in regard to utility hookups. He would encourage the City to push really hard with all the utilities to give better allowances to all Second Units to avoid the high hookup fees. Those are a huge impediment to people trying to do a cost effective Second Unit in their home or as a separate structure.

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Commissioner Mark stated that the big distinction between the two is whether it is considered a true Second Unit for the utilities. Mention of not having a dedicated circuit means you cannot have separate meters. So this could be the purpose of what the utilities are asking for anyway. Our goal would be to try to identify it as an extension of the home living, metered with no additional hookups or anything else, and all part and parcel with the rent. That should be our statement to the utilities as to how we are zoning it.

Commissioner Carapiet stated she agrees with Commissioner Mark that there is a distinction between a Second Unit and a Junior Second Unit. A Junior Second Unit is for a different kind of use than for an actual Second Unit.

Ms. Borba stated that Second Units and Junior Second Units are ministerially approved. There is some language in the Tiburon Ordinance that might be incorporated into this Ordinance which reads: "Off-street parking. The junior second unit shall be located on a lot where the primary dwelling unit complies with current parking standards and there is adequate on or off street parking to accommodate the additional use as determined by the Director's discretion."

Commissioner Carapiet asked who is the "Director"?

Vice-Chair Rosenlund replied that is the Tiburon equivalent of Ms. Borba's position in Belvedere.

MOTION: To adopt a Resolution recommending approval to the City of Belvedere City Council, of the attached Draft Ordinance Amendments to Title 19, Zoning as per Attachment 1, Resolution & Exhibit A with the additional parking stipulation as just read.

MOVED BY: Peter Mark, seconded by Nena Hart

VOTE:
Ayes: Paul Rosenlund, Peter Mark, Nena Hart, Pat Carapiet
Noes: None
Recused: None
Absent: Marsha Lasky, Jim Lynch