



City of Sebastopol Proposed Ordinance

From Bruce Inman [REDACTED]

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To Victoria Henkel <vhenkel@cityofsebastopol.gov>

Good Afternoon Ms. Henkel,

It is my understanding that the City of Sebastopol is considering the adoption of an AB 1033/Government Code Section 66342 ordinance to permit the individual sale of accessory dwelling units. I applaud the City's actions and the leadership being shown by everyone at the City of Sebastopol regarding this issue.

I'm an attorney that specializes in California condominium law, and for what it is worth, I offer the following suggestions to the City of Sebastopol regarding its proposed ordinance:

For starters, the City's proposed approach of adopting a simplified Ordinance is excellent:

A. Adopt the simplified Ordinance with the HOA requirements listed separately in a handout. This option would include all of the required elements of AB 1033 while limiting confusing language. However, there would be two sources of information for the public to access.

– Much of AB1033/Gov. Code 66342 already repeats existing statutes, so the city's approach is a great way to adopt an enabling ordinance that will not need constant conforming amendments to the extent the existing statutory procedures are changes in the future.

With respect to the text of the proposed ordinance, there are some minor changes that I believe is needed:

The underlined sentences are not needed and not necessary.

An Accessory Dwelling unit may not be sold or otherwise conveyed separate from the primary residence except under the conditions outlined in this Part and of Title 16 of the Sebastopol Municipal Code, or built by a qualified nonprofit corporation and would be sold to a qualified buyer. Prior to approval of a parcel map, a home or property owners' association or similar entity shall be formed for any condominium project. The association's shall, at a minimum, provide for the administration, management and maintenance of all common areas including landscaping, drive aisles and parking areas, maintenance of the exterior of all buildings, pool or common roof, the collection of dues, payment of public utilities not billed separately to each unit, and enforcement of standards within the project.

My reasons for revising or eliminating the above-underlined provisions are as follows:

1. Any HOA formation prior to the approval of the map is premature. An owners' association is a statutory component of a condominium project, so no need to require it. The statute already requires this:

"66342 (a) The condominiums shall be created pursuant to the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code)."

2. The language in the second sentence is potentially not applicable to the project, as it describes more traditional condominium project configurations with common area swimming pools and maintenance of what is typically multifamily buildings.

In addition to deleting the first underlined sentence above, I recommend a slight revision to the paragraph, so that it reads as follows::

An Accessory Dwelling unit may not be sold or otherwise conveyed separate from the primary residence except under the conditions outlined in this Part and of Title 16 of the Sebastopol Municipal Code or built by a qualified nonprofit corporation and sold to a qualified buyer. The condominiums shall in this Part be created pursuant to the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code). The condominium declaration shall, at a minimum, provide for the management and maintenance of all exterior improvements, including landscaping, drive aisles and parking areas, maintenance of the exterior of all dwellings and structures, payment of public utilities not billed separately to each unit, and enforcement of standards within the project.

This revised language addresses the need to have the improvements maintained but does not designate the condominium association as specifically obligated for such maintenance obligations. This is consistent with FHA, Fannie Mae, and Freddie Mac guidelines applicable for "site condominiums" which are condominium units with the boundaries of the units located outside of the dwelling. Pursuant to site condominium documentation, the unit owner is responsible for the maintenance, repair, replacement, and insurance of the dwelling. Site condominiums are an excellent way to create the condominiums typically associated with ADUs and are easier to finance under FHA/Fannie/Freddie than traditional condominiums. My suggested revision still requires the CC&Rs address maintenance and utilities, while avoiding any potential conflicts with FHA guidelines.

Also, so that the City of Sebastopol will have a more efficient means code-enforcement type rights, I also would encourage the city to add the following:

The condominium declaration shall give the City third-party enforcement authority for the right, but not the duty, to enforce the declaration's maintenance and property use provisions.

This language gives the city the right to go to court over violations of the CC&Rs and to recover prevailing party attorneys' fees from the property owner(s). Our experience with these types of local agency enforcement provisions is that they give the local agency a powerful tool to prevent nuisances, without imposing any duties on the local agency.

In addition to the AB1033/Gov. Code 66342 discussion above, I have an additional suggestion for the city for another day:

Practically all of the future ADU condominiums will be from property owners who own an existing mapped lot or parcel which is less than 5 acres. As described in Government Code 66426(f), and the City's ordinance 16.12.060 (D), they will all be entitled via a parcel map. The City of Sebastopol could greatly reduce the burden placed upon city staff and the applicant property owners if the city waived the requirements for the lot or parcel owner to remap their lot or parcel for the sole purpose of establishing the condominium entitlement required by AB1033/Gov. Code 66342. The City already has a parcel map waiver ordinance, 16.12.030, so the revision to the existing ordinance would be minor, while the benefits would be significant to both the city staff and the property owner applicant. The revision to the city's existing ordinance would be minor (see underlined sentence in A.4., below):

16.12.030 Parcel map waiver.

- A. The Planning Commission may waive the requirement for a parcel map for the following:
 - 1. Division of real property or interests therein created by probate, eminent domain procedures, partition, or other civil judgments or decrees;
 - 2. Division of real property resulting from the conveyance of land or any interest therein to or from the City, public entity or public utility for a public purpose, such as school sites, public building sites, or rights-of-way or easements for streets, sewers, utilities, drainage, etc.;
 - 3. Division of real property which has been merged pursuant to this chapter, the Subdivision Map Act or any prior ordinance of the City.
 - 4. Division of less than a total of five acres of existing real property lots or parcels into condominiums. Any such waiver may only be approved if the Commission finds that the proposed division of land complies with requirements as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of this chapter, this code, the General Plan and the State Subdivision Map Act. The City Council may reject the recommendation of the Planning Commission on appeal only if the City Council cannot make the foregoing findings.
- B. When the requirement of a parcel map is waived but dedication for the purposes of street widening is necessary, such dedication shall be made by a separate instrument which shall be recorded.
- C. A waiver may be conditioned to provide for, among other things, payment by the subdivider of parkland dedication, drainage, traffic and other fees permitted by law.
- D. Upon the waiver of the parcel map requirement, pursuant to this section, the City Engineer shall file with the County Recorder a certificate of compliance for the land to be divided, in accordance with SMC [16.52.040](#), and a plat map showing the division.
- E. A parcel map waiver approval shall be valid for 18 months from the date of approval and if the lots are not a matter of record within that 18-month period, the approval shall expire. Such approval may be extended by the Environmental Review Committee for up to one year from the expiration date if an application for such extension is filed in advance of the expiration date and if the Environmental Review Committee finds that the parcel map waiver is consistent with the then-existing General Plan and SMC Title [17](#), Zoning, and conforms to the then-existing improvement standards of this chapter. The Environmental Review Committee may condition its approval of the extension request to address issues of conformity as well as to address other potential impacts of the parcel map waiver. The ERC's action on an extension shall be subject to appeal to the Planning Commission in accordance with the provisions of Chapter [17.455](#) SMC. An appeal must be filed in writing within five days from issuance of the ERC's decision on the matter, and be accompanied by any required fee.

This change would allow the city to have an efficient entitlement process which allows the city to address all AB1033 related issues, while avoiding the redundancy of parcel mapping an existing legal parcel or lot for the sole purpose of establishing the condominium entitlement.

The City of Sebastopol's consideration of AB1033/Gov. Code 66342 shows tremendous leadership in addressing obtainable and achievable homeownership, and I would be happy to discuss any of these issues if you or anyone else at the city has any questions!

Thanks,
Bruce

Bruce R. Inman, Esq.

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