



**Contra
Costa
County**

To: Board of Supervisors
From: John Kopchik, Director, Conservation & Development Department
Date: May 23, 2017

Subject: Hearing to consider adopting Ordinance No. 2017-11 establishing regulations and permitting procedures for accessory dwelling units

RECOMMENDATION(S):

1. OPEN the public hearing on Ordinance No. 2017-11; RECEIVE testimony and CLOSE the public hearing.
2. FIND that adoption of Ordinance No. 2017-11 is exempt from environmental review under the California Environmental Quality Act (California Code of Regulations, Title 14, Section 15282(h), and Section 15061(b)(3)).
3. ADOPT Ordinance No. 2017-11 establishing regulations and permitting procedures for accessory dwelling units.
4. DIRECT staff to examine the issue of short-term rentals and report to the Board by September 2017 with policy recommendations.
5. DIRECT the Department of Conservation and Development Director, or his designee, to file a Notice of Exemption with the County Clerk-Recorder.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **05/23/2017** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: May 23, 2017

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Telma Moreira
925-674-7783

cc:

FISCAL IMPACT:

The costs of preparing this ordinance have been funded by the Department of Conservation and Development's Land Development Fund. The cost of processing accessory dwelling unit applications will be 100% funded by application fees.

BACKGROUND:

On September 27, 2016, Assembly Bill 2299 and Senate Bill 1069 were approved by the Governor. The bills amended Government Code section 65852.2 regulating the establishment of accessory dwelling units (ADUs, formerly designated as residential second units), effective January 1, 2017. As determined by the State legislature, ADUs are a valuable form of housing in California and an effective tool in combatting the housing shortage in the state. ADUs provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others at below market prices within existing neighborhoods. State law requires local ordinances regulating ADUs to comply with Government Code section 65852.2, as amended. In response, the County initiated this zoning code amendment to amend the County's existing residential second unit ordinance, found in Chapter 82-24 of the County Ordinance Code, and portions of the Kensington (-K) combining district Ordinance as it relates to ADUs.

KEY COMPONENTS OF THE CHANGES PROPOSED IN THE ADU ORDINANCE

In accordance with Government Code section 65852.2, proposed Ordinance No. 2017-11 provides for a ministerial process to approve ADUs including, specifically, ADUs resulting from an internal conversion. The proposed ordinance also provides more lenient off-street parking requirements including allowing parking within the setbacks and, in some instances, exempting ADUs from off-street parking requirements.

Ministerial approval of ADUs resulting from an internal conversion:

An application to establish an ADU will be ministerially approved if the ADU:

- is within a single-family residential zone;
- is contained within the existing space of a single-family residence or accessory structure;
- has independent exterior access;
- has side and rear setbacks sufficient for fire safety; and
- meets all applicable building standards, and all applicable sewage and water requirements.

Exemption from off-street parking requirements

Off-street parking will not be required for an ADU if the ADU is located within:

- one-half mile of public transit;
- an architecturally and historically significant historic district;
- a permit-parking area but an on-street parking permit is not available to the occupant of the ADU; or
- one block of a care share vehicle pick-up location.

Modifications proposed for the Kensington (-K) combining district Ordinance

The current Kensington (-K) combining district Ordinance requires new construction, including ADUs, to undergo a discretionary design review. The proposed ordinance would exempt ADUs in the -K District from the discretionary design review in compliance with Government Code section 65852.2.

However, the discretionary design review served policies of the County General Plan. The Land Use Element of the County General Plan includes the following policies that relates to the Kensington area:

- Policy 3-194. Allow for the review of new residential development that provides reasonable protection for existing residences in the Kensington Community with regards to: views, design compatibility (including bulk, size, and height), adequate parking, privacy, and access to sunlight.
- Policy 3-195. Preservation of view of scenic natural resources (e.g. bay, mountains) and the developed environment (e.g. bridges, city skyline) should be incorporated in the review of development applications.
- Policy 3-197. New residential development will be reviewed against realistic impacts of privacy and sunlight on surrounding neighbors.

The Kensington design review served to review potential impacts to sun light and obstruction of views into neighboring properties. The proposed ordinance would provide restrictions specific to the K-District that will apply to the lot size, unit size, and height, of ADUs in recognition of the County General Plan policies affecting the Kensington area. The table below shows a comparison of all of the proposed county-wide changes versus changes proposed for the Kensington area.

Summary of The Modifications Proposed in the ADU Ordinance:

	Existing County Wide	Proposed County Wide	Proposed Kensington
Min. Lot*	6,000 sq. ft	6,000 sq. ft.	10,000 sq.ft.
Max sq.ft. detached	1,000 sq. ft in R-Districts 1,200 sq. ft in A-Districts or more than 5 acres	1,000 sq.ft. in R-Districts 1,200 sq. ft. in A-Districts or more than 5 acres	600 sq. ft. or 60% of the floor area of main residence, whichever is less

Max. sq.ft. attached	30% of the floor area of main residence, or 1,000 sq. ft (1,200 sq. ft. in A-Districts or more than 5 acres), whichever is less	50% of the floor area of the main residence, or 1,000 sq. ft. (1,200 sq. ft. in A-Districts or more than 5 acres), whichever is less	50% of the floor area of the main residence or 600 sq. ft., whichever is less
Height*	35 feet	35 feet	14 feet
Setbacks*	same as main residence	same as main residence	same as main residence
Lot coverage	40% for R-Districts 35% M-29 25% M-6 to M-17	40% for R-Districts 35% M-29 25% M-6 to M-17	40% for R-Districts 35% for M-29 25% M-6 to M-17
Off street parking*	max one . No parking on setbacks	max. one unless exempt. OK to park on setbacks	max. one unless exempt. OK to park on setbacks
* variances may be considered for lot size, height, setbacks, and off-street parking			

COUNTY PLANNING COMMISSION HEARING

On April 26, 2017, the County Planning Commission opened the hearing and took testimony from 4 members of the community. The County Planning Commission received 2 letters from residents of the Kensington area. One of the commenters addressed the concern that ADUs may be used for short-term rentals and recommended the zoning text amendment to limit ADU rentals to terms of more than 30 days. The second commenter from Kensington stated his concerns regarding the processing of his current ADU application. His application includes a 1,000 sq. ft. ADU on a lot totaling 24,218 sq.ft. and with a height of 12 feet. As proposed, the Ordinance will restrict the size of ADUs in the Kensington area to a maximum of 600 sq. ft., or 60% of the primary residence living area. The Planning Commission also heard testimony from a couple of residents from the Clayton area. The Clayton residents requested the Planning Commission to consider additional flexibility in the Ordinance and to allow ADUs to be increased from 1,000 sq. ft. to 1,200 sq. ft. on lots that are larger than 40,000 sq.ft.

County Ordinance Code section 84-4.404 (5) allows a property owner to apply and obtain approval of a second dwelling unit through a land use permit process, which includes a public hearing. There are no size limitations that apply to a second dwelling unit. Since the property owner may have the option to build a larger unit thorough a land use permit process, the proposed ADU Ordinance does not have to be modified to address larger lots in the County.

After reviewing the testimony, the Planning Commission voted to recommend approval of the Ordinance and included additional language to restrict ADUs from being rented for less than 30 days.

STAFF REASONING FOR RECOMMENDATION TO ELIMINATE 30 DAY LIMITATION

Government Code Section 65852.2(a)(6) states:

"No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued under this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days."

All properties with ADU's are subject to a deed restriction that requires the owners to occupy either the primary unit or the ADU. The Planning Commission's recommendation would apply to both existing and new ADUs. This is a significant change that warrants further analysis and deliberation. Additionally, the language added by the Planning Commission does not prevent the primary residence from being rented for less than 30 days, potentially creating numerous enforcement issues.

Staff does not believe it is appropriate to include the additional restriction at this time as part of the ADU Ordinance. Staff recommends the Board not adopt the Commission's recommendation to prohibit short-term rentals of ADUs until staff has had an opportunity to further review the short-term rental matter in a more comprehensive manner.

CONCLUSION

The proposed accessory dwelling unit ordinance is consistent with Government Code section 65852.2, and is also consistent with both the County General Plan, and the Zoning Code. Staff recommends the Board adopt Ordinance No. 2017-11 as presented.

CONSEQUENCE OF NEGATIVE ACTION:

No local ADU Ordinance will be in effect and the County will be required to apply only the standards found in Government Code section 65852.2 in processing applications to establish ADU.

CHILDREN'S IMPACT STATEMENT:

There are no impacts to children.

CLERK'S ADDENDUM

CLOSED the hearing; FOUND that adoption of Ordinance No. 2017-11 is exempt from environmental review under the California Environmental Quality Act; ADOPTED Ordinance 2017-11; DIRECTED staff to examine the issue of short-term rentals and report to the Board by September 2017 with policy recommendations; and DIRECTED the Department of Conservation and Development Director, or his designee, to file a Notice of Exemption with the County Clerk-Recorder.

ATTACHMENTS

Ordinance No. 2017-11

County Planning Commission Staff Report 4.26.17

County Planning Resolution 9-2017

Senate Bill No. 1069/Assembly 2299

Power point