



Monterey County

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: RES 20-149

September 15, 2020

Introduced: 9/3/2020

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

Public Hearing to consider:

- a. Adopting an ordinance amending sections of Title 21 (non-coastal zoning ordinance) to update the County's inland zoning regulations for accessory dwelling units (ADUs) and establish inland zoning regulations for Junior Accessory Dwelling Units (JADUs); and
- b. Adopting an ordinance amending sections of Title 20 (coastal zoning ordinance) to update the County's coastal zoning regulations for ADUs and establish coastal zoning regulations for JADUs, subject to California Coastal Commission certification; and
- c. Adopting a resolution to transmit the Title 20 ordinance to the California Coastal Commission for certification.

Project Title: REF200029/ Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU) Regulations Update

Proposed Location: County-wide (Coastal and Non-Coastal)

Proposed CEQA Action: Statutorily Exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080.17 and CEQA Guidelines section 15282(h)

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt an ordinance (**Attachment A**) amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to:
 - 1) Amend Section 21.64.030 of the Monterey County Code to align County regulations with state regulations for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) in the non-coastal unincorporated area of Monterey County;
 - 2) Amend Section 21.58.040 of the Monterey County Code to remove the requirement for parking spaces associated with ADUs and JADUs
 - 3) Amend Section 21.06.372 of the Monterey County Code to modify the definition of "Accessory Dwelling Unit" and add a definition for "Junior Accessory Dwelling Unit"
 - 4) Amend Section 21.36.040 of the Monterey County Code to remove the requirement for an Administrative Permit in the Resource Conservation or "RC" Zoning District.
- b. Adopt an ordinance (**Attachment B**) amending Title 20 (coastal zoning ordinance) of the Monterey County Code (subject to certification by the California Coastal Commission) to:
 - 1) Amend Section 20.64.030 of the Monterey County Code to align County regulations with state regulations for Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) in the coastal unincorporated area of Monterey County;
 - 2) Amend Section 20.58.040 of the Monterey County Code to remove the requirement for parking spaces associated with ADUs and JADUs
 - 3) Amend Section 20.06.375 of the Monterey County Code to modify the definition of

“Accessory Dwelling Unit” and add a definition for “Junior Accessory Dwelling Unit”

- c. Adopt a resolution (**Attachment C**) to authorize submission of the ordinance amending Title 20 to the California Coastal Commission for certification.

SUMMARY:

State ADU regulations are meant to streamline the process for building ADUs and JADUs, in an effort to increase the affordable housing stock across the state. The proposed ordinances presented for adoption modify multiple sections of Title 20 (Coastal) and Title 21 (Non-Coastal) of the Monterey County Code. The coastal ordinance would also amend the County’s Coastal Implementation Plan and therefore is subject to certification by the California Coastal Commission. Accordingly, the recommended Board action includes adoption of a resolution to submit the coastal ordinance to the Coastal Commission for certification.

In May 2011, the Board of Supervisors replaced “Caretaker Units” and “Senior Citizen Units” with regulations for Accessory Dwelling Units (ADUs) in compliance with State legislation. The California Coastal Commission (CCC) required revisions to the coastal regulations in order to certify the County’s coastal regulations, including requiring hearings for Coastal Administrative Permits and prohibiting ADUs in the North County coastal zone. Staff initiated amendments to the County’s ADU regulations in 2016 following changes by the State Legislature to state law. The State Legislature subsequently modified state law pertaining to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) in 2017, and then again in 2019. Changes in State law require revisions to the County’s existing ADU regulations.

The draft ordinances being presented to the Board, which were considered and recommended by the Planning Commission on August 26, 2020, are designed to bring the County into alignment with current state regulations, and provide a simpler path for development of these units in the County. Since State law has detailed requirements for ADUs and JADUs which local government must follow, the general concept of the ordinances is to defer to state law and only include regulations which are specific to Monterey County (e.g.: designate areas where, generally, ADUs may not be allowed due to resource constraints).

Ordinances have been prepared for both the coastal and non-coastal areas of the County to update the County’s ADU regulations and establish JADU regulations. The Board is being asked to adopt both the draft ordinances. Typically, the Board would adopt a resolution of intent for amendments to coastal regulations to forward to the Coastal Commission for certification, and the regulations would then need to return again to the Board for formal adoption and not take effect until 30 days after that final Board adoption. As such, the Planning Commission recommended that the Board formally adopt the Coastal ordinance now rather than submitting a resolution of intent, which is an allowable process for obtaining certification and would help expedite the process. In an effort to obtain Coastal Commission certification of the ordinance as drafted, County staff consulted with Coastal Commission staff multiple times while drafting the ordinance. If the Coastal Commission certifies the ordinance without modification, the ordinance will take effect upon certification and will not need to return to the Board for formal adoption and 30-day waiting period. If the Coastal Commission requires modifications, the ordinance would come back to the County to consider adoption of the ordinance with the proposed modifications or to work with Coastal Commission staff on additional modifications.

DISCUSSION:

On May 24, 2011, the Board of Supervisors adopted Ordinance No. 5177 which updated County's inland zoning regulations related to second units to conform to state ADU law at that time. Among other housing amendments, the ordinance designated certain geographic areas as off limits for ADUs based on infrastructure constraints and prospectively replaced regulations for "Caretaker Units" (Section 21.64.030) and "Senior Citizen Units" (Section 21.64.010) with regulations for ADUs (Section 21.64.030--Regulations for Accessory Dwelling Units). Also, in 2011, the Board adopted a Resolution of Intent to adopt housing amendments for the coastal zone, including to replace Caretaker Units (section 20.64.030) and Senior Citizen Units (section 20.64.010) with ADUs (section 20.64.030 Regulations for Accessory Dwelling Units). The CCC required changes in order to certify County's ordinance, including requirements for a Coastal Administrative Permit with public hearing and prohibiting ADUs in certain areas (North County Coastal). On December 2015, the Board adopted the coastal housing regulations as with modifications acceptable to the CCC (Ordinance No. 5283, adopted December 8, 2015).

In 2016, 2017, and again in 2019 the State Legislature passed a series of bills governing Accessory Dwelling Units and Junior Accessory Dwelling Units. These bills amended Sections 65852.2 and 65822.22 of the California Government Code, among other statutes. These laws go into great detail regarding the specific land use requirements and development standards for ADUs and JADUs and constrain local land use authority in an effort to clear a path for construction of these units. Local agencies may enact their own regulations within the limits set by state law. With that in mind, staff has drafted ordinances that defer mostly to state law, while only making provisions that are specific to Monterey County (discussed in more detail below). There are multiple benefits to this approach, including consistency for the public, a shorter and more understandable ordinance to implement, and fewer amendments to the coastal and non-coastal ordinances in the future when/if the state adopts additional ADU and JADU regulations.

On August 26, 2020, the Planning Commission (PC) held a public hearing on the draft ordinances and recommended unanimously that the Board adopt the ordinances, with the additional recommendations. (**Attachment G.**) The following is a summary of the Planning Commission's recommendations and how they have been addressed:

- PC made a statement of urgency to the Board to get these new regulations in place as quickly as possible not only to help with the overall housing shortage, but also to provide a path to those who may have lost structures during the recent fires to quickly re-build an ADU while reconstructing their primary dwelling.
 - Statement of urgency has been included in PC Resolution, and staff is recommending the Board adopt the coastal ordinance, subject to Coastal Commission certification, rather than a resolution of intent.
 - Ordinance was modified after PC hearing to state explicitly that a building permit may be issued for an ADU ahead of issuance of a building permit for a main dwelling if the main dwelling was destroyed or damaged by natural disaster.
- PC recommended that the Board pursue incentives in the near future to streamline the process and/or lower the cost of developing ADUs and JADUs in Monterey County.

- Recommendation included in PC Resolution
- Staff intends to begin developing an incentive program immediately after adoption of updated ADU/JADU ordinances
- PC suggested that staff work to provide additional information to the public to make clear where ADUs/JADUs are allowed in the County and where there may be some barriers such as the B-8 Zoning Overlay or resource constraints and to provide additional information about the overall permitting process.
 - Staff intends to create a guide/brochure for the public after the ordinances are adopted which will provide helpful information, supplemental to the regulations.

The state Legislature also amended the Davis-Stirling Act related to common interest developments to add Civil Code section 4751 to render restrictions in deeds and other governing documents that prohibit or unreasonably restrict ADUs or JADUs in common interest developments void and unenforceable. In response to public comment received at the Planning Commission, staff has added a provision to the draft ordinances to provide that to the extent the Davis-Stirling Act applies, the County is not prohibited from issuing a permit for an ADU or JADU and that if there is a substantive dispute regarding whether Civil Code section 4751 applies, the County will consider the deed or governing document and particular facts and circumstances on a case-by-case basis.

The following section provides highlights of the most current state regulations, general provisions contained in both county ordinances, and also items specific to the draft coastal and non-coastal ordinances. The full text of all these regulations are included as attachments to this report.

State Law (Attachment F)

As previously stated, the purpose of these laws is to create a streamlined path for the construction of ADUs and JADUs. Some highlights of the state law include:

- Minimum lot size does not apply
- Allows for a jurisdiction to designate where ADUs may be permitted based on adequacy of water and sewer services and impacts on traffic flow and public safety
- ADUs under 800 square feet must be allowed, even in areas a local government would otherwise place off limits due to resource constraints, with potential for Environmental Health review of onsite wastewater disposal capacity.
- Legal lots allowed to have one (1) ADU and one (1) JADU
- Plans and regulations to limit residential growth, including unit caps, do not apply
- Allows for conversion of accessory structures including garages, carports, sheds, etc.
- If garage or carport is converted to an ADU, parking does not need to be replaced on site
- No parking required for ADUs
- Setback may be as close as 4 feet from the side and rear property lines for new construction (front setback still applies)
- Clarifies that ADUs and JADUs count towards Regional Housing Needs Assessment (RHNA)
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days

- Renders void and unenforceable restrictions contained in deeds and CC&Rs in common interest developments that prohibit or unreasonably restrict construction or use of ADUs or JADUs
- JADUs no longer need to have internal circulation with the main residence

County Ordinances - General (Attachments A and B)

The following is a highlight of provisions that are included in both the coastal and non-coastal ordinances:

- All ADUs and JADUs that will connect to a private sewage disposal system, a private well and/or a water system with two (2) to one-hundred and ninety-nine (199) service connections are subject to review and approval by Environmental Health ensure adequate water and wastewater. The Director of Environmental Health will evaluate adequacy of water quality and quantity for ADUs and evaluate adequacy of water quality for JADUs. If adequate sewage disposal capacity or adequate water supply is not available, an ADU or JADU may be prohibited
- Units previously permitted as “Senior Citizen” or “Caretaker” will be considered ADUs; previously permitted “Guesthouses” may be converted to ADU subject to the ADU regulations.
- JADUs are allowed ministerially in all unincorporated inland and coastal areas of the County, including those resource-constrained areas where ADUs are prohibited
- ADUs shall not be used as a vacation rental (minimum rental of more than 30 consecutive days)
- No setback shall be required for an existing garage that is converted to or demolished and reconstructed as an ADU within the existing footprint of the structure. Side and rear lot line setbacks for ADUs shall be a minimum of four (4) feet, and must also be adequate for fire safety
- An ADU shall be designed in such a manner as to be visually consistent and compatible with the existing or proposed principal residence and other residences in the area
- Definition of ADU was expanded to align with state regulations and definition of JADU was added.
- ADUs shall not exceed 1,200 square feet
- JADUs shall not exceed 500 square feet

Draft Coastal Ordinance - Specific (Attachment B)

The following is a highlight of provisions that are unique to the coastal ordinance:

- ADUs (new construction) over 800 square feet not allowed in:
 - Areas subject to a B-8 zoning overlay,
 - Areas for which the County has adopted a Specific Plan, except as expressly permitted by the Specific Plan.
- Tiered approval process for ADUs (conversion and new construction):
 1. Waiver - The requirement for a Coastal Administrative Permit (CAP) may be

waived by the Director for any ADU that is determined to be “minor” in nature as defined in the ordinance, subject to the waiver process.

2. Coastal Administrative Permit (CAP) - ADUs not meeting the waiver criteria or meeting certain other criteria defined in the ordinance (e.g.: public controversy, land division including condominiums, etc.) will be required to obtain a CAP.
3. Coastal Development Permit may be required in addition to the CAP if a proposed ADU involves any development which necessitates a Coastal Development Permit pursuant to Chapter 20.70 of Title 20.

Draft Non-Coastal Ordinance - Specific (Attachment A)

The following is a highlight of provisions that are unique to the non-coastal ordinance:

- ADUs (new construction) over 800 square feet not allowed in:
 - Areas subject to a B-8 zoning overlay.
 - North County Planning Area per General Plan Policy NC-1.5, except Accessory Dwelling Units may be allowed within the Castroville Community Plan area.
 - That portion of the Toro Planning Area which is shown on Figure LU-10 of the 2010 General Plan as being limited to the first single family home on a legal lot of record per General Plan Policy T-1.7.
 - That portion of the Greater Salinas Planning Area with residential land use designations north of the City of Salinas, generally between Williams Road and Highway 101 which is shown on Figure LU-7 of the 2010 General Plan as being limited to the first single family home on a legal lot of record per General Plan Policy GS-1.13.
 - Areas for which the County has adopted a Specific Plan, except as expressly permitted by the Specific Plan.
- Removes the requirement for an Administrative Permit in the Resource Conservation or “RC” Zoning District to allow for ministerial approval

The preceding lists are not exhaustive, but attempt to provide some of the highlights of each of the ordinances.

CEQA:

Adoption of ordinances by a county to implement Government Code section 65852.2 relating to ADUs, which is assumed to include implementation of Government Code section 65852.22 relating to JADUs, is statutorily exempt from CEQA per Public Resources Code section 21080.17 and CEQA Guidelines Section 15282 (h).

OTHER AGENCY INVOLVEMENT:

RMA consulted County Counsel, and County Counsel has approved the ordinances as to form and legality. RMA staff has also consulted state Housing and Community Development (HCD) staff for interpretation of state ADU law during the drafting of these ordinances. In addition, RMA consulted California Coastal Commission staff relative to application of state ADU law within the coastal zone.

RMA consulted the Monterey County Health Department Environmental Health Bureau (EHB) regarding ADUs and JADUs. To ensure adequate sewage disposal facilities and adequate water supply exist or have been demonstrated feasible to construct to serve the unit, EHB requested language which is included in the ordinances to enable EHB review and approval of ADUs and JADUs that will connect to a private sewage disposal system or that will obtain their water supply from a private well and/or a water system with two (2) to one-hundred and ninety-nine (199) service connections. EHB will evaluate all ADU/JADUs for wastewater treatment feasibility (nitrogen loading, capacity and future expansion area), and EHB will evaluate adequacy of water quality and quantity for ADUs and evaluate adequacy of water quality for JADUs. EHB considered the impacts of JADUs and determined it was necessary to review those applications. This stems from both a water quality/quantity perspective and from nitrogen loading limitations in County's local agency management program for onsite wastewater treatment systems (LAMP), which limits bedroom count based on lot size. Conversion of a family room or other existing part of a dwelling would establish a new bedroom and could push the site over the nitrogen limit. EHB maintains that an independent dwelling unit (regardless of how small or limited the kitchen is) may intensify water use.

FINANCING:

Funding for staff time associated with bringing these ordinances to the Board is included in the FY2020-21 Adopted Budget for RMA-Planning. County Counsel does not charge their time directly to County General Fund Units, as these costs are accumulated and allocated through the Countywide Cost Allocation Plan (COWCAP).

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

These ordinance updates will bring county regulations for ADUs and JADUs into alignment with current state law. Subsequently, most permits for these types of projects will be processed in a more streamlined manner, which could help increase the overall housing stock in Monterey County.

Check the related Board of Supervisors Strategic Initiatives:

- ☐ Economic Development
- ☒ Administration
- ☒ Health & Human Services
- ☐ Infrastructure
- ☐ Public Safety

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Approved by: Carl Holm, AICP, Director Resource Management Agency

Brandon Swanson
Digitally signed by Brandon Swanson
Date: 2020.09.04 15:42:08 -0700

The following attachments are on file with the Clerk of Board:

- Attachment A - CLEAN - Draft Ordinance amending Title 21 (Non-Coastal Regulations)
- Attachment B - CLEAN - Draft Ordinance amending Title 20 (Coastal Regulations)
- Attachment C - Draft Resolution for submittal to Coastal Commission
- Attachment D - REDLINE - Sec. 21.64.030 MCC (Existing Non-Coastal Regulations)

Attachment E - REDLINE - Sec. 20.64.030 MCC (Existing Coastal Regulations)

Attachment F - ADU/JADU Technical Advisory Memo, incl. State Code for ADU/JADU

Attachment G - Planning Commission Resolution