



**Contra  
Costa  
County**

To: Board of Supervisors  
From: John Gioia, District I Supervisor  
Date: June 18, 2019

Subject: Establish Accessory Dwelling Unit Incentive Program to promote the legalization of ADUs previously constructed without permits

**RECOMMENDATION(S):**

1. APPROVE and AUTHORIZE the Director of Conservation and Development to waive, through July 1, 2021, late filing fees and building permit penalty fees for applications to permit previously constructed unpermitted accessory dwelling units.
2. DIRECT County staff to work with individual property owners to bring previously constructed unpermitted accessory dwelling units into compliance with zoning and building code requirements using the most cost-effective methods available and minimizing the changes required to existing construction.
3. FIND the approval of an ADU Incentive Program exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15061(b)(3) (common sense exemption) and 15273(a)(1) (fees established by public agencies to meet operating expenses).
4. DIRECT the Director of the Department of Conservation and Development to file a Notice of Exemption with the County Clerk.

☒ APPROVE ☐ OTHER  
☒ RECOMMENDATION OF CNTY ADMINISTRATOR ☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **06/18/2019** ☒ 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: June 18, 2019

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

By: June McHuen, Deputy

Contact: Jason Crapo (925)  
 674-7722

cc:

## FISCAL IMPACT:

Minimal impact of an undetermined amount to the Land Development Fund. No impact to General Fund. The Department of Conservation and Development (DCD) will forgo some fee revenue for the individual applications as a means to incentivize property owners to seek permits for illegally constructed ADUs. However, the program may lead to more applications being filed than otherwise would have occurred, each of which would pay standard fees. There will be some uncompensated staff work associated with developing public information materials and marketing the program, as well as staff time spent in pre-application meetings with property owners. The precise budgetary impact is unknown but estimated to be relatively small within the context of the Department's budget.

## BACKGROUND:

### Summary

The County recognizes the importance of Accessory Dwelling Units (ADUs) as a means of increasing the supply of housing for County residents. The Board of Supervisors hereby directs the County Department of Conservation and Development (DCD) to establish a program that encourages property owners to apply for planning and/or building permits for ADUs already in existence but built without required permits. The Building and Community Development Divisions of the Department of Conservation and Development (DCD) collaborated in the development of this proposal and DCD recommends its approval.

This "ADU Incentive Program" would provide property owners an opportunity to have one or more free pre-application consultations with County staff to review their situation and determine the process and scope of improvements needed to legalize the unit. If, after consulting with County staff, the property owner decides not to pursue a project, there will be no penalty to the property owner.

If the property owner decides to pursue permits to legalize the ADU, all penalty fees associated with the owner having previously built the unit without permits will be waived. The property owner will only pay normal permit fees, as if it were a new ADU.

The Board of Supervisors directs DCD to make every effort to exercise flexibility and discretion with property owners so as to minimize the scope of changes needed to an unpermitted ADU in order to legalize it, while maintaining health and safety requirements reflected in the County zoning code and California Building Code.

### Intent

The intent of the ADU incentive Program is to encourage property owners to obtain required planning and building permits for previously unpermitted ADUs by waiving financial penalties for such permits and providing the maximum allowable and appropriate flexibility to enable property owners to permit their existing ADUs while maintaining required standards for health and safety of building occupants.

### Eligibility

Any unpermitted ADU that is already constructed is eligible for the program. Units currently under construction without permits are not eligible for the program and must apply for permits as new projects.

### Reasons and Justification for Program

California is facing a housing crisis. The State as a whole has not kept up with the demand for housing,

leading to chronic problems of housing affordability throughout California, including Contra Costa County.

One way to increase the supply of housing and to provide more affordable housing options for Californians is to increase the number of Accessory Dwelling Units. ADUs provide housing for family members, the elderly, in-home health care providers, persons with disabilities, students and others at relatively affordable rents. They also provide additional income to property owners to help offset the high costs of home ownership. ADUs can be built in basements, attics, attached garages or additions to existing residences, or in detached garages or rear yard structures, with minimal change to the character of existing residential neighborhoods.

ADUs represent an efficient, low-impact form of infill development. They make effective use of the existing infrastructure of residential neighborhoods, and do not require added investment of new roads, utility systems and other improvements required in newly developed area.

The California State Legislature adopted, and the Governor subsequently approved, legislation facilitating the construction of Accessory Dwelling Units in 2016. The County then adopted the ADU Ordinance in May 2017 that allowed for ministerial planning approval of ADUs in a manner consistent with State law, thereby expediting the processing of ADU permits.

In response to these changes in State and local laws, DCD has experienced an increase of more than 300% in the number of ADU permit applications over the past four years. As shown in the table below, this includes both applications for new ADUs, and applications to permit ADUs previously constructed without permits. The number of ADU permit applications has increased substantially in both categories, and the vast majority of these applications have been approved.

Year	Total Permit Applications	Permits to Legalize Unpermitted ADUs			
		Total	Approved	Withdrawn	In Process
2015	25	4	4	0	0
2016	29	5	4	1	0
2017	76	19	18	0	1
2018	82	14	10	2	2

Regardless of whether the ADU Permit application is for a new ADU to legalize an unpermitted ADU, recent changes in State and local laws have streamlined the approval process for many ADUs. However, ADUs previously constructed without permits have unique challenges because the construction may not conform to zoning and building code requirements, and therefore may present health and safety risks to the occupants. A main reason for the ADU Incentive Program is to assist property owners overcoming these challenges through close review of their particular circumstances and making efforts to accommodate and improve upon the existing unpermitted construction in order to bring it into code compliance and issue the permits required to legalize the unit.

## Common Zoning and Building Code Issues for Unpermitted ADUs

ADUs must comply with County zoning and building code requirements. These requirements can sometimes pose unique challenges for ADUs previously constructed without permits. As directed by the Board of supervisors, DCD will work with participating property owners to address these issues efficiently, with concentrated effort made to legalize existing unpermitted construction and to minimize the modifications and associated cost necessary for compliance with code requirements.

Zoning Requirements: The ADU Ordinance sets forth a ministerial review and approval process for ADUs that meet certain location and development standards, including development standards specific to the underlying zoning district. A discretionary ADU Permit is required to establish an ADU that does not meet all the applicable development standards, such as minimum side or rear yards. However, the ADU Ordinance authorizes ministerial approval of an ADU that is an internal conversion of an existing residence or existing accessory building located within a side or rear yard. The ADU Ordinance also allows the required off-street parking space for the ADU to be located within the property setback or waives the parking requirement for an ADU located within 1/2 mile of public transit, in a historic district, in a permit parking area or within one block of a care share vehicle location. Thus, most ADU Permit applications to legalize a previously built ADU is readily processed and approved, as shown on the preceding table.

Building Code Requirements: Regarding building code requirements, unpermitted ADUs must comply with requirements of the California building code in order to receive a building permit. The 2016 California Building Standards Code is the version currently applicable throughout California. The Board of Supervisors approved Ordinance No. 2016-22 adopting the 2016 California building code, with local amendments.

Building code requirements are mandated by the State. State building code requirements represent the minimum allowable standards for building safety, and therefore local agencies do not have legal authority to reduce or waive the requirements of the State building code.

ADU constructed years ago when earlier versions of the California Building Code were in effect often faces challenges complying with current code requirements because the code evolves and changes with each new code cycle to reflect current technology and research concerning building safety. The State typically updates the California Building Code every three years.

There are certain code compliance challenges that commonly occur with unpermitted ADUs. For example, an ADU connected to an existing residence requires a fire rated separation between the ADU and the original home. Such separation could be a wall between the primary residence and an addition, or it could be a floor or ceiling between a basement or attic level and the original home. If the home's walls, floor or ceiling were not originally fire rated, creating this separation can be difficult. Legalizing the conversion of attic or basement areas into living space also involves air, thermal and moisture barriers which may not have been properly constructed. Legalizing existing accessory structures (such as barns or storage sheds) converted to an ADU can present challenges, as these were not initially constructed as living units, and were likely not built to the standards required for habitable space. Accordingly, for each ADU evaluated, staff will need to verify required safety measures on a case-by-case basis.

Although existing unpermitted ADUs may not strictly meet all current building code requirements, the building code allows the permitting of such construction if the local building department determines the construction achieves a level of safety equivalent to current building code requirements. This authority derives from section 104.11 of the 2016 California Building Code, which states, "An alternate material, design, or method of construction shall be approved where the building official finds that the proposed

design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, not less than the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety."

The building code allows the County to take a comprehensive view of the building safety of an ADU, and to permit ADUs that provide an equivalent level of safety to that required by the building code, even if some specific aspects of the unit do not strictly meet the standard of the code. For example, strict engineering requirements in the building code for foundations, framing, or shear walls could be substituted by structural elements that meet conventional and accepted standards for residential construction. In the case of energy efficiency requirements in the building code, tradeoffs exist between the various components of an ADU that affect the energy efficiency of the unit, such as windows, insulation, and appliances. The County will exercise discretion in evaluating energy code compliance to minimize the changes required to achieve a level of effectiveness equivalent to that of current code. Staff will take a similar approach to evaluation the requirement of other building system of ADUs, such as electrical, mechanical and plumbing systems.

Consistent with Board direction, DCD will make a concerted effort to work with property owners to bring older units into compliance with building code requirements. The extent of the modifications needed to the unit, and associated cost will depend on the age and condition of the construction. Improvements can often be made to existing construction to achieve a level of safety equivalent to current code requirements. This can be more cost effective than demolishing the existing construction and rebuilding to the specifications of current code. Attached are drafts of public information materials describing some examples of improvements commonly made to unpermitted ADUs to bring the units to the required level of building safety.

### Proposed Program Process

The County's objective for the ADU Incentive Program is to create a program process that allows for early discussion between the property owner and County staff, before the property owner decides whether to participate in the program, to identify the conditions on the property that will need to be modified or otherwise addressed in order for the ADU to be permitted and legalized. The interactive process would identify issues of concern early in the process so the property owner can estimate the cost of bringing the unit into compliance and decide whether to proceed with the program, without penalty.

Before submitting any permit applications to the ADU Incentive Program, County staff will ask the property owner to attend a free pre-application consultation meeting with County staff to review the conditions on the property and begin to identify the scope of work needed to legalize the unit. Property owners will need to bring photographs and drawings of the property to the initial consultation meeting so that County staff can assess the condition of the property.

Following one or more consultation meetings with County staff, the property owner can decide to participate, or to not participate in the program. Project feasibility and estimated project cost will likely be important factors in a property owner's decision. Property owners will be encouraged to seek estimates from licensed contractors for the cost of any necessary improvements that are needed to legalize the unit. The costs can be significant in some cases, depending of the scope of improvements required to meet building safety standards.

Regardless of whether the property owner decides to participate, there will be no penalty to the property owner. If the property owner does not participate, the County will keep no record of pre-application consultation meetings. Except where a building code deficiency poses an immediate risk to health and safety, the County will not utilize any information or documentation obtained in the pre-application

process to support a code enforcement action against the property owner.

If upon completion of a pre-application consultation with staff the property owner decides to proceed with the program, the owner would submit applications for appropriate planning and building permits. After obtaining the required permits, the owner would proceed to construct any necessary improvements and have this construction inspected by County staff, consistent with building permit requirements.

### Program Benefits for Property Owners

To encourage property owners to legalize their unpermitted ADUs, a participant in the ADU Incentive Program will not be required to pay an ADU permit late filing fee or building penalty fee to legalize a unit. The late filing fee for an ADU Permit is \$500. The penalty fee for work constructed without a building permit is two times the amount of the building permit fee itself. The minimum fee is \$250. The actual fee depends on the cost of construction. These fees would be waived for program participants that submit an application before July 1, 2021.

By successfully completing the ADU Incentive Program, a participating property owner will have a legal and safe ADU, and only be required to pay the fees he or she would have paid if applying for a new ADU today.

Participants in the ADU Incentive Program also benefit from the pre-application consultation with County staff. Staff will assist participants in identifying any zoning or building code deficiencies in the unit.

In addition to health and safety benefits, property owners who legalize their unpermitted ADUs will likely achieve an increase in their property value by being able to market the property as having two legal residential units.

Another benefit to property owners of participating in the ADU Incentive Program is removal of the risk of future code enforcement action against an unpermitted unit, and associated costs of resolving such a code enforcement case.

### Public Outreach

DCD will distribute public information materials about the ADU Incentive Program that will identify key requirements for compliance to assist property owners in understanding these requirements before participating in the Program (see attachments). Participating property owners will be required to meet County zoning and building code requirements. County staff will make every effort to work cooperatively with property owners to help them bring their existing unpermitted ADUs into code compliance with the minimum amount of modifications necessary to meet current zoning and building code requirements.

### California Environmental Quality Act

Approval of an ADU Incentive Program is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment. Waiving previously adopted filing fees is also statutorily exempt from CEQA pursuant to CEQA Guidelines Section 15273(a)(1). CEQA does not apply to fees established or modified by public agencies to meet operating expenses.

## Conclusion and Recommendation

The proposed ADU Incentive Program would encourage property owners with unpermitted ADUs to legalize their unit by waiving late filing and penalty fees for participants who submit an application prior to July 1, 2021. The Program would facilitate safe housing for family members, the elderly, in-home health care providers, persons with disabilities, students, and others at more affordable rents within existing neighborhoods throughout the County. Consistent with the intent and direction of the Board of Supervisors, County staff will apply the discretion and flexibility within their authority to minimize the modifications, and associated expense, necessary to legalize previously unpermitted ADUs.

While penalty fees will be waived, participating property owners will still need to pay normal permit fees required for ADUs, and in some cases property owners may incur additional construction expenses necessary to improve their ADUs in order to meet zoning and building code requirements. In exchange for incurring these costs and legalizing their ADU, property owners will improve the safety and value of their property

### CONSEQUENCE OF NEGATIVE ACTION:

The County will continue to charge late filing fees for unpermitted ADUs and property owners would typically only apply for an ADU Permit to legalize their unit in response to a code enforcement action or through an application submitted for a different planning permit. The County will continue to have a significant number of unpermitted, potentially unsafe ADUs that may not be compliant with the County planning, building or fire codes

### CHILDREN'S IMPACT STATEMENT:

N/A

### ATTACHMENTS

ADU Incentive Program Summary

ADU Comparison Table

ADU Article - UC Turner Center

Handout-Existing Building Footprint

Handout -Addition to Existing Residence

Handout -Detached Structures