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Agenda Date: 7/5/2017

Agenda Placement: 8A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: Charlene Gallina for David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: John McDowell, Principal Planner - 299-1354
SUBJECT: Accessory Dwelling Unit Ordinance

RECOMMENDATION

ACCESSORY DWELLING UNIT ORDINANCE / COUNTY OF NAPA / P17-00097-ORD

CEQA Status: 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.

Request: Consideration and recommendation for adoption of a County sponsored ordinance to conform County Zoning regulations with State Law (Senate Bill 1069 and Assembly Bill 2299) as it pertains to Accessory Dwelling Units.

Title of Ordinance: Ordinance of the Board of Supervisors of the County of Napa, State of California, amending Sections 18.08.550 (Second Unit), 18.10.020 (Duties - Specific Subjects), 18.104.180 (Second Unit Attached To Or Detached From An Existing Dwelling), 18.110.030 (Number Of Parking Spaces Required), as they relate to second units and adding section 18.08.551 (Second Unit, Interior)

Staff Recommendation: Recommend that the Board of Supervisors find that the proposed project is exempt from the California Environmental Quality Act pursuant to Public Resources Code Section 21080.17, and adopt the proposed ordinance.

Staff Contact: John McDowell, (707) 299-1354 or john.mcdowell@countyofnapa.org

EXECUTIVE SUMMARY

Proposed Actions:

That the Planning Commission recommend that the Board of Supervisors:

1. Find that the proposed project is exempt from the California Environmental Quality Act pursuant to Public Resource Code Section 21080.17; and
2. Adopt the proposed ordinance.

Discussion:

The purpose of the proposed ordinance is to conform County Code to recent updates to State Law concerning second units, which are known as Accessory Dwelling Units in the state statutes (hereafter, second units and accessory dwelling units, as used under state law, will be referred to interchangeably as either "ADUs" or "second units"). In 2016, the State Legislature declared that allowing ADUs in single family and multifamily zones provides additional rental housing opportunities that are an essential component to addressing critical housing needs in California. Two new laws were enacted. The Senate enacted SB 1069 (Wieckowski) to address local regulatory agency barriers to the development of ADUs, and prescribes certain limits on parking requirements, utility connection and impact fees, fire safety requirements, and prohibits local governments from excluding ADUs in single family residential districts. The Assembly passed AB 2299 (Bloom) which requires local governments to ministerially approve ADUs if the unit complies with certain requirements. By and large, Napa County's existing regulations conform to these new State laws because the County has allowed second units by-right in single family residential districts for decades, and current design standards generally do not present a substantial barrier. However, several updates are necessary and this is otherwise an opportunity to update and simplify code language.

Proposed ordinance text changes include (but are not limited to): identifying that the term "second unit" means "accessory dwelling unit;" creating a new type of unit labeled as "Interior Second Units" and establishing standards for such units; amending parking standards for all ADUs; simplifying requirements for allowing second units to be attached to other accessory structures; requiring the property owner to acknowledge that ADUs cannot be sold separately from the primary unit or used for transient/short-term rental; and noting State imposed limitations on utility connection fees and fire sprinkler requirements.

Existing ordinance requirements limiting ADUs to 1,200 sq. ft. are not affected by this ordinance and remain consistent with the maximum size prescribed by State law. Existing regulations for guest cottages, which do not qualify as dwelling units and do not contain kitchens, are not affected by this ordinance. State law only mandates that ADUs be allowed within single family zoning districts. Napa County has however historically allowed second dwelling units in the Agricultural Watershed (AW) district but not in the Agricultural Preserve (AP). This ordinance will not alter those existing provisions and ADUs will continue to be allowed in AW but prohibited in AP. The full extent of changes are described in the Background section of this report.

It is requested that the Commission conduct a public hearing on the ordinance and forward a recommendation for approval to the Board of Supervisors. This item will be scheduled for the Board of Supervisors after the Commission has completed review and made a recommendation.

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.

BACKGROUND AND DISCUSSION

Discussion

The proposed ordinance would, if adopted, update four existing sections and add one new section to County Code. The draft ordinance is attached to this report in both a clean and tracked changes format for reference. For several decades, the State has mandated that local agencies provide for second units within single family zoning districts. The County has not only complied with State law, but has exceeded the mandate by allowing second units in rural and agricultural zoning districts as well. County Code currently allows second units by right in Residential Single (RS), Residential Country (RC) and Agricultural Watershed (AW) districts, but does not allow them in the Agricultural Preserve (AP) or Planned Development (PD) districts, all of which will not be changed with this ordinance. Instead, as discussed below, proposed updates relate primarily to new design criteria limitations.

Interior Second Units:

The most notable change in State Law is a provision under SB-1069 that mandates local agencies allow conversion of existing interior space in the primary dwelling or accessory structures within "all single family zones," but it is not obligatory in agricultural, commercial, industrial and other non-residential districts. The legislation is geared towards fostering such units within built out neighborhoods and urban settings, which does not apply to most areas of unincorporated Napa County. However, there are a number of RS and RC zoned pockets spread across the County where these interior space provision may assist in 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 one in 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 districts within City of Napa water and sewer service areas. RC districts are located in several areas surrounding the City of Napa, near Lake Berryessa, and several pockets border St. Helena and Calistoga, with most properties served by private well and septic system. A large area of RC properties is located east of Napa in Coombsville where second unit development is highly constrained due to the groundwater limitations in the Miliken-Sacro-Tulucay groundwater basin. The proposed ordinance will continue to allow second units in the Coombsville neighborhood, however, second unit development in this area is rare due to groundwater health and safety regulations (Title 13 - Groundwater Conservation). The groundwater regulations will not be changed with this ordinance.

The County's existing second unit regulations are largely compliant with the interior space conversion mandate from SB-1069. Presently, the two types of second units (attached and detached) enable existing interior space in dwellings and accessory structures to be converted. However, under current regulations, conversion of interior space to dwelling space is subjected to dwelling unit setbacks which in some circumstances are larger than the existing structure setbacks. Under the new legislation, conversion of existing interior spaces is exempt from building setbacks. Therefore, to implement this provision, a new third type of second unit labeled and defined as Second Unit, Interior (or Interior Second Unit) is proposed. The proposed ordinance will only allow these new interior second units within RS and RC districts consistent with State law.

Road and Street Standards:

Last year, as part of the Road and Street Standards (RSS) update to address new State-mandated requirements for fire safety, RSS requirements for second units were updated to comply with SB-1069 and AB-2299.

Improvements to an existing driveway are not required for the construction of new second dwelling units located in the Local Responsibility Area (LRA), which generally coincides with valley floor areas. For new second dwellings that require new access driveways, the new access driveways shall be constructed to the residential driveway standard from the point of access to the new second dwelling unit. Within the State Responsibility Area (SRA), which generally involves all hillside areas, most second units will continue to trigger improvements to existing driveways from the publicly maintained road to the new or improved structure.

Ordinance Section 1:

Updates Section 18.08.550 to reflect that the County's long-established term "second unit" is synonymous with the State's new "accessory dwelling unit" term, and then recognizes the various types of ADUs prescribed by the State.

Ordinance Section 2:

Creates new Section 18.08.551 establishing a definition of the new type of second unit labeled as "Second unit, interior." Interior Second Units are differentiated from Attached and Detached Second Units in that an interior unit is limited to the conversion of existing legally constructed spaces within a primary residence or accessory structure. Attached and detached units can include conversion but also may include expansion or new construction.

Ordinance Section 3:

Removes antiquated code language in Section 18.10.020.A.5 which state that the Zoning Administrative is the discretionary decision maker for second units within "deep lot developments." Deep lot developments no longer exist in zoning or as a land use in unincorporated Napa County, and if they did, State law mandates that second units be non-discretionary approvals (ministerial actions) which would pre-empt a Zoning Administrator review process anyway.

Ordinance Section 4:

This section contains numerous proposed changes to design criteria as follows:

18.104.180.A - Updated to now allow a second unit to be attached to other accessory structures, such as a free-standing garage or a barn. Presently, second units which are detached from the primary dwelling unit are not permitted to be attached to an accessory structure unless the Director grants an exception under the terms of 18.104.180.A.5 (see below).

18.104.180.A.4 - This is the 1,200 sq. ft. maximum size limit requirements (per State law) relocated from Section 18.104.180.C.1.

18.104.180.A.5 - This section has been modified to eliminate the quasi-discretionary "exception process" allowing second units to be attached to accessory structures. Existing code requires detached second units to be free standing structures, except that the Director can grant an exception allowing the second unit to be attached to other accessory structures if the second unit contains design features the prevent future unauthorized expansion. The new code language simplifies this section by allowing second units to be attached to other accessory structures by-right without grant of an exception. Second units will continue to include design features limiting the unit to 1,200 sq. ft. and preventing interior access, but the code language has been significantly reduced. Also see Section 18.104.180.B.2 regarding prohibition of interior access with the attached accessory structure.

18.104.180.A.6 - Augments this section to stipulate that second units will not be subject to connection fees or capacity charges for utilities. However, since the County is not a utility services provider, this code section has little relevancy to most second unit projects simply because they are typically served by private well and septic systems,

and the County has no authority dictate how utility providers choose to comply with State Law. Applicants seeking utility connections will need to work directly with the utility provider in this regard.

18.104.180.A.9, -A.10 and -A.11 - These three sections will be rescinded and replaced as follows: Existing code language in these sections will be relocated to Sections 18.104.180.B.3, -B.4, and -B.5 respectively, and new State-mandated fire sprinkler and parking provisions will occupy these sections. Under previous Building and Fire Code requirements, a requirement to install fire sprinklers has been a significant barrier to implementation of some second unit projects, primarily second units occurring within existing structures. The new Building and Fire Code requirements prescribe that fire sprinklers will not be required unless they are required for the primary residence. As a result, fire sprinklers will continue to be required for second units constructed concurrent with a main dwelling in hillside locations, but would not be required when the garage of an existing residence in a subdivision is being converted to a second dwelling, by way of an example. Fire sprinkler requirements are applied by the Fire Marshall separate from zoning requirements. CalFire has issued a bulletin on this subject matter, which is attached herein for reference.

The new parking requirements essentially mirror parking requirements from statute, The major change affecting unincorporated Napa County is that no additional parking can be required for new Interior Second Units. For other second units, a maximum of one space per bedroom can be required, but even this much parking cannot be required in urban areas within one-half mile of transit or in historically or architecturally significant districts. Any required parking can be provided uncovered or in tandem. Generally, provision of parking spaces is not an issue or barrier to second unit development on unincorporated properties but these new provisions could assist in second unit conversion within the several unincorporated urban neighbors within City of Napa.

18.104.180.A.12 - This new section requires recordation of a property covenant notifying future owners that the second unit cannot be sold separately from the primary dwelling or used for short-term rental. Property covenants have been used on some second unit projects previously when there has been a question of use, but with this change, a buyer awareness covenant will be recorded on all second unit projects. State law allows for such covenants as a means to protect housing stock.

18.104.180.B.1 - This is the new section establishing regulations for Interior Second Units as discussed above. Under current code if an existing accessory structure encroaches into minimum building setbacks, it cannot be converted to a dwelling unit (without complying with the setback for dwellings). This new provision is likely to assist in resolution of code cases for long-existing undocumented second units occupying former garages and accessory structures within the RS districts. It will also enable the conversion of garages (typically in older urban areas) where side yard setbacks are below current standards.

18.104.180.B.2 - This section prohibits second units attached to accessory units from having interior access. This is considered a necessary provision to discourage expansion of secondary dwelling units into attached accessory use space, and is consistent with long-standing County practices. Also see 18.104.180.A.5. concerning elimination of the 'exception' provision.

18.104.180.B.3, -B.4 and -B.5 - These sections have been relocated from Sections 18.104.180.A.9, -A.10 and -A.11 with no changes in text. They address minimum lot size for second units in the RS district, provision of adequate lot area for water and sewage treatment in the RC and AW zones, and provide for second units to be separately metered at the property owner's discretion.

18.104.180.C - This section is updated to reflect that its provision do not apply to the new Interior Second Units, and implement a State requirement that Attached Second Units may only constitute a maximum of 50% of the floor area of the primary dwelling or 1,200 square feet.

18.104.180.D - Modifies section to reflect that its provisions do not apply to Interior Second Units and eliminates redundant 1,200 square foot size limit language. Of note, the existing code language to be eliminated includes "as measured from the inside of the exterior walls." Measurement of useable floor area will continue to be taken from interior walls for zoning purposes.

18.104.180.E - This new section applies requirements applicable only to Interior Section Units. Such units will be allowed only in the RS and RC zoning districts consistent with State law, and are not required to otherwise meet residential use setbacks (as noted in Section 18.104.180.B.1), and do not require additional parking spaces.

18.104.180.F - This is a new section applying language mandated by State law stipulating that second units are an administratively approved permit reviewed "over the counter" in a ministerial process. A decision must be made within 120 days of application. This code section will not change the second unit review process for Napa County, which currently employs an administrative building permit process.

Ordinance Section 5

Updates parking requirement table contained in Section 18.110.030 to reference parking waiver procedures from Sections 18.104.180.A.10 and -A.11.

Public Process

This version of the draft ordinance was emailed to those persons who have requested notification of pending items before the Planning Commission, to the CEQA notification list, and to the "development stakeholder" email list, which contains many regular customers who have expressed interest in PBES land use topics. Staff will add customer's email addresses to the stakeholder list upon their request. The ordinance was emailed to these groups on May 26, 2017. Several customers responded with questions, and one customer advocated for septic system requirements to be reduced. Otherwise, as of the publishing of this staff report, there have been no formal comments or correspondence received. Any comments received prior to the hearing will be provided to the Commission.

Notice of the Planning Commission hearing was published as an 1/8th add in the Napa Register on June 23, 2017. As an ordinance affecting the entire County, there is no mailed notice and instead an enlarged newspaper add is provided in a prominent section of the newspaper.

Decision Making Options:

As noted in the Executive Summary Section above, staff request that the Planning Commission recommend approval of the ordinance to the Board of Supervisors as proposed, which is described in Option 1 below, but the Commission may also proposed revisions, or continue the item if more information is required or substantial changes are recommended.

Option 1 - Forward Recommendation of Approval of Proposed Ordinance (Staff Recommendation)

Disposition - This option would result in the Commission's recommendation for approval of the ordinance as currently proposed being forwarded to the Board of Supervisors. The Board will consider the ordinance after a duly noticed (10-day minimum) public notice period. If the Board chooses to adopt the ordinance, as proposed or amended, it will close the public hearing and direct that the final version of the ordinance return for a second and final reading of adoption. The ordinance will then become effective 30 days after final adoption.

Action Required - Follow proposed actions listed in Executive Summary.

Option 2 - Forward Recommendation of Revised Ordinance

Disposition - If minor amendments to proposed code language are recommended, the Commission may make a final recommendation with direction to Staff on the nature of changes to proposed language. Staff will incorporate proposed changes into a revised draft ordinance forwarded to the Board of Supervisors at a subsequent duly noticed public hearing where the Board will be asked to follow the same process outlined in Option 1 above.

Action Required - Follow the proposed actions listed in the Executive Summary and stipulate that the recommendation for approval is for the ordinance as amended. Provide specific direction to Staff on the nature of code language amendments.

Option 3 - Continuance Option

The Commission may continue an item to a future hearing date at its own discretion. Possible rationale for continuance of the item would include (but not be limited to) requesting substantial changes to the ordinance that cannot be satisfactorily addressed at the hearing, and/or if substantial public comments are received where additional Staff time is required to provide adequate response.

SUPPORTING DOCUMENTS

- A . Proposed Ordinance
- B . Proposed Ordinance - Tracked Changes
- C . CalFire ADU Bulletin
- D . Accessory Dwelling Unit Zoning Map

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina