



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

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

MEETING DATE: September 25, 2018

TO: Board of Supervisors

FROM: Nevada County Planning Department

SUBJECT: A public hearing to consider the Planning Commission's August 9, 2018, 5-0 vote recommending that the Board of Supervisors introduce, waive further reading and adopt the Ordinance (Planning ORD18-1) for zoning text amendments to the Nevada County Land Use and Development Code Chapter II Section L-II 3.19.1 to encourage the development of Accessory Dwelling Units (ADUs).

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 (Planning ORD18-1) amending Sections L-II 3.19.1 making the findings provided in the attached Ordinance (*Attachment I*).
- III. Close Board Order BO17-02.

FUNDING: No budget amendments are required.

ATTACHMENTS:

1. Planning Ordinance- ORD18-1

2. “Track Changes” version of the Draft Ordinance
 3. August 9, 2018 PC Staff Report/Memo with duplicate attachments removed
 4. August 9, 2018 Draft PC Meeting Minutes
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BACKGROUND:

In 2017, the Board of Supervisors adopted Ordinance No. 2441, which amended the County’s Accessory Dwelling Unit Ordinance to bring the County’s Zoning Regulations regarding Accessory Dwelling Unit into compliance with State Law (SB1069 and AB2299). During that process, individuals and/or groups requested additional changes to the ordinance to help promote ADUs as a means to assist with addressing affordable housing needs in Nevada County. The Planning Commission had recommended to the Board of Supervisors that for the Board consider further amending the Ordinance to codify the requests of the public. At that time, the additional changes had not been noticed, analyzed or included as a part of the project. Therefore, staff requested that to implement those changes, the Board provide direction to staff to do so and staff would return on a later date with these changes. Subsequently, the Board of Supervisors on Sept. 12, 2017 in adopting Ordinance 2441, directed staff to return to the Board with further amendments to the County’s ADU ordinance through Board Order BO17-02.

The original direction of the Board of Supervisors requested the Planning Department to return to the Board with an ordinance that considered the following regarding ADUs:

1. Restricting short-term rentals in ADUs/Defining what a short-term rental is.
2. Owner occupancy requirements for ADUs,
3. Smaller maximum allowed square footage for ADUs,
4. Lower fees for ADUs,

Subsequently, staff prepared a draft ordinance and circulated it for agency and public comments to ultimately be considered by the Planning Commission for a recommendation to the Board of Supervisors, which included the following:

1. Prohibit use of accessory dwelling units as vacation or short-term rentals (less than 30-days).
2. Provide an exception to the requirement that one of the units needs to be owner occupied by using a professional property manager to maintain the property.
3. Allow for the deferral of permit and road/sewer mitigation fees if the accessory dwelling unit is deed restricted for very-low or low income individuals or under 800-square feet in size.
4. Remove the requirement that accessory second dwelling units must be attached units on properties under 1-acre in size, consistent with recent state legislation.
5. Further clarify the water and sewage disposal (septic) requirements for ADUs

The Planning Commission on August 9, 2018 considered the aforementioned ordinance amendments and in making a recommendation to the Board of Supervisors made significant modifications to items 1 and 2, highlighted below.

PROJECT DESCRIPTION:

The proposed project is a Zoning Text Amendment proposing to amend the County's Accessory Dwelling Unit (ADU) Ordinance (Land Use and Development Code Section L-II 3.19.1) to encourage the development of accessory dwelling units as one of County's strategies towards addressing the statewide affordable housing crisis.

Based on the direction from the Planning Commission, the draft ordinance was modified as discussed below from the list above to the following (underline text shows the modified draft standards):

1. Allow ADUs to be short-term rentals as defined as less than 30 consecutive calendar days by removing the draft language that required long-term use and prohibited short-term rentals.
2. Allow both the ADU and primary unit to be rentals, by eliminating all together the County's existing standard requiring one of the units to be owner occupied.
3. Allow for the deferral of permit and road/sewer mitigation fees if the accessory dwelling unit is deed restricted for very-low or low income individuals or under 800-square feet in size.
4. Remove the requirement that accessory second dwelling units must be attached units on properties under 1-acre in size, consistent with recent state legislation.
5. Further clarify the water and sewage disposal (septic) requirements for ADUs.

PLANNING COMMISSION ACTION:

On August 9, 2018, the Nevada County Planning Commission on a 5-0 vote after reviewing written public comments, staff's recommendation, taking public testimony and deliberating on the project, the Planning Commission recommended that the Board of Supervisors, introduce, waive further reading and adopt the proposed amendments to the County's ADU Ordinance, provided as Attachment 1 and shown in track changes in Attachment 2. As directed by the Board of Supervisors, the draft ordinance brought before the Planning Commission included standards that would have prohibited the use of an ADU as short-term housing (e.g. AirBnBs/VRBOs) and would have maintained the existing standards requiring either the primary or ADU be owner occupied, but would have provided an option for both units to be rentals if the property owner entered into contract with a professional property management company to ensure the upkeep and maintenance of the property.

As a part of the public outreach process, the Agricultural Advisory Commission (AAC) provided a comment requesting an exception to the prohibition of ADUs as short-term rental for properties that qualified for agritourism events pursuant to Land Use and Development Code Section L-II 3.3. The Planning Commission, in review of this comment and verbal comments made at the public hearing by the chair of the AAC, discussed the potential for recommending this exception. Ultimately, the Commission decided that restricting the use of an ADU may be infringing on property rights and that the “market” should dictate whether or not someone wants to use their ADU as a short-term rental. Subsequently, the Planning Commission recommended that the prohibition be stricken from the ordinance in its entirety and not just for properties that are being used for agritourism events and activities.

The Planning Commission also discussed the effectiveness of a property management company to ensure a property is maintained and the added cost that this would place upon a property owner who desired to provide both of their units as rentals. After deliberating, the Commission in making a recommendation to the Board, requested that the owner-occupancy requirement be removed all together as a way to encourage the development of ADUs and increase the County’s rental housing stock. For additional detail on the Planning Commission’s deliberation and direction, see the attached draft August 9, 2018 meeting minutes provided as Attachment 4.

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 ordinance would not allow any new uses and would not change the amount of potential development that is allowed under current regulations. Additionally, CEQA Guidelines Section 15268 exempts ministerial projects, which is appropriate because ADUs 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.

SUMMARY:

The proposed project is an amendment to the County’s Accessory Dwelling Unit Ordinance to promote and incentivize the development of ADUs as a way to provide more rental housing opportunities in Nevada County. The modified draft ordinances proposes to achieve this by providing incentives for the development of ADUs including: 1) removing the existing owner occupancy requirement for either the primary dwelling or ADU as a way to increase the County’s rental housing stock; 2) by allowing detached ADUs on parcels under 1-acre consistent with state law, 3) by clarifying septic disposal

requirements for an ADU; and 4) by establishing a road and sewer mitigation fee deferral allowance for ADUs under certain circumstances.

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 (Planning ORD18-1) amending Sections L-II 3.19.1 making the findings provided in the attached Ordinance (*Attachment I*).
- III. Close Board Order BO17-02.

Item Initiated by: Tyler Barrington, Principal Planner

Approved by: Brian Foss, Director of Planning