

**COUNTY OF EL DORADO
PLANNING AND BUILDING DEPARTMENT
PLANNING COMMISSION
STAFF REPORT**



Agenda of: October 14, 2021

Staff: C.J. Freeland

ZONING ORDINANCE AMENDMENT

FILE NUMBER: Project File OR19-0002

APPLICANT: El Dorado County

REQUEST: Proposed Title 130 - Zoning Ordinance Minor Amendments - Secondary Dwellings

ENVIRONMENTAL DOCUMENT: California Environmental Quality Act (CEQA) Exemption consistent with Section 15282(I) of the CEQA Guidelines.

RECOMMENDATION: Staff recommends the Planning Commission forward a recommendation to the Board of Supervisors to take the following actions:

1. Approve the California Environmental Quality Act (CEQA) Exemption consistent with Section 15282(h) of the CEQA Guidelines pursuant to Section 21080.17 of the California Public Resources Code (Exhibit A); and
2. Approve the proposed amendments to the Secondary Dwelling Ordinance, now referred to under state law as the Accessory Dwelling Unit (ADU) Ordinance and related Articles of the Zoning Ordinance, and adopt an Ordinance for comprehensive minor amendments to Title 130 of the El Dorado County Ordinance Code relating to ADUs (Exhibit B) as presented by staff.

PURPOSE

The purpose of this Planning Commission hearing is to provide the public with an opportunity to comment on the proposed amendments to the Accessory Dwelling Unit (ADU) Ordinance (Project OR19-0002), and for the Planning Commission to review and discuss the modifications required by state law as presented by staff for the Board of Supervisors consideration.

DISCUSSION / BACKGROUND

Accessory Dwelling Units, or ADUs, are also known as granny flats, in-law units, and backyard cottages. ADUs can be attached to or detached from a primary residential dwelling on the same

lot as the primary dwelling and must provide complete independent living facilities for one or more persons. ADUs must include permanent provisions for living, sleeping, eating, cooking, and sanitation, in contrast to recreational vehicles which provide temporary housing according to California law.

The County Code of Ordinances allows homeowners to build ADUs in zones that permit residential development and incorporates those provisions in Title 130 of the Code. ADUs support the County's efforts to encourage a variety of housing options for local residents. They provide an innovative, affordable, effective option for adding much-needed housing in El Dorado County without diminishing the rural character of local communities.

Legislative History

On December 15, 2015, the Board of Supervisors (Board) adopted a comprehensive Zoning Ordinance Update (Legistar File 11-0356). On the same date the Board also certified the Final Program Environmental Impact Report (State Clearinghouse No. 2012052074) for the TGPA/ZOU Project.

On September 27, 2016, then Governor Brown signed two accessory dwelling unit bills into state law, Assembly Bill (AB) 2299 (Bloom) and Senate Bill (SB) 1069 (Wieckowski), which amended the state's existing second unit law found in Government Code Section 65852.2. These amendments to the existing second unit law (now referred to as Accessory Dwelling Unit or ADU law) became effective on January 1, 2017.

Additional revisions to ADU law came into effect January 1, 2018, with SB 1069 (Wieckowski), AB 2299 (Bloom), and AB 2406 (Thurmond), that added provisions to promote the development of ADUs and further address barriers to the development of ADUs.

On August 16, 2019, AB 670 (Friedman/Wieckowski) added Civil Code Section 4751 to void provisions in Covenants, Conditions and Restrictions (CC&Rs) for homeowner associations (HOAs) that "either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code."

Chapter 653, Statutes of 2019 (SB13, Section 3), Chapter 655, Statutes of 2019 (AB 68, Section 2) and Chapter 659 (AB 881, Section 1.5 and 2.5) build upon previous changes to ADU and Junior Accessory Dwelling Unit (JADU) law (Government Code Section 65852.2, 65852.22 and Health and Safety Code Section 17980.12) and further address barriers to the development of ADUs and JADUs.

As recently as January 1, 2021, Section 65852.2 of the Government Code was amended again to make clear that if the local agency has not acted upon the completed application for an ADU within 60 days, the application shall be deemed approved.

This legislation, among other changes, addresses the following:

- Reduces the maximum ADU and JADU application review time to 60 days (Section (a)(3) and (b)).
- Removes covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civil Code Section 4751).
- Eliminates owner-occupancy requirements by local agencies (Section (a)(6) and (e)(1)) until January 1, 2025.
- Reduces the maximum number of required parking spaces for an ADU to one space
- Clarifies an ADU can be created through the conversion of a garage, carport or covered parking structure.
- Allows replacement parking spaces to be located in any configuration as a result of a parking structure conversion to an ADU.
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement off-street parking spaces cannot be required by the local agency (Section (a)(1)(D)(xi)).
- Defines the term "tandem parking" to mean two or more automobiles.
- Clarifies that development standards shall not include requirements on minimum lot size (Section (a)(1)(B)(i)).
- Clarifies areas designated for ADUs may be based on water and sewer and impacts on traffic flow and public safety.
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1000 square feet if the ADU contains more than one bedroom (Section (c)(2)(B)).
- Clarifies "public transit" to include various means of transportation that charge set fees, run on fixed routes and are available to the public (Section (j)(10)).
- Establishes impact fee exemptions or limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees and impact fees for an ADU of 750 square feet or larger shall be proportional to the relationship of the ADU to the primary dwelling unit (Section (f)(3)).
- Requires special districts and water corporations to charge a proportional fee scale based upon the ADUs size or its number of plumbing fixtures.
- Defines an "accessory structure" to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Section (j)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy RHNA housing needs as specified in Government Code Section 65583.1(a) and 65852.2(m).
- Permits JADUs without an ordinance adoption by a local agency (Section (a)(3), (b) and (e)).
- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Government Code Section 65852.22).
- Allows an owner of a substandard ADU five (5) years to correct the violation upon application and approval, if the violation is not a health and safety issue, as determined by the enforcement agency (Section (n)).
- Creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separate from the primary dwelling by allowing deed-restricted sales to occur. To qualify, the

primary dwelling and the ADU are to be built by a qualified non-profit corporation whose mission is to provide units to low-income households (Government Code Section 65852.26).

- Requires local agency housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Government Code Section 65583 and Health and Safety Code Section 50504.5)
- Authorizes the Department of Housing and Community Development (HCD) to review and comment on ADU ordinances.
- Pursuant to Government Code Section 65852.2(h), adopted ADU ordinances shall be submitted to HCD within 60 days of adoption.
- Authorizes HCD to notify the local agency if the department finds that their ADU ordinance is not in compliance with state law (Section (h)(2)).

State law makes clear that nonconforming ordinances are void and that the state standards specified in Government Code Section 65852.2 and 65852.22 shall be enforced until such time a jurisdiction adopts its own ordinance in accordance with state law. In order to preserve local preferences, such as lot size and maximum floor area, and in accordance with Board Policy A-3 (Ordinances - New or Amended), Section 130.40.300 and related Articles of Title 130 of the El Dorado County Ordinance Code require amendments to comply with state law.

Per Board Policy A-3, "Minor amendments to existing ordinances that are the result of changes in state or federal laws or regulations shall be presented to the Chief Administrative Office for conceptual review and authorization prior to requesting the preparation of a draft ordinance by County Counsel. The requestor shall identify what, if any, environmental documentation is necessary." The authorization from the Chief Administrative Office is attached as Exhibit E.

Zoning Ordinance Amendments to Regulations of Accessory Dwelling Units

In amending its Ordinance, the County, per state law, may modify certain state standards but must adhere to others. State law allows a local government to establish minimum and maximum unit sizes for ADUs (Government Code Section 65852.2(c)). Furthermore, the law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs. A chart summarizing the proposed changes to Section 130.40.300 and related Articles of the El Dorado County Zoning Ordinance is attached as Exhibit D.

The Zoning Ordinance Amendments to regulation of ADUs (Project OR19-0002) consists of modifications required by state law and recommended by HCD. The amendments include but are not limited to: 1) universal name change from "Secondary Dwelling" to "Accessory Dwelling Unit" (ADU) throughout Title 130; 2) add the ADU Use Type as an allowed use in Residential Multi-family (RM) Zones (Article 2, Table 130.24.020 – Residential Zone Use Matrix); 3) add ADU as an allowed use in the Meyers Area Plan (MAP) for MAP-1 and MAP-3 zones; 4) revise MAP-3 Zone (Res/T) to remove limitation of second unit only on parcels greater than one acre; 5) add language to clarify Design Review exclusions for ADUs in MAP Zones; 6) add parking reduction requirements and exemptions for ADUs (Article 3, Table 130.35.030.1 – Schedule of Off-Street Vehicle Parking Requirements); 7) revise maximum ADU floor area for smaller residential lots from 600 sq. ft. to 850 sq. ft., or 1,000 sq. ft. if more than one bedroom (Article 4,

Table 130.40.300.1 – Maximum Floor Area for Detached Accessory Dwelling Units); 8) remove lot coverage from zoning conformance requirements; 9) increase floor area for converted living area of primary dwelling to ADUs from maximum of 30 percent to 50 percent; 10) add development standards for conversion of all or a portion of a legally permitted accessory structure to an ADU; 11) add minimum setback requirements of four feet with exceptions for fire and safety, public utility or drainage easements, or other recorded easements; 12) add language to clarify that passageways are not required for ADUs; 13) add language to define accessory dwelling units including identification and description of types of ADUs; 14) add subsection to allow for one ADU and one junior ADU per lot under certain conditions; 15) add language to allow an expansion of not more than 150 sq. ft. beyond the same physical dimensions as the existing primary dwelling to accommodate ingress and egress (Article 4, Subsection 130.40.300.2 – General Development Requirements); 16) add subsections “b” to describe detached ADUs and “c” to describe converting existing space to ADUs; 17) add subsection “e” to allow for ADUs in multi-family or mixed use zones; 18) add subsection for Junior Accessory Dwelling Unit development standards; 19) add subsection to clarify detached accessory dwelling unit floor area, minimum setbacks, and requirements for converted structures to ADUs (Article 4, Subsection 130.40.300.3 – Specific Development Requirements); 20) revise parking requirements to one per ADU and allow for parking in setback areas, if feasible; 21) add provisions when no replacement parking is required due to conversion of parking structures to ADUs and other exceptions to parking requirements (Article 4, Subsection 130.40.300.4 – Parking); 22) add resale restriction and short-term rental restrictions for ADUs; 23) add five-year suspension of owner-occupancy requirements from January 1, 2020 to January 1, 2025; 24) Remove Subsection 130.40.300.C.5, Utilities; 25) add County-initiated exceptions for ADU owner-occupancy for licensed care facilities, nonprofit housing organizations and beneficiaries of special needs trusts owning the property (Article 4, Subsection 130.40.300.D – Owner Occupancy); 26) add definitions for “Accessory Dwelling Unit,” “Efficiency Unit,” and “Junior Accessory Dwelling Unit”; and 27) delete definition for “Secondary Dwelling” (Article 8, Section 130.80.020 – Definitions of Specialized Terms and Phrases).

The proposed text changes to the Zoning Ordinance Amendments to Zoning Regulations of ADUs is included as (Exhibit C) shown in track changes format.

ENVIRONMENTAL REVIEW

Pursuant to Section 21080.17 of the California Public Resources Code (PRC), the adoption of the ordinance is statutorily exempt from the California Environmental Quality Act (CEQA). Under PRC Section 21080.17, CEQA does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.2 (and 65852.22) of the Government Code (the state ADU law). The ordinance implements Government Code Section 65852.2 and 65852.22 within the unincorporated area of El Dorado County in a manner that is consistent with the requirements of state law. As such, the adoption of the ordinance is exempt from CEQA. The draft CEQA Notice of Exemption is attached as (Exhibit A).

NEXT STEPS

The Planning Commission’s recommendation for the proposed Title 130 Zoning Ordinance Minor Amendments – Secondary Dwellings will be forwarded to the Board of Supervisors for consideration. The Board hearing is anticipated to be held on November 16, 2021. At that time, the Board will hold a public hearing to receive public comments and take formal action on the proposed Title 130 Zoning Ordinance Minor Amendments – Secondary Dwellings.

STAFF REPORT EXHIBITS

- Exhibit A Draft CEQA Notice of Exemption
- Exhibit B..... Draft Ordinance - Title 130 Zoning Ordinance Minor Amendment to Regulations of Secondary Dwellings (Project File OR 19-0002)
- Exhibit C..... Draft Title 130 Zoning Ordinance Minor Amendments – Secondary Dwellings (Track Changes) for Articles 2, 3, 4, 5, and 8
- Exhibit D Summary Table of Proposed Title 130 Zoning Ordinance Minor Amendments – Secondary Dwellings
- Exhibit E..... Letter of Authorization for Amendments from the CAO’s Office