



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

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**NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memo**

MEETING DATE: September 12, 2017

TO: Board of Supervisors

FROM: Nevada County Planning Department

SUBJECT: A public hearing to consider the Planning Commission's July 13, 2017, 3-1, 1 absent vote recommending that the Board of Supervisors introduce, waive further reading and adopt an Ordinance (ORD17-1) for zoning text amendments to the Nevada County Land Use and Development Code Chapter II, to bring the Code into compliance with State housing laws for accessory dwelling units (ADUs), and transitional and supportive housing.

RECOMMENDATION: The Planning Commission (PC) has recommended that the Board of Supervisors take the following actions:

- I. Find the project is statutorily exempt from the California Environmental Quality Act pursuant to Public Resources Code 21080.17 and Sections 15061(b)(3), 15268, and 15282(h) of the California Environmental Quality Act (CEQA) Guidelines.
- II. Introduce, waive further reading and adopt the attached Ordinance (ORD17-1) amending Chapter II of the Nevada Land Use and Development Code Allowable Land Uses Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.6.F; and Sections L-II 3.19, 3.19.1, 3.19.2, 4.2.5, 4.2.9 and 6.1 making the findings provided in the attached Ordinance (*Attachment 1*).

FUNDING: No budget amendments are required.

ATTACHMENTS:

1. Ordinance- ORD17-1

2. “Track Changes” version of the Draft Ordinance
 3. July 13, 2017 PC Staff Report
 4. July 13, 2017 PC Memo-Additional Comments Received
 5. July 13, 2017 PC Meeting Minutes
 6. Public Comments received following July 13, 2017 PC Meeting
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BACKGROUND:

California’s second-unit law (Gov. Code Section 65858.2) was first enacted in 1982 to encourage the creation of second dwelling units on parcels developed with an existing primary residence, while allowing local jurisdiction control and flexibility. Since that time the State has passed several laws to streamline and simplify development of second dwelling units. Most recently, California’s Governor signed two new second dwelling unit bills into State law, Senate Bill (SB) 1069 and Assembly Bill (AB) 2299. The intention of the legislation is to streamline and simplify issuance of building permits for second dwelling unit that comply with the standards established by the local jurisdiction. These laws make clear that local government ordinances which do not align with the new State laws shall be “null and void” beginning January 1, 2017, and that until which time a jurisdiction adopts its own ordinance in accordance with State law, the State standards specified in section 65852.2 shall be enforced.

PROJECT DESCRIPTION:

The proposed project is a recommendation by the Nevada County Planning Commission (July 13, 2017: 3-1, 1 absent vote) for the Board of Supervisors to introduce, waive further reading and adopt proposed zoning text amendments to the Nevada County Zoning Ordinance (Land Use and Development Code Chapter II) to bring the Code into compliance with State housing laws for accessory dwelling units (ADUs), and transitional and supportive housing.

The project includes proposed amendments to: 1) Land Use and Development Code (LUDC) Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.6.F of Article 2 related to consistent terminology for accessory dwelling units (ADUs) and transitional and supportive housing allowable land uses; 2) LUDC Section L-II 3.19 (Second Dwelling Units) of Article 3 by replacing the phrase “Second Dwelling Units” with “Accessory Dwelling Units” (ADUs) for consistency with State law; 3) LUDC Section 3.19.1 (Accessory-Second Dwelling Units) of Article 3 related to consistent ADU administration, terminology and development standards; 4) LUDC Section L-II 3.19.2 (Second Dwelling Units-Consistent with Allowed Density) of Article 3 related to development of second dwelling units within the medium density multi-family residential (R2) zone district; 5) LUDC Section L-II 4.2.5 (Building Setbacks) of Article 4 related to ADU building setback exceptions; 6) LUDC Section L-II 4.2.9 (Parking) of Article 4 to clarify ADU parking requirements; and 7) LUDC Section L-II 6.1 (Definitions) of Article 6 related to revised definitions for transitional and supportive housing (ORD17-1).

STAFF COMMENT:

Proposed Accessory Dwelling Unit Amendments:

SB 1069 made five (5) primary changes to address barriers to the development of ADUs and expanded capacity and potential for their development. The mandatory changes of the bill include: 1) reduced parking requirements for ADUs and prohibiting additional parking for ADUs when certain criteria is met (e.g., located within a half mile of public transportation); 2) prohibition of local governments from requiring an ADU applicant to install a new or separate utility connection, or impose a related capacity charge for ADUs contained within an existing residence or accessory structure, and proportionate water and sewer fees for attached and detached ADUs; 3) clarification that fire sprinklers shall not be required in an ADU if they are not required in the primary residence; 4) a requirement that local governments approve an ADU within a single-family residential zone district “by right” if the unit is contained within an existing residence or accessory structure with independent exterior access, and existing rear and side setbacks that are sufficient for fire safety; and 5) a prohibition for local governments to adopt an ordinance that precludes development of ADUs.

AB 2299 modified ADU parking requirements, expanded the relative percentage for attached ADU floor area compared to the size of the primary residence, and provides additional flexibility related to the conversion of existing living area or accessory structures into an ADU. AB 2299 requires local governments to administratively (i.e., without discretion) approve ADUs if the following site development and building design standards are met:

- The lot is zoned for single-family or multifamily use and contains an existing single-family dwelling;
- The unit is either attached to an existing dwelling or located within the living area or the existing dwelling or detached structure and on the same lot;
- The increased floor area of the unit does not exceed 50% of the existing living area, with a maximum increase in floor area of 1,200 square feet;
- The total area of floor space for a detached accessory dwelling unit does not exceed 1,200 square feet;
- No setback can be required from an existing garage that is converted to an ADU;
- Accessory structures with setbacks sufficient for fire safety may convert to an ADU provided they have their own exterior entrance;
- Compliance with local building code requirements; and
- Requires approval by the local health officer where private sewage disposal system is being used.

Based on the changes to ADU regulations resulting from SB1069 and AB 2299, staff has prepared Zoning Ordinance amendments to ensure the County’s ADU administration, terminology and development standards are consistent with current State laws.

Proposed Transitional Housing and Supportive Housing Amendments:

In addition to the proposed amendments related to ADUs, staff has prepared two housing related amendments for transitional and supportive housing to be consistent with the State Housing Accountability Act and County adopted housing plans and programs, specifically Housing Element Program EO-8.5.4. Senate Bill (SB) 2, Chapter 633, Statutes of 2007 clarified and strengthened housing element law to ensure local zoning ordinances encourage and facilitate the development of emergency shelters, and transitional and supportive housing for homeless individuals and families. SB 2 recognizes transitional and supportive housing as a type of residential occupancy that may only be subject to those restrictions that apply to other residential uses of the same type in the same zone. For example, if the transitional housing is a multi-family apartment building proposed in a multifamily zone, then zoning should treat the transitional unit the same as other multifamily uses proposed in the zone. The scope for the proposed Transitional and Supportive Housing Amendment is driven by the following program in the 2014-2019 Housing Element, which was originally required as a result of the State Department of Housing and Community Development's (HCD) review and certification of the Element:

Program EO-8.5.4: To encourage transitional and supportive housing, the County will amend its zoning ordinance in accordance with Government Code Section 65583(a)(5) to permit transitional housing and supportive housing as a residential use, subject only to those regulations that apply to other residential dwellings (e.g., single family, duplex, condominiums, apartments) of the same type in the same zone.

In addition, the County shall review and if necessary amend the zoning ordinance definitions of "transitional housing" and "supportive housing" to be consistent with Government Code Section 65582.

The proposal responds to the Housing Element programs in accordance with California Senate Bill (SB) 2, to allow transitional and supportive housing as a residential use of property subject to the same restrictions and permitting requirements that apply to other residential dwellings of the same type in the same zoning district with one exception, and amends the current definitions for transitional housing and supportive housing. The one exception relates to the fact that the County's Community Commercial (C2) Zoning District requires approval of a Use Permit for construction of residential dwelling units that are part of a mixed-use development, but permits transitional and supportive housing as an allowed "by-right" use in the C2 zone. Allowing transitional and supportive housing as a by-right use in the C2 zone was a direct result of the implementation of the 2009-2014 Nevada County Housing Element (Ordinance No. 2366). A strict interpretation of SB 2 would therefore suggest that the permitting requirements for transitional and supportive housing in the C2 Zoning District be changed from an allowed use to instead require approval of a Use Permit, as is the case for other residential units in

the C2 zone. However, because the intent of SB 2 is to remove constraints for transitional and supportive housing, and because the Board has adopted “improving and expanding emergency shelters” as a 2017 “A” Legislative Priority, staff is proposing to leave transitional and supportive housing in the C2 zone permissible as a “by-right” use in an effort to continue to make those housing types more feasible to construct, above and beyond what SB2 requires.

Other Housing-Related “Clean-up” Amendment:

During analysis and review of the proposed amendments a housing-related inconsistency in the Zoning Ordinance was discovered related to whether “Second Dwelling Units-Consistent with Allowed Density” were permissible within the Medium Density residential zone district (R2). Second Dwelling Units-Consistent with Allowed Density are different than ADUs in that they must be located on properties that are at least twice their Zoning District’s minimum parcel size and do not have a square footage size limitation. Table L-II 2.2.2.B of the Zoning Ordinance lists Second Dwelling Units-Consistent with Allowed Density as an allowed “by-right” use within the R2 Zone District, however, under the associated specific land uses Code Section L-II 3.19.2 (Second Dwelling Units-Consistent with Allowed Density) the R2 Zone is not listed as one of the Districts allowing for second dwelling units. For efficiency staff has elected to bundle this correction with the other proposed housing-related amendments being considered.

PLANNING COMMISSION ACTION:

On July 13, 2017, the Nevada County Planning Commission held a duly noticed public hearing to consider the proposed zoning text amendments. Staff had received letters from Mr. Greg Zaller and Ms. Pauli Halstead requesting that the County go further to in promoting ADUs as a means for providing affordable housing (*Attachments 4 & 6*). At the public hearing, in addition to discussing the overall affordability of second dwelling units including the overall cost of the requirement for a stand-alone septic system, a specific focus of some of the public comments related to the existing standard that requires either the primary or accessory dwelling unit to be owner occupied. After taking public testimony and deliberating, the Planning Commission first voted 4-0, 1 absent recommending that the Board of Supervisors find the project exempt from environmental review and then voted 3-1, 1 absent recommending that Board adopt the proposed Ordinance. In addition, the Planning Commission when making a recommendation on the proposed Ordinance, also added a recommendation that the Board of Supervisor’s consider dropping the current restriction that ADUs can only be occupied so long as an owner occupies either the ADU or the primary dwelling unit onsite. Commissioner James was the dissenting vote, in doing so he expressed that the owner occupancy requirement was an important factor in maintaining the integrity of a property/neighborhood and as a result of his prior work in other jurisdictions he has seen the problems that are created on properties with absentee owners (*Attachment 5*).

Based on research following the public hearing, staff found that “owner-occupancy” requirement was first established in 1992 for “Second Dwelling Units-Consistent with Density,” but did not apply to Accessory Second Dwelling Units because at that time they required a deed restriction to be either restricted to senior citizen or persons with disabilities. In 2002, the County created a “Limited Density” Second Dwelling Unit Pilot program that also included an owner occupancy requirement. In 2007, similar to this proposed Ordinance, the County was pre-empted by State law to remove age and other restrictions on second dwelling units. At this time the County also disbanded the “Limited Density” Second Dwelling Unit Pilot program as it was not being utilized. When amending the Second Dwelling Unit (ADU) Ordinance, the County carried over the “positive requirements” of the pilot program, one of which was the owner occupancy requirement, which has remained a requirement for the last 10 years. Should the Board elect follow the Planning Commission’s additional recommendation to consider dropping the owner occupy standard, staff would recommend direction be provided to staff to take this proposal through the public planning process to allow additional research, analysis and public outreach as this more substantial amendment was not contemplated or advertised as a part of this proposed Ordinance amendment.

ENVIRONMENTAL REVIEW:

The proposed Zoning Ordinance amendments are statutorily exempt pursuant to Sections 15061(b)(3), 15268, and 15282(h) of the California Environmental Quality Act (CEQA) Guidelines. The text changes are covered by the general rule (15061(b)(3)) that CEQA applies only to projects, and exempts activities that can be seen with certainty to have no possibility for causing a significant effect on the environment. The proposed ADU, and Transitional and Supportive housing amendments, would not allow any new uses and would not change the amount of potential development that is currently allowed. Additionally, CEQA Guidelines Section 15268 exempts ministerial projects, which is appropriate because most ADUs, and Transitional and Supportive housing in residentially zoned districts are non-discretionary and allowed “by right”, subject to zoning compliance. Also, Section 15282(h) is an appropriate exemption from CEQA review for the adoption of an Ordinance regarding accessory dwelling units to implement the provisions of Section 65852.2, which is the primary purpose of this project.

In summary, the proposed amendments are a result of State housing law mandates and would not create any public health or safety hazards and would not have a significant impact on the resources or services within this area, such as water, sanitary services, surrounding roadways and intersections, schools, and existing agricultural uses, therefore there is no possibility the project may have a significant effect on the environment.

SUMMARY:

Based on AB 2299 and SB 1069, as well as SB 2 and Housing Element Program EO-8.5.4, staff is proposing zoning text amendments to implement changes to be consistent state laws that support efforts to establish a greater amount of affordable housing and residential care facilities, and bring the County’s Zoning Ordinance into compliance with

current legislation for ADUs, and transitional and supportive housing. The Planning Commission has considered the proposed Ordinance and has recommended the Board adopt the Ordinance and in making said recommendation, requested that consideration be given to removing the requirement that a property owner occupy either the primary or accessory dwelling unit. Should the Board elect follow the Planning Commission's additional recommendation, staff would recommend direction be provided to staff take this proposal through the public planning process to allow additional research, analysis and public outreach as this amendment was not contemplated or noticed as a part of this proposed Ordinance.

RECOMMENDATION: The Planning Commission has recommended that the Board of Supervisors take the following actions:

- I. Find the project is statutorily exempt from the California Environmental Quality Act pursuant to Public Resources Code 21080.17 and Sections 15061(b)(3), 15268, and 15282(h) of the California Environmental Quality Act (CEQA) Guidelines.
- II. Introduce, waive further reading and adopt the attached Ordinance (ORD17-1) amending Chapter II of the Nevada Land Use and Development Code Allowable Land Uses Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.6.F; and Sections L-II 3.19, 3.19.1, 3.19.2, 4.2.5, 4.2.9 and 6.1 making the findings provided in the attached Ordinance (*Attachment 1*).

Item Initiated by: Tyler Barrington, Principal Planner

Approved by: Brian Foss, Director of Planning