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MEMORANDUM

TO: Board of Supervisors
FROM: Deputy County Counsel, Glenn Spitzer
DATE: August 31, 2020
SUBJECT: Accessory Dwelling Unit Ordinance

BACKGROUND: The California State Legislature adopted Government Code section 65852.2, which establishes permitting rules for Accessory Dwelling Units (ADU). The State law requires ministerial (*i.e.*, non-discretionary) review of permit applications for ADUs that meet the basic requirements. The law prohibits cities and counties from creating permitting requirements that are inconsistent with Government Code section 65852.2, and provides that any local law in conflict with these rules is now void.

ADUs are generally defined as an attached or detached residential dwelling that is in addition to the primary dwelling and that provides complete independent living facilities. Government Code section 65852.2 gives cities and counties very little flexibility in the rules they adopt to regulate ADUs, with most of the flexibility provided to address issues related to the adequacy of water and sewer services, and the impacts on traffic flow and public safety. (Gov't Code § 65852.2(a)(A).)

The purpose of the State law is to prevent local agencies from making regulations that burden ADU applicants. The County may ease the minimum regulation requirements set forth in Government Code section 65852.2, but with limited exception it generally may not make the regulations more burdensome. Some areas of flexibility include: (1) The County may limit the size of a Category 1 ADU to no less than 850 square feet for a one bedroom unit or 1000 square feet for a two or more bedroom unit. (2) The County may add design requirements to Category 1 ADUs. (3) The County may prohibit ADUs from being used as short term rentals.

PROPOSED CHAPTER 19.72 (ACCESSORY DWELLING UNITS): The ordinance creates a ministerial process for the permitting of ADUs. The ADUs must meet basic regulations set forth in section 19.72.05(A), which include the following:

- The ADU must be located on the same parcel as the primary dwelling;

- With limited exception, the ADU must meet building code requirements;
- The ADU must meet minimum well production and sewage disposal requirements;
- The ADU must meet minimum zoning setback requirements except that only a four foot setback is required from the side and rear lot lines for new structures unless greater setbacks are required for fire and public safety.

Consistent with Government Code section 65852.2, the proposed ADU ordinance creates two categories of permits, called “Category 1” permits and “Category 2” permits. (Section 19.72.05(B) and (C).) The Category 1 permit (section 19.72.05(B)) allows an applicant one ADU with no limitation on rental duration, and a size limitation that is generally capped at the size of the primary dwelling. Category 1 applicants must meet parking requirements.

The Category 2 permits allow for four subcategories. (Section 19.72.05(C).) These four subcategories track the requirements of Government Code section 65852.2(e). The Category 2 requirements allow an applicant to avoid any parking requirements, but the applicant is prohibited from using the ADU as a short term rental. The four subcategories are as follows:

1. One ADU within existing space: This subcategory of ADU must be within the existing structure (with up to 150 additional square footage allowed to accommodate ingress and egress), must have adequate side and rear setbacks, and must have direct exterior access.
2. One new detached ADU: This subcategory of ADU must be less than 800 square feet and less than 16 feet in height.
3. Multiple ADUs within existing multifamily structures: This subcategory of ADU is allowed in existing multifamily space that is not currently used as living space. Total ADUs are limited to 25% of existing units on the parcel.
4. One or two detached ADUs on parcel with existing multifamily: This subcategory allows for up to two ADUs, not to exceed 16 feet in height, on parcels with existing multifamily.

OTHER PROPOSED CHANGES IN THE ORDINANCE: The ordinance also repeals Sections 19.48.070 and 19.48.120 regarding guest houses and second family dwellings. These sections are inconsistent with Government Code section 65852.2 and therefore void, or are otherwise irrelevant in light of the new permitting requirements of Chapter 19.72 and Government Code section 65852.2.

The proposed ordinance also amends section 14.06.055 regarding well production requirements. The ordinance also amends other sections (section 19.08.310 regarding Guest House definition, section 19.24.045 regarding R1-A zoning, and section 19.48.110 regarding setback regulations) to make appropriate references to the new law and to remove references to the repealed laws.

The proposed ordinance also repeals Chapter 7.16 (House Courts—Camp Spaces). This Chapter has numerous provisions that may be construed as inconsistent with Government Code section 65852.2 and that are therefore void. Chapter 7.16, adopted in 1947, was intended to address issues no longer relevant within the County. The Chapter has been out of use for decades.

PLANNING COMMISSION RECOMMENDATION: This proposed ordinance came before the Planning Commission on July 14, 2020. The Planning Commission requested one amendment to proposed Section 19.72.05(B)(2) regarding the maximum floor area for Category 1 permits. Whereas the initial language did not have a cap on the maximum floor area, the Planning Commission recommends a cap on the total square footage of the ADU so that it does not exceed the floor area of the primary dwelling. The Government Code does not allow a cap below 850 square feet for an ADU under two bedrooms, and it does not allow a cap below 1000 square feet for an ADU that has two or more bedrooms, and the Planning Commission's recommended language addresses this issue. The Planning Commission recommends approval of the ordinance as amended.

County Counsel and staff recommend the adoption of the proposed ordinance in order to bring the Amador County Municipal Code in compliance with State law. Without the amendments, applicants are allowed to obtain ADU permits under the default rules of Government Code section 65852.2. Adoption of the Ordinance will provide clear guidance to staff and the public, and will allow the County to address permitting issues that are unique to the safety of Amador County residents, such as fire safety setbacks and water supply issues.