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Agenda Date: 9/12/2017  
Agenda Placement: 9F  
Set Time: 10:30 AM PUBLIC HEARING  
Estimated Report Time: 30 minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** David Morrison - Director  
Planning, Building and Environmental Services  
**REPORT BY:** John McDowell, Principal Planner - 299-1354  
**SUBJECT:** Accessory Dwelling Unit Ordinance

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### **RECOMMENDATION**

First reading and intention to adopt an ordinance to conform County Zoning regulations with State Law as they pertain to Accessory Dwelling Units amending Sections 18.08.550 (Second Unit), 18.10.020 (Duties - Specific Subjects), 18.104.180 (Junior Accessory Dwelling Unit and Second Unit), and 18.110.030 (Number Of Parking Spaces Required), and adding Section 18.08.332 (Junior Accessory Dwelling Unit) and Section 18.08.551 (Second Unit, Interior).

**ENVIRONMENTAL DETERMINATION:** Pursuant to Public Resources Code Section 21080.17, the adoption of this ordinance implementing Government Code Section 65852.2 is exempt from the California Environmental Quality Act. The adoption of the ordinance implementing Government Code Section 65852.22 for junior accessory dwelling units is categorically exempt under CEQA Guidelines Section 15303, conversion of small structures, in that it permits only one junior accessory dwelling unit on any parcel, which must include an existing bedroom within an existing single family home with only minor exterior alterations to allow access and limited utility service.

**(CONTINUED FROM AUGUST 22, 2017)**

### **EXECUTIVE SUMMARY**

The purpose of the proposed ordinance is to conform County Code to recent updates to State Law concerning second units, which are now known as Accessory Dwelling Units in State statutes (hereafter, second units and accessory dwelling units will be referred to interchangeably as either "ADU", "ADUs" or "second units"). State law provides that the County's existing second unit ordinance is "null and void" if it does not conform to the amended statutes.

On August 22, 2017, the Board conducted a public hearing and considered two versions of the proposed ordinance. The first version of the ordinance contained only those code updates necessary to

address mandates prescribed by State law. The second version of the ordinance contained additional optional provisions for Junior Accessory Dwelling Units (hereafter referred to as JADUs or a JADU), which are encouraged in State law but not mandatory. A JADU consists of a living unit no greater than 500 sq. ft. in area that includes a bedroom within an existing single family dwelling unit with certain limits on kitchen size, rental occupancy, and electric service. These units are exempt from all utility connection fees.

At the conclusion of the August 22, 2017 Board meeting, the Board voted to continue the item to September 12, 2017 to allow Staff to return with updates to the proposed ordinance and to provide additional information as requested by the Board. The Board advised that the second version of the ordinance addressing JADUs was the preferred approach. An updated version of the ordinance which contains JADU provisions is attached, as well as a zoning compatibility chart highlighting those zoning districts where changes to standards would occur based on the new ordinance.

The public hearing for this item remains open. Staff recommend that the Board adopt the updated ordinance (first reading) after completing the public hearing. A second and final reading would occur at a subsequent meeting.

### **PROCEDURAL REQUIREMENTS**

1. Staff reports;
2. Receive public comments (Public Hearing opened August 22, 2017);
3. Close the Public Hearing;
4. Clerk reads the Ordinance Title;
5. Motion, second, discussion and vote to waive the balance of the reading of the ordinance; and
6. Motion, second, discussion, and vote on intention to adopt the ordinance.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

Pursuant to Public Resources Code Section 21080.17, the adoption of this ordinance implementing Government Code Section 65852.2 is exempt from the California Environmental Quality Act. The adoption of the ordinance implementing Government Code Section 65852.22 for junior accessory dwelling units is categorically exempt under CEQA Guidelines Section 15303, conversion of small structures, in that it permits only one junior accessory dwelling unit on any parcel, which must include an existing bedroom within an existing single family home with only minor exterior alterations to allow access and limited utility service.

### **BACKGROUND AND DISCUSSION**

An updated version of the proposed ordinance which includes the optional JADU provisions is attached in both clean and tracked-changes format. The track-changes format shows updates from the ordinance presented on August 22, 2017, with substantive changes in yellow highlighting.

The primary objective of the new legislation is to provide additional housing by easing local governmental restrictions on ADUs in single family zones. It requires local governments to make several key changes in their

ordinances:

- ) Second units located entirely within an existing structure (“interior second units”) must be allowed in all single-family zones.
- ) The County cannot require separate sewer or water connections for interior second units.
- ) No additional parking can be required for an interior second unit, unless it converts an existing garage, and the amount of parking that can be required for any second unit is limited. Parking for second units may be uncovered, in setbacks, or in tandem.
- ) No fire sprinklers can be required for a second unit unless they are required for the primary residence.

While the majority of the unincorporated area consists of large agricultural or open properties, there are a number of Residential Single (RS) and Residential Country (RC) zoned pockets spread across the County where these changes to State Law may assist in providing opportunities for additional second unit development. The attached map shows the location of all RS and RC zones. RS zoning districts are located in pockets of the City of Napa, on the north side of Coombsville including the Silverado Country Club, in pockets south of St. Helena, and at Deer Park and Angwin. All of these areas are essentially built-out, and many are constrained by private well and septic system limitations, except for the unincorporated RS zoning districts within City of Napa water and sewer service areas. RC zoning districts are located in several areas surrounding the City of Napa, near Lake Berryessa, and several pockets bordering the Cities of St. Helena and Calistoga, with most properties served by private well and septic system. A large area of RC zoned properties is located east of Napa in Coombsville, where second unit development is highly constrained due to groundwater limitations in the Miliken-Sacro-Tulucay basin. The proposed ordinance will continue to allow second units in the Coombsville neighborhood; however, the potential for second unit development will remain limited in this area due to groundwater health and safety regulations (Title 13 - Groundwater Conservation). The existing groundwater regulations will not be changed by this ordinance.

The County has allowed second units by right in the RS and RC zones, and has also allowed second units within the AW zoning district. County Code currently does not allow second units in the AP zone and only permits them in the PD zoning district if expressly enabled in the use permit for a specific development.

The attached ordinance makes numerous changes in provisions applicable to second units in zoning districts where second units are already allowed, establishes provisions for junior accessory dwelling units (JADUs) and allows both JADUs and second units by right in the PD zone, but only on PD-zoned lots designed for single family dwellings.

### **SUMMARY OF MAJOR CHANGES**

At the August 22, 2017 Board meeting, the Board requested several clarifications in the ordinance (highlighted in the attached ordinance) and requested additional information about efficiency kitchens in junior accessory dwelling units (JADUs) and the County’s ability to limit occupancy of second units. These issues are discussed below.

A detailed section by section description of the changes to the second unit ordinance is attached to this report. The major changes are these:

1. The amendments define a new type of second unit called, “second unit, interior,” which are units created by converting existing legally constructed spaces located either within a primary residence or within an existing accessory structure. These are permitted in single-family RS and RC zones and in PD zones on lots where single-family homes are permitted. The County cannot require

separate water or sewer connections for interior second units, and no parking can be required, unless the unit is located within an existing garage. In that case the County can require the parking to be replaced but must allow it to be covered or uncovered or in tandem.

2. Parking for all types of second units may be covered or uncovered or in tandem.
3. No fire sprinklers can be required for second units of all types unless required for the primary residence.
4. Junior ADUs are allowed in RS, RC, and AW districts and in PD zones on lots where single-family homes are permitted. JADUs are limited to 500 sq. ft., must include an existing bedroom, must have both separate exterior access and interior access to the main house, may share a bathroom with the main house, and may only include a limited efficiency kitchen (see below). They are exempt from all water and sewer connection and capacity fees.
5. Owners must record a covenant stating that the second unit cannot be sold separately from the primarily residence nor used for short-term rentals. Properties with JADUs must additionally be owner-occupied, and a covenant must be recorded limiting the unit to the restrictions in the statute.

#### **Efficiency Kitchens in Junior Accessory Dwelling Units:**

The JADU statute was designed to define a type of second unit with efficiency kitchen facilities that would be exempt from all connection and capacity fees from all public agencies. The State statute enabling JADUs mandates that these units contain a kitchen with the following:

- a. A sink with a maximum waste line diameter of one-and-a-half inches;
- b. A cooking facility or appliance which does not require electrical service greater than one hundred and twenty volts, or natural or propane gas; and
- c. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit (which is limited to 500 sq.ft).

These requirements are applied through zoning regulations and therefore Planning Division Staff will be responsible for ensuring compliance with the standard as part of the ministerial building permit process. A significant amount of interior improvement details is presently required on building permit plans for residential structures (i.e. - conditioned space). Details include the size and location of all plumbing and electrical lines and fixtures in addition to structural configuration and fixed finishing materials, like cabinetry and countertops. These details are necessary to demonstrate compliance with building and health codes, in addition to zoning standards. Building permit plans for JADUs will consequently go through the same process, and be subject to the same level of building permit plan detail, as applied to all other second unit and guest cottage. Through this process Planning Division Staff will ensure compliance with the State standard. Additionally, State law requires and the ordinance provides that prior to issuance of a building permit, a covenant must be recorded restricting the JADU from exceeding these kitchen standards.

After issuance of the building permit, Building Division Inspectors monitor construction for compliance with the approved set of plans, and ultimately grant a final occupancy of the project after the applicant has successfully demonstrated that the project has been completed according to the approved plans. It is common for plan changes to occur during construction of most projects. Plan changes are reviewed by all departments to ensure compliance with the terms of the original permit and applicable regulations. Therefore, any in-progress changes to an approved efficiency kitchen would be subject to review for compliance with JADU regulations.

Once final occupancy of a building permit has been granted, property owners are obligated to file a new building permit should substantial changes to a JADU (or any other permitted residential structure) be implemented. In the event changes are performed to a JADU without benefit of a required permit, it is likely the County would not be aware of such changes unless a complaint is filed or if Inspectors happen on the project in the course of conducting other field inspections. However, given real estate disclosure laws involved with the sale of property, often times unpermitted work on a residence is addressed at the time of sale. The restrictions associated with the JADU will be recorded against the title and should be identified on the preliminary title report.

**Residential Occupancy:**

Cities and counties are largely precluded from regulating occupancy of residential structures. The only occupancy standards presently in State law are in the Uniform Housing Code (1997 UHC Section 503(b) and in Health & Safety Code Section 17922(a)(1)). These standards are designed for safety and to prevent overcrowding (i.e., so that all people in a unit or building can exit safely during a fire). The UHC provides that at least one room in a dwelling unit must have 120 square feet. Other rooms must have at least 70 square feet (except kitchens). If more than two persons are using a room for sleeping purposes, there must be an additional 50 square feet for each additional person. Using this standard, the occupancy limit would be seven persons for a 400-sq. ft. studio apartment (the size of a standard two-car garage); or two persons in a 150-sq. ft. minimum efficiency unit. Locally adopted occupancy limits cannot be more restrictive than the UHC unless justified based on local climatic, geological, or topographical conditions. The Court of Appeal has held that more restrictive standards based on other impacts (such as parking and noise) are preempted by the UHC (Briseno v. City of Santa Ana, 6 Cal. App. 4th 1378, 1381-82 (1992)).

Private rental property managers often impose limits on the number of persons who can occupy a unit. However, overly restrictive standards imposed by private owners have been found to have a discriminatory impact on families with children. The County, in any case, is precluded from establishing occupancy standards more strict than those in the UHC unless it can find that climatic, geological, or topographical conditions in the County require a reduction in occupancy.

**Second Unit General Plan and Zoning Consistency:**

Attachment D summarizes the definitions and provisions for second units under existing County Code and under the proposed ordinance. Changes to standards are highlighted in yellow. Also included is a table indicating which zoning districts that allow for residential uses correlate to each general plan designation. This table also indicates all other zoning districts occurring within each general plan designation. The last table lists the total number of assessor's parcels within each of the zoning districts that allow single family residential uses, as well as the number of parcels within those districts currently developed with more than one unit. It is important to note that this table is based on assessor's parcel numbers which does not correspond exactly to the actual number of legal lots of records, and does not factor out government owned lots.

**Recommendation:**

It is requested that the Board of Supervisors adopt the ordinance as proposed and updated. Staff requests that the Board conduct its first reading of the ordinance, and direct that the item return for a second and final reading at a future meeting. Minor changes may be incorporated as part of the first reading for consideration with the second reading.

**SUPPORTING DOCUMENTS**

- A . JADU and ADU Ordinance (Clean)
- B . JADU and ADU Ordinance (Tracked)
- C . Summary of Proposed Code Changes
- D . Summary of Residential Structure Types
- E . JADU and ADU Zoning and General Plan Table
- F . CalFire ADU Memo

CEO Recommendation: Approve

Reviewed By: Helene Franchi