



County of Monterey

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

Board Report

File #: PC 18-114, **Version:** 1

REF180015 - ACCESSORY DWELLING UNITS REGULATIONS UPDATE

(Continued from September 26, 2018)

Public Hearing to make a recommendation to the Board of Supervisors to adopt an ordinance amending Title 21 (non-coastal zoning ordinance) to update the County's inland zoning regulations for accessory dwelling units.

Proposed Location: County-wide (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 Planning Commission recommend that the Board of Supervisors:

- a. Find the project statutorily exempt from the California Environmental Quality Act; and
- b. Adopt an ordinance amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to amend the regulations for accessory dwelling units in the inland unincorporated area of Monterey County to include amending parking and setback requirements and addressing conversion of existing single family residences and accessory structures to accessory dwelling units

(Attachment 1 to Exhibit A);

PROJECT INFORMATION:

Planning File Number: PLN180015 (Inland, Accessory Dwelling Unit Regulations)

Plan Area: Inland Areas (Non-coastal)

SUMMARY:

On April 3, 2018, Economic Development Department and Resource Management Agency (RMA) staff provided a report to the Board of Supervisors responding to Board Referral No. 2017.21 requesting information for Accessory Dwelling Units in Monterey County to address the housing shortage. As a follow-up to the April 3rd meeting, on June 26, 2018 the Planning Commission reviewed a draft ordinance that documented amendments to County regulations for Accessory Dwelling Units (ADUs) to update the County Code to be consistent with legislation that went into effect in January 2017 and January 2018. Although the County Code does not reflect the state amendments, RMA staff is applying County Code consistent with state law.

On June 26, 2018, the Planning Commission conducted a public hearing on Accessory Dwelling Units (ADU's) At that meeting staff presented a redline of the current ordinance that reflected the necessary amendments to the County regulations to update the County Code to be consistent with state legislation that became in effect in January 2017 and January 2018. The amendments to the ordinance are necessary to dispel any ambiguity or questions regarding conformance to state law. During the public hearing, a discussion ensue regarding parking, the use of modular homes/tiny homes, and consistency of the ordinance with the 2010 General Plan.

Staff has prepared an ordinance to update the County's ADU regulations starting with the inland ordinance that include amending parking and setback requirements and addressing conversion of existing single family residences and accessory structures to accessory dwelling units. Once the inland ordinance is completed, staff will draft the coastal ordinance. As state law evolves, additional amendments may be necessary depending on actions with pending state legislation. Amendments to The Zoning Ordinance require the recommendation of

the Planning Commission at a noticed public hearing before consideration by the Board. Amendments to coastal regulations will require certification by the Coastal Commission.

DISCUSSION:

On May 24, 2011, the Board of Supervisors adopted Ordinance No. 5177 which, among other housing amendments, prospectively replaced “Caretaker Units” (Section 21.64.030) and “Senior Citizen Units” (Section 21.64.010) with ADUs (Section 21.64.030 Regulations for Accessory Dwelling Units). See **Exhibit B, County Inland Zoning Regulations**. In addition, 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 the County’s ordinance, including requirements for a Coastal Administrative Permit with public hearing and excluding certain areas (North County Coastal). In December 2015, the Board adopted the coastal housing regulations as certified by the CCC, Ordinance No. 5283 on December 8, 2015. See **Exhibit C, County Coastal Zoning Regulations**.

In 2016 and 2017, the State Legislature passed, and Governor Brown signed four bills governing Accessory Dwelling Units (ADUs):

- 2016: (SB1069 and AB2229, signed by the Governor on October 8, 2017, became effective January 1, 2017); and
- 2017: (SB229 and AB494, signed by the Governor on October 8, 2017, became effective January 1, 2018).

These regulations amended Section 65852.2 of the California Government Code relative to Accessory Dwelling Units. Additionally, AB2406 relating to Junior ADUs was signed by the Governor on September 28, 2017, and became effective January 1, 2017; allowing for the establishment of “Junior Accessory Dwelling Units.”

Additionally, the State Legislature has initiated three bills that could significantly change ADU regulations. One of the bills, SB1469 died in the Senate; the other two AB2890 and SB831 are still moving through the legislation process.

- AB2890 would provide for the creation of ADUs by ordinance in areas zoned to allow single-family or multifamily dwelling residential use. The bill would revise the standards for the local ordinance to, among other things, remove the requirement for minimum lot size for the allowance of an ADU; require that the square footage of an ADU not be calculated in floor area ratio or lot coverage, if required in the applied zoning for a lot; require that the existing or proposed square footage of an ADU not be less than 800 square feet and at least 16 feet in height.
- SB831 would require that in areas zoned to allow single-family or multifamily dwelling residential use, there may be designated areas that may be excluded from allowing ADUs, due to public health and safety purposes. The bill would revise the standards for the local ordinance to, among other things, remove the requirement for minimum lot size for ADUs unless it is found that the ADU would adversely impact public health and safety, including fire safety; require that the square footage of an ADU not be calculated in floor area ratio or lot coverage, if required in the applied zoning for a lot; require that the existing or proposed square footage of an ADU not be less than 800 square feet or more than 50 percent of an existing or proposed single family residence not to exceed 1,200 square feet. Finally, an application for an ADU shall be approved ministerially within 60 days of submittal.

The California State Association of Counties (CSAC), the Urban Counties of California (UCC), the Rural

County Representatives of California (RCRC), and the League of California Cities (LCC) have submitted letters opposing these bills as drafted (**Exhibit F**).

Staff has drafted amendments to the inland regulations to address current statutory language.

Regulations for Accessory Dwelling Units - Inland (Non-coastal Area)

Currently, the County's inland Zoning Code (Title 21 of the Monterey County Code) provides a ministerial process for approval of ADUs in residential zoning districts, except for specified areas that the County appropriately designated as not allowing ADUs due to infrastructure or resource constraints. (Monterey County Code, section 21.64.030.). In 2018, California Department of Housing and Community Development (HCD) staff interpreted the new language added to Government Code section 65852.2 as rendering city and county ordinances adopted prior to January 1, 2017 "null and void" unless the ordinances had been amended to conform to the January 1, 2017 state law amendments. Per Board direction on April 3, 2018, staff has prepared a draft ordinance to incorporate the state law changes, affirm the ministerial process, and designate areas where ADUs are allowed in the County and not allowed due to infrastructure constraints.

The ordinance will remove requirements for off street parking and setbacks of existing structures consistent with changes to state law. In accordance with the 2010 General Plan, the ordinance amends Section 21.64.030 (Regulations for Accessory Dwelling Units) to retain designated areas where ADUs are not allowed due to infrastructure constraints, but has added an exception for existing habitable spaces not exceeding 1,200 square feet to conform to the 2016 and 2017 amendments to Government Code section 65852.2. As amended by the 2016 and state legislation, subdivision (e) of Government Code section 65852.2 added a requirement for a ministerial approval process for ADUs, regardless of location, "if the unit is contained within the existing space of a single-family residence or accessory structure, including but not limited to a studio, pool house, or other similar structure." (Government Code section 65852.2(e).) Staff conferred with HCD on County's interpretation that this relates to legally permitted habitable structures existing prior to enactment of this subsection. HCD staff indicated their agreement that this section does not allow ministerial conversion of existing structures that were built without the required land use permits.

CEQA:

Adoption of ordinances by a county to implement Government Code section 65852.2 is statutorily exempt from CEQA per Section 15282 (h). (Pub. Res. Code section 21080.17.)

Regulations for Accessory Dwelling Units - Coastal Zone

The update to the County's coastal regulations relating to ADUs will need to take account of both the state housing law and the Coastal Act. Subdivision (j) of section 65852.2 explicitly provides that "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." County's original proposed Title 20 ordinance omitted a public hearing requirement based on state ADU law, but the California Coastal Commission (CCC) staff required the County to restore the discretionary public hearing requirement. Currently our coastal ordinance requires a Coastal Administrative Permit for an ADU and in some cases a Coastal Development Permit. CCC also added to the areas where ADUs are not allowed in the coastal zone. On April 18, 2017, CCC circulated a memo intended to help local governments interpret and implement new state requirements regarding regulation of "accessory dwelling units" in the coastal zone (**Exhibit E**). The Coastal Commission staff is now advising local governments to approve ADUs administratively if possible, but it is not clear if CCC staff would still require County ordinances to include a hearing requirement. The CCC memo recognizes that the ADU dictates of Government Code section 65852.2 and the Local Coastal Program could conflict. The advice of CCC is to preserve local

government authority to protect coastal resources when regulating ADUs in the coastal zone, while also complying with the state ADU law “to the greatest extent feasible”. Where there is a direct conflict, to consider updating the LCP to be consistent with ADU law “to the greatest extent feasible” while still complying with the Coastal Act. Due to this remaining ambiguity, staff is only recommending updates to the inland ordinance at this time.

Regulations for Junior Accessory Dwelling Units

State law authorizes, but does not require, the county to adopt an ordinance to provide for junior accessory dwelling units (JADU). However, staff will draft a separate ordinance incorporating JADUs as it is a simple way to increase the available affordable housing stock in the County. The JADU Ordinance is proposed to:

1. Allow Junior Accessory Dwelling Units in all residential zones.
2. Allow one Accessory Dwelling Unit per lot. A Junior Accessory Dwelling Unit shall not be permitted prior to a main residence and shall be located within the main residence. A Junior Accessory Dwelling Unit must utilize an existing legally constructed room (i.e. bedroom, office etc.), shall have an efficiency kitchen and can share a bathroom in the principal residence. A Junior Accessory Dwelling Unit may be separately rented. One of the units, either the principal residence or the Junior Accessory Dwelling, must be owner occupied.
3. There is no minimum lot size for the establishment of a Junior Accessory Dwelling Unit.
4. A Junior Accessory Dwelling Unit shall not be subject to density requirements of the zoning district in which the lot is located.
5. The maximum floor area for an Accessory Dwelling Unit is 500 square feet.
6. Prior to commencement of the use, the property owner shall record a deed restriction stating that that the Junior Accessory Dwelling Unit shall not be subdivided or sold from the principal residence.
6. Junior Accessory Dwelling Unit are subject to the zoning and development standards (lot coverage, height, setbacks, design, etc.) for the principal residence of the zoning district which governs the lot.
7. No Additional parking is required for a Junior Accessory Dwelling unit. Parking required to the principal residence shall apply in accordance with Parking Regulations in Chapter 21.58.
8. A Junior Accessory Dwelling Unit shall be designed in such a manner as to be visually consistent and compatible with the principal residence on-site and other residences in the area.
9. A Junior Accessory Dwelling Units is subject to review and approval by the Director of Environmental Health to ensure adequate sewage disposal and water supply facilities exist or are readily available to serve the unit.
10. That a Junior Accessory Dwelling Unit is prohibited to be rented for less than 30 days and used for transient use.

Staff is considering how to incorporate JADUs into the ordinance and the appropriate environmental review under CEQA for a JADU ordinance; JADU is also the subject of pending state legislation.

OTHER AGENCY INVOLVEMENT:

RMA consulted County Counsel regarding state ADU law and developing zoning code amendments. State Housing and Community Development was also consulted for interpretation of state ADU law. In addition, RMA consulted California Coastal Commission staff relative to application of state ADU law within the coastal zone.

Economic Development Department
Health Department/Environmental Health Bureau
County Counsel's Office

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Reviewed by: John M. Dugan, FAICP, RMA Deputy Director of Land Use
Approved by: Carl Holm, AICP, Director Resource Management Agency

The following attachments are on file with the RMA:

- Exhibit A - Draft Ordinance amending Title 21 - Chapter 21.64.030 MCC, Inland
- Exhibit B - Section 21.64.030 MCC (Regulations for Accessory Dwelling Units), Inland
- Exhibit C - Section 20.64.030 MCC (Regulations for Accessory Dwelling Units), Coastal
- Exhibit D - State ADU Statute (Government Code Section 65852.2)
- Exhibit E - California Coastal Commission Memo regarding Accessory Dwelling Units
- Exhibit F - Letters regarding AB2890, SB1469 & SB831 & State Legislature (AB2890, SB1469 & SB831)

cc: Front Counter Copy; California Coastal Commission; Brandon Swanson, RMA Services Manager; The Open Monterey Project (Molly Erickson); LandWatch; John H. Farrow; Janet Brennan; Project File REF180015