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**COMMUNITY DEVELOPMENT AGENCY  
LONG RANGE PLANNING DIVISION**

**INTEROFFICE MEMORANDUM**

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**Date:** May 3, 2017

**To:** Creighton Avila, Deputy Chief Administrative Officer *CA*

**From:** C.J. Freeland, Department Analyst II *CF*  
Long Range Planning, Housing Community and Economic Development Programs

**Subject:** Zoning Ordinance Amendment – Secondary Dwellings 130.40.300

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."

Staff requests authorization from the Chief Administrative Office to prepare a draft amended Secondary Dwelling Ordinance for County Counsel review as required by Government Code Section 65852.2. The minor amendments required by state law will not require environmental review as noted below.

**SUMMARY**

On September 27, 2016, Governor Brown signed two accessory dwelling unit bills into state law, Assembly Bill (AB) 2299 and Senate Bill (SB) 1069 that amended the state's existing second unit law (Government Code (GC) Section 65852.2). These amendments to the existing second unit law went into effect on January 1, 2017. The new version of state law makes clear that city or county ordinances which do not align with state law shall be "null and void" and that, until such time a jurisdiction adopts its own ordinance, in accordance with state law, the state standards specified in GC Section 65852.2 shall be enforced.

The state's standards include a limitation on the size of a second unit (now called accessory dwelling units (ADUs). ADUs that are attached to an existing single family dwelling cannot be larger than 50% of the existing living areas. Both attached and detached ADUs cannot exceed 1,200 square feet.

**Section 130.40.300 (Secondary Dwellings) of the County's Zoning Ordinance (Title 130 of the County Code of Ordinances) does not align with state law as amended.**

**BACKGROUND**

On December 15, 2015, the Board of Supervisors adopted a comprehensive update of the County's Zoning Ordinance, codified as Title 130, which includes Section 130.40.300 (Secondary Dwellings). The

Ordinance further prescribes that ADUs attached to an existing single family dwelling cannot exceed 30% of the existing living areas (Section 130.40.300.C.1)

In preparing its own ordinance, the County, per state law, may modify certain state standards but must adhere to others. Local government may establish minimum and maximum unit sizes (GC Section 65852.2(c)). Furthermore, GC Section 65852.2.4(g) **does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs.** However, like all development standards (e.g., height, lot coverage, lot size), unit sizes should not burden the development of ADUs.

#### PROPOSED AMENDMENTS

Changes to the Ordinance required to comply with state law include Section 130.40.300.C.1, adjusting the maximum percentage for an ADU attached to an existing single family dwelling from 30% to 50% of the existing living area. Language may also be amended throughout the Ordinance to identify all secondary dwellings as ADUs.

Attachment 1 to this memo shows the statutory changes to **Government Code Section 65852.2**, as **provided in** the Technical Assistance Booklet provided by the California Department of Housing and Community Development (HCD) and available at:

<http://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml>.

Attachment 2 is the State Standards Checklist provided by HCD to assess conformance with state law as amended. Note that the two areas of non-conformance are the ADU maximum square foot allowance and the maximum percent of conversation for attached ADUs.

Staff concludes that:

- 1) The County's maximum allowance of ADUs at 1,600 square feet (Section 130.40.300, Table 130.40.300.1), depending on lot size, was included in the Environmental Impact Report (EIR) for the Targeted General Plan Amendment-Zoning Ordinance Update (TGPA-ZOU) project in 2015, and
- 2) ADUs at a maximum 1,600 square feet (Section 130.40.300, Table 130.40.300.1), depending on lot size, is less restrictive than the state law, and may therefore remain unchanged.
- 3) Increasing the maximum floor area conversion from 30% to 50% is exempt from the California Environmental Quality Act (CEQA), as stipulated in the following CEQA sections (<http://resources.ca.gov/ceqa/>):
  - Section 15301 - Existing Facilities, (e) 1 and 2.
    - The key consideration is whether the project involves negligible or no expansion of an existing use
  - Section 15369 - Ministerial
    - Where the law requires a governmental agency to act on a project in a set way without allowing the agency to use its own judgment, the project is called "ministerial," and CEQA does not apply.

- Section 15268 - Ministerial Projects
  - Ministerial projects are exempt from the requirements of CEQA
- Section 15303 - New Construction Or Conversion Of Small Structures
  - Examples of this exemption include, but are not limited to:
    - One single-family residence or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption, and
    - Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

REQUEST FOR AUTHORIZATION

Please provide staff with a signature below to indicate authority to proceed with amendments to the Secondary Dwelling Ordinance, Section 130.40.300 (Secondary Dwellings) of the County Zoning Ordinance (Title 130), as required by state law, GC Section 65852.2.

Thank you.

Authorized by: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Cc: Roger Trout, Director Development Services  
Tom Burnette, Deputy Director/Building Official  
Kyle Kraus, Deputy Building Official  
Anne Novotny, Principal Planner  
Tiffany Schmid, Principal Administrative Analyst  
Kyle Zimbelman, Ombudsman/Department Analyst

Attachment 1: Statutory Changes (Strikeout/Underline)

**Government Code Section 65852.2**

(a) (1) Any A local agency may, by ordinance, provide for the creation of second-accessory dwelling units in single-family and multifamily residential zones. The ordinance ~~may~~ shall do any all of the following:

(A) Designate areas within the jurisdiction of the local agency where second-accessory dwelling units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of second-accessory dwelling units on traffic ~~flow~~ flow and public safety.

(B) (i) Impose standards on second-accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that second-accessory dwelling units do not exceed the allowable density for the lot upon which the second-accessory dwelling unit is located, and that second-accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (i) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(ii) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(iii) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. ~~Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of ADUs.~~ permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of ADUs. an accessory dwelling unit.

~~(b) (4) (4) An~~ When existing ordinance governing the creation of an accessory dwelling unit by a local agency which has not adopted an ordinance governing ADUs in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use permit for the creation of a ADU if the ADU complies with all of the following: that complies with this section.

~~(A) The unit is not intended for sale and may be rented.~~

~~(B) The lot is zoned for single-family or multifamily use.~~

~~(C) The lot contains an existing single-family dwelling.~~

~~(D) The ADU is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.~~

~~(E) The increased floor area of an attached ADU shall not exceed 30 percent of the existing living area.~~

~~(F) The total area of floorspace for a detached ADU shall not exceed 1,200 square feet.~~

~~(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.~~

~~(H) Local building code requirements which apply to detached dwellings, as appropriate.~~

~~(I) Approval by the local health officer where a private sewage disposal system is being used, if required.~~

~~(2) (5)~~ No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

~~(3) (6)~~ This subdivision establishes the maximum standards that local agencies shall use to evaluate ~~proposed ADUs on lots~~ a proposed accessory dwelling unit on a lot zoned for residential use which ~~contain~~ that contains an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision ~~(a), subdivision~~, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant owner-occupant or that the property be used for rentals of terms longer than 30 days.

~~(4) (7)~~ No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of ADUs an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

~~(5) (8)~~ A ADU which conforms to the requirements of An accessory dwelling unit that conforms to this subdivision shall ~~be deemed to be an accessory use or an accessory building and shall~~ not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which that is consistent with the existing general plan and zoning designations for the lot. The ADU accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

~~(a) (b)~~ No ~~When a~~ local agency shall adopt an ordinance which totally precludes ADUs within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing ADUs within single-family and multifamily zoned areas justify adopting the ordinance. that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

~~(d) (c)~~ A local agency may establish minimum and maximum unit size requirements for both attached and detached ~~second-accessory dwelling~~ units. No minimum or maximum size for ~~a second~~ an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings ~~which that~~ does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

~~(e)~~ Parking requirements for ADUs shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the

~~use of the ADU and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction. Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.~~

(f) ~~(1) Fees charged for the construction of second-accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000), 66000) and Chapter 7 (commencing with Section 66012).~~

~~(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.~~

~~(A) For an accessory dwelling unit described in subdivision (e), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.~~

~~(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.~~

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs ~~an accessory dwelling unit.~~

(h) Local agencies shall submit a copy of the ~~ordinances ordinance~~ adopted pursuant to subdivision (a) ~~or (e)~~ to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living ~~area,~~ area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) ~~Second-~~ "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. ~~A second-~~ An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for ~~second accessory dwelling~~ units.

**Government Code Section 65852.22.**

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence already built on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the existing walls of the structure, and require the inclusion of an existing bedroom.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A sink with a maximum waste line diameter of 1.5 inches.

(B) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas.

(C) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine whether the junior accessory dwelling unit is in compliance with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. A permit shall be issued within 120 days of submission of an application for a



permit pursuant to this section. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For the purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For the purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Attachment 4: State Standards Checklist (As of January 1, 2017)

| YES/NO     | STATE STANDARD*  | GOVERNMENT CODE SECTION |
|------------|--|-------------------------|
| YES        | Unit is not intended for sale separate from the primary residence and may be rented.   | 65852.2(a)(1)(D)(i)     |
| YES        | Lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.  | 65852.2(a)(1)(D)(ii)    |
| YES        | Accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.                                    | 65852.2(a)(1)(D)(iii)   |
| EDC IS 30% | Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.  | 65852.2(a)(1)(D)(iv)    |
| 1600 sq ft | Total area of floor space for a detached accessory dwelling unit does not exceed 1,200 square feet.  | 65852.2(a)(1)(D)(v)     |
| YES        | Passageways are not required in conjunction with the construction of an accessory dwelling unit.   | 65852.2(a)(1)(D)(vi)    |
| YES        | Setbacks are not required for an existing garage that is converted to an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines are not required for an accessory dwelling unit that is constructed above a garage. | 65852.2(a)(1)(D)(vi)    |
| YES        | (Local building code requirements that apply to detached dwellings are met, as appropriate.  | 65852.2(a)(1)(D)(vi)    |
| YES        | Local health officer approval where a private sewage disposal system is being used, if required.   | 65852.2(a)(1)(D)(ix)    |
| YES        | Parking requirements do not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.  | 65852.2(a)(1)(D)(x)     |

\* Other requirements may apply. See Government Code Section 65852.2