



## Legislation Details (With Text)

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**File created:** 10/18/2021      **In control:** Board of Supervisors

**On agenda:** 11/16/2021      **Final action:** 11/16/2021

**Title:** HEARING - To consider the recommendation for approval from the Planning Commission on the proposed amendments to the Accessory Dwelling Unit (ADU) Ordinance (Project OR19-0002), and recommending the Board of Supervisors (Board) 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 Ordinance 5152 for comprehensive minor amendments to Title 130 of the El Dorado County Ordinance Code relating to ADUs (Exhibit B) as presented by staff.

**FUNDING:** General Fund.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. A - Blue Route Summary ADU Ordinance - approved, 2. B - Blue Route ADU Ordinance - approved, 3. C - CEQA Notice of Exemption Title 130 Amendments, 4. D - Title 130 ADU Amendments Summary Ordinance, 5. E - DRAFT Title 130 Amendments - approved ADU Ordinance 8-26-21 Clean, 6. F - Replace Staff Report Exhibit C - DRAFT Title 130 Amendments-ADU Ordinance 8-26-21 Track Changes, 7. G - CAO Office Authorization, 8. H - Planning Commission Staff Report, 9. I - ADU BOS Presentation 11-16-21, 10. J - PC Minutes 10-14-21, 11. Public Comment BOS Rcvd. 11-16-2021, 12. Public Comment BOS Rcvd. 11-15-2021, 13. Executed Summary Ordinance 5152, 14. Proof of Publication Mt. Democrat 11/3, 15. Proof of Publication Mt. Democrat 11/8, 16. Proof of Publication Mt. Democrat 11/19, 17. Proof of Publication Georgetown Gazette 11/4, 18. Proof of Publication Tahoe Daily Tribute 11/5, 19. FILED-Notice of Exemption, 20. Executed Ordinance 5152

Date	Ver.	Action By	Action	Result
11/16/2021	1	Board of Supervisors	Approved	Pass

**HEARING** - To consider the recommendation for approval from the Planning Commission on the proposed amendments to the Accessory Dwelling Unit (ADU) Ordinance (Project OR19-0002), and recommending the Board of Supervisors (Board) take the following actions:  
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**FUNDING:** General Fund.

### DISCUSSION / BACKGROUND

On October 14, 2021, Planning staff presented proposed Title 130 Zoning Ordinance Minor

Amendments related to Secondary Dwelling Units submitted by the County for consistency with Government Code Sections 65852.2 and 65852.22 (Project File OR19-0002) project to the Planning Commission (Item 4, Legistar File 21-1556). Following closure of the public hearing and deliberation, Commissioner Nevis, made a motion to approve staff's recommendation that the Planning Commission forward a recommendation to the Board to approve the Project, with a second by Commissioner Clerici. The Planning Commission motion recommends that the Board of Supervisors: 1) Approve the California Environmental Quality Act (CEQA) Exemption consistent with Section 15282(h) of the CEQA Guidelines; 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 as presented by staff. The full recommendation from the Planning Commission is summarized in the Planning Commission meeting minutes from October 14, 2021 (Item 4, Legistar File 21-1556).

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.

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.

The proposed amendments include but are not limited to amendments to the Secondary Dwelling Ordinance (Section 130.40.300) hereafter called the Accessory Dwelling Unit Ordinance, and related sections in Title 130 (Zoning Ordinance) of the El Dorado County Ordinance Code for consistency with Government Code Sections 65852.2 and 65852.22. 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).

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 Attachment G.

### **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 Attachment D (Staff Report Exhibit C - DRAFT Title 130 Amendments-ADU Ordinance 8-26-21 (Track Changes)).

### **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) consistent with Section 15282(h) of the CEQA Guidelines. 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 Attachment C.

### **ALTERNATIVES**

The County is currently held to the provisions of state law under Government Sections 65852.2 and 65852.22. While the Board may choose not to adopt the Project (OR OR19-0002), that decision would have no substantial effect the development of ADUs or JADUs in the county.

### **PRIOR BOARD ACTION**

N/A

### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

County Counsel

### **CAO RECOMMENDATION**

Pursuant to Section 2.13.050 of the County Code of Ordinances, the Chief Administrative Officer does not make recommendations on those items scheduled for public hearing through the Planning Commission.

### **FINANCIAL IMPACT**

No change to County Net Cost. The County is currently held to the provisions of state law under Government Sections 65852.2 and 65852.22.

### **CLERK OF THE BOARD FOLLOW UP ACTIONS**

- 1) Obtain the Chair's signature on the ordinance summary and publish in the newspaper no less than 5 days prior to Final Passage.
- 2) Publish the summary ordinance to include the final Board vote within 15 days after Final Passage.
- 3) Send the full ordinance to Municode for codification following Final Passage.

### **STRATEGIC PLAN COMPONENT**

Good County Governance - Accountability with respect to laws, regulations and policies. Healthy Communities - Achieve sufficient and attainable housing for all El Dorado County residents. Economic Development - Provide attainable housing options - balance jobs with housing.

### **CONTACT**

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