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AGENDA ITEM NO. 5 (Action Item – Public Hearing)

**PLANNING COMMISSION
MEETING DATE:** September 23, 2020

SUBJECT: Zone Text Amendment (ZTA) No. 2020-02/Inyo County-Rescind 18.78.340/Second Units

EXECUTIVE SUMMARY

Staff has drafted a proposed ordinance to rescind the Inyo County Zoning Code's Title 18.78.340 General Regulations, Second Units

PROJECT INFORMATION

Supervisory District:	County-wide
Applicants:	Inyo County
Landowners: Address/	Multiple
Community:	County-wide
A.P.N.:	County-wide
Existing General Plan:	N/A
Existing Zoning:	N/A
Surrounding Land Use:	N/A
Recommended Action:	Adopt the attached Resolution, recommending that the Board of Supervisors:

- 1.) Find the proposed project exempt from the requirements of the California Environmental Quality Act.
- 2.) Make certain Findings with respect to, and approve, Zone Text Amendment ZTA/2020-02

Alternatives:

- 1.) Recommend modifications to the proposal.
- 2.) Recommend denial. This is not recommended as the County is currently out of compliance with State regulations regarding Accessory Dwelling Units.
- 3.) Continue the public hearing to a future date, and provide specific direction to staff regarding additional information and analysis needed.

Project Planner:

Cathreen Richards

BACKGROUND

In 1997 the Board of Supervisors adopted Ordinance 997 regulating Second Dwelling Units. The Ordinance is implemented by 18.78.340 (Attached) of the Inyo County Code and covers the Open Space (OS), Rural Residential (RR), Rural Residential Starlite Estates (RR-Starlite), One Family Residences (R1) and Single Residence Mobile Home Combined (RMH) zones.

Since 1997 the State has changed its regulations regarding Second Dwelling Units*, also referred to over time as Granny Units* and presently Accessory Dwelling Units* (ADU). The County has not kept up with the State's changes to regulations regarding ADUs and has been out of compliance. For many years, the planning department has simply not followed the non-compliant sections of 18.78.340. As time as gone on, though, more and more of 18.78.340 has become non-compliant. There is also a push by the State to ensure that local jurisdictions have conforming ADU regulations or that they rely on the State's.

Sections of 18.78.340 that do not meet the State's regulations are:

A. No second dwelling unit may be constructed or established in any of the above-described zones unless the owner of the property concerned has first obtained a conditional use permit pursuant to the procedures set forth in Chapter 18.81 and this section.

The State prohibited requiring conditional use permits for ADUs in 2003 by changing Government Code 65852.2 to state ADUs must approved ministerially (building permit), and without discretionary review or hearings.

*Second Dwelling Unit, Granny Unit and Accessory Dwelling Unit all have the same meaning. Inconsistencies of these terms within these documents are due to changes in use of the terms at different times and/or in different regulations. Accessory Dwelling Unit (ADU) is the most current.

Planning Department staff has not required CUPs for ADUs for years, but did follow the development guidelines included in 18.78.340. These include:

B (1). The lot upon which the second dwelling unit is to be constructed or established contains an existing single-family dwelling;

This can no longer be applied as lots with existing or proposed primary dwellings qualify for ADUs. Also, this can no longer be limited to single-family dwellings as multi-family dwellings qualify, as well.

C(2). In the case of a second unit attached, or to be attached, to an existing single-family residence, the increase in the floor area occasioned by the construction or establishment of the second unit shall not exceed thirty percent of the existing living area of the single-family residence.

This is now 50%.

C(4). The second dwelling unit, and any construction associated with the second dwelling unit, shall conform to the height, setback, lot coverage, architectural review, and site-plan review requirements, and all other zoning requirements, applicable generally to residential construction in the zone in which the property is located and that all fees and charges associated with those reviews and requirements shall be paid by the applicant.

This is not compliant with State regulations. Adjustments to the setback requirements now include 4-foot rear and side yards (the County's is 5-feet) and if an existing garage, carport, shed, etc. is converted into an ADU they can stay within a non-conforming building's footprint.

C(6). At least two on-site, off-street parking spaces shall be designated and provided, in addition to any parking spaces required due to the presence of the existing single-family dwelling.

Parking standards for ADUs can only include requiring one space per dwelling unit or per bedroom, whichever is less (the County requires 2). Also, no parking requirements can be imposed if the ADU is within one-half-mile of a transit stop.

C(7). Any other conditions or requirements determined by the planning commission necessary to ensure that the second dwelling unit will neither adversely affect the health or safety of persons living or working in the vicinity nor be materially detrimental to public welfare.

All ADUs must be approved ministerially, leaving no potential for additional conditions.

ANALYSIS

Staff has analyzed the State's ADU regulations against the current County Code and found that it is in the best interest of the County to rescind the Second Dwelling Unit regulations from the code. A draft ordinance (Attached) has been prepared to rescind 18.78.340, so that the County is no longer out of compliance with the State's ADU regulations.

General Plan Consistency

ZTA 2020-02 - Rescinding 18.78.340 – Second Dwelling Units, from the Inyo County Code causes certain allowed activities related to ADUs to fall directly under State regulations and will not change the current allowance of the use, or its relationship to residential uses per the General Plan. ADUs must still have residential zoning and General Plan designations and meet density requirements as set forth in the General Plan. Due to these factors, rescinding 18.78.340 is consistent with the General Plan.

Zoning Ordinance Consistency

ZTA 2020-02 is consistent with the Inyo County Zoning code as rescinding 18.78.340 does not discontinue or expand the use, but instead causes it to fall directly under State regulations. The use will remain consistent with the use requirements of Title 18 regarding Residential Districts.

ENVIRONMENTAL REVIEW

Pursuant to the California Environmental Quality Act (CEQA), the proposal is covered by the Common Sense Rule 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This project is a proposal to rescind a part of the County Code that is currently out of compliance with State regulations. It includes no development proposals or any increases in allowed use.

RECOMMENDATIONS

Staff recommends adoption of the attached Resolution recommending the Board of Supervisors consider the ZTA 2020-02, make certain findings, and adopt the proposed ordinance amending the Inyo County Code to rescind 18.78.340.

Recommended Findings

1. The proposed ordinance is covered by the Common Sense Rule 15061(b)(3)
[Evidence: the proposed ordinance is covered by the Common Sense Rule 15061(b)(3) that states CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Rescinding the language in 18.78.340 to bring the County into compliance with State regulations regarding ADUs will not have a significant effect on the environment as it does not include the approval of any development or affect future development.]
2. Based on substantial evidence in the record, the proposed Zoning Ordinance Amendment is consistent with the Goals and Policies of the Inyo County General Plan.
[Evidence: Rescinding of 18.78.340 – Second Dwelling Units, from the Inyo County Code is consistent with the Goals and Policies of the General Plan as it

causes certain allowed activities related to ADUs to fall directly under State regulations and will not change the current allowance of the use, or its relationship to residential uses per the General Plan. ADUs must still have residential zoning and General Plan designations and meet density requirements as set forth in the General Plan.]

3. Based on substantial evidence in the record, the proposed Zoning Ordinance to amend ICC 18.44 is consistent with Title 18 (Zoning Ordinance) of the Inyo County Code.

[Evidence: Zone Text Amendment 2020-02 is consistent with the Inyo County Zoning code as rescinding 18.78.340 does not discontinue or expand the use, but instead causes it to fall directly under State regulations. The use will remain consistent with the use requirements of Title 18 regarding Residential Districts.]

ATTACHMENTS

- A. Inyo County Code Section 18.78.340
- B. Draft proposed ordinance
- C. Resolution

Inyo County Code

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Second dwelling units are permitted in areas within the OS-40, RR, RR-0.5-Starlite Estates, R-1 and RMH zones in accordance with the following:

A. No second dwelling unit may be constructed or established in any of the above-described zones unless the owner of the property concerned has first obtained a conditional use permit pursuant to the procedures set forth in Chapter 18.81 and this section.

B. No conditional use permit shall be issued for a second dwelling unit in any of the above-described zones unless the planning commission finds that:

1. The lot upon which the second dwelling unit is to be constructed or established contains an existing single-family dwelling;

2. The second dwelling unit is or will be constructed or established such that it is or will be attached to the existing dwelling and located within the living area of that dwelling or is or will be detached from the existing dwelling, but located entirely on the same lot as the existing dwelling;

3. In the case of a second dwelling unit to be served by a private well and/or sewage system, the applicant has obtained written approval of the construction or establishment of the second dwelling unit from the Inyo County department of environmental health services.

C. Except as provided in subsection D of this section, should the planning commission make all of the findings described in subsection B of this section, it shall grant the application for the second dwelling unit conditional use permit, but shall place the following conditions on that use:

1. The second dwelling unit shall not be offered for sale; rental of the unit shall be permitted.

2. In the case of a second unit attached, or to be attached, to an existing single-family residence, the increase in the floor area occasioned by the construction or establishment of the second unit shall not exceed thirty percent of the existing living area of the single-family residence.

3. In the case of a second dwelling unit detached, or to be detached, from an existing single-family residence, the total area of the floor space of the second dwelling unit shall not exceed twelve hundred square feet.

4. The second dwelling unit, and any construction associated with the second dwelling unit, shall conform to the height, setback, lot coverage, architectural review, and site-plan review requirements, and all other zoning requirements, applicable generally to residential construction in the zone in which the property is located and that all fees and charges associated with those reviews and requirements shall be paid by the applicant.

5. The second dwelling unit, and any construction associated with the second dwelling unit, shall meet all applicable building code requirements.

6. At least two on-site, off-street parking spaces shall be designated and provided, in addition to any parking spaces required due to the presence of the existing single-family dwelling.

7. Any other conditions or requirements determined by the planning commission necessary to ensure that the second dwelling unit will neither adversely affect the health or safety of persons living or working in the vicinity nor be materially detrimental to public welfare.

D. The planning commission shall deny an application for a conditional use permit to construct or establish a second dwelling unit if it determines that construction or establishment of the second dwelling unit will, even as it may be conditioned, not be properly related to other uses in the area and to transportation and service facilities in the area or that, under all of the attendant circumstances, the second dwelling unit will adversely affect the health or safety of persons living or working in the vicinity or be materially detrimental to the public welfare. (Ord. 997 § 13, 1998.)

ORDINANCE NO. 2020-_____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF INYO, STATE OF CALIFORNIA, RESCINDING INYO COUNTY CODE SECTION 18.78.340

WHEREAS, in 1998, the Inyo County Board of Supervisors adopted Ordinance 997 regulating Second Dwelling Units under ICC 18.78.340, on property zoned Open Space (OS), Rural Residential (RR), Rural Residential Starlite Estates (RR-Starlite), One Family Residences (R1) and Single Residence Mobile Home Combined (RMH);

WHEREAS, since the adoption of Ordinance 997, the State of California has changed regulations regarding Accessory Dwelling Units on several occasions rendering 18.78.340 non-compliant with State regulations;

WHEREAS, Planning Department staff proposes rescinding 18.78.340, thereby causing the County to follow only State regulations regarding Accessory Dwelling Units;

WHEREAS, the Inyo County Planning Commission met to discuss the proposal to rescind 18.78.340 with regard to consistency with Inyo County zoning code, General Plan, and the California Environmental Quality Act and concurred with staff recommendations;

NOW, THEREFORE, the Board of Supervisors, County of Inyo, ordains as follows:

SECTION I. MODIFICATIONS TO TITLE 18

Section 18.78.340 of the Inyo County Code is rescinded in its entirety to read as follows:
"18.78.340 Reserved."

SECTION II. SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid or unconstitutional.

SECTION III. EFFECTIVE DATE

This Ordinance shall take effect and be in full force and effect thirty (30) days after its adoption. Before the expiration of fifteen (15) days from the adoption thereof, a summary of this Ordinance shall be published once in a newspaper of general circulation printed and published in the County of Inyo, State of California in accordance with Government Code Section 25124(b). The Clerk of the Board is hereby instructed and ordered to so publish a summary of this Ordinance together with the names of the Board voting for and against same.

PASSED AND ADOPTED this xx day of xx, 2020 by the following vote of the Inyo County Board of Supervisors:

AYES:

NOES:

ABSTAIN:

ABSENT:

MATT KINGSLEY, Chairperson

ATTEST: Clint Quilter
 Clerk to the Board

By: _____
 Darcy Ellis, Assistant

RESOLUTION NO. 20-

A RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF INYO, STATE OF CALIFORNIA, RECOMMENDING THAT THE BOARD OF SUPERVISORS FIND THE PROPOSED PROJECT IS EXEMPT FROM THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND TO MAKE CERTAIN FINDINGS WITH RESPECT TO AND RECOMMEND THE INYO COUNTY BOARD OF SUPERVISORS APPROVE ZONE TEXT AMENDMENT NO. 2020-02 INYO COUNTY

WHEREAS, the Inyo County Board of Supervisors, through Inyo County Code (ICC) Section 15.12.040, has designated the Planning Commission to serve as the Environmental Review Board pursuant to Section 15022 of the California Environmental Quality Act (CEQA) Guidelines, which is responsible for the environmental review of all County projects;

WHEREAS, Pursuant to the California Environmental Quality Act (CEQA), the proposed ordinance is covered by the Common Sense Rule 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA;

WHEREAS, the Inyo County Planning Commission held a public hearing on September 23, 2020, to review and consider a request for approval of Zone Text Amendment No. 2020-02, and considered the staff report for the project and all oral and written comments regarding the proposal;

WHEREAS, currently the ICC is not in conformance with State Regulations regarding Accessory Dwelling Units. Specifically, section per 18.78.340 – Second Dwelling Units, must be removed to bring the ICC into compliance;

WHEREAS, ICC Section 18.03.020 in part states that it is necessary for the zoning ordinance to be consistent with the General Plan;

WHEREAS, ZTA 2020-02 results in the rescinding of 18.78.340 – Second Dwelling Units from the ICC, which causes certain allowed activities related to Accessory Dwelling Units to fall directly under State regulations and will not change the current allowance of this use, or its relationship to residential uses per the General Plan;

WHEREAS, ZTA 2020-02 is consistent with the Inyo County Zoning code. Rescinding section 18.78.340 does not discontinue the use, but causes it to fall directly under State regulations. Thus, the use will remain consistent with the requirements of Title 18 regarding Residential Districts.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that based on all of the written and oral comment and input received at September 23, 2020, hearing, including the Planning

Department Staff Report, the Planning Commission makes the following findings regarding the proposal and hereby recommends that the Board of Supervisors adopt the following findings for the proposed project:

RECOMMENDED FINDINGS

1. The proposed ordinance is covered by the Common Sense Rule (CEQA Guidelines section 15061(b)(3)) that states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Projects subsequent to this ordinance will continue to be directed by State regulations.
2. Based on substantial evidence in the record, the proposed Zoning Ordinance Amendment is consistent with the Goals and Policies of the Inyo County General Plan.
3. Based on substantial evidence in the record, the proposed Zoning Ordinance Amendment is consistent with Title 18 (Zoning Ordinance) of the Inyo County Code.

BE IT FURTHER RESOLVED that the Planning Commission recommends that the Board of Supervisors take the following actions:

RECOMMENDED ACTIONS

1. Approve rescinding 18.78.340 – Second Dwelling Units based on all of the information in the public record and on the recommendation of the Planning Commission.

PASSED AND ADOPTED this 23rd day of September 23, 2020, by the following vote of the Inyo County Planning Commission:

AYES:
NOES:
ABSTAIN:
ABSENT:

Kate Morley, Chair
Inyo County Planning Commission

ATTEST:

Cathreen Richards, Planning Director

By _____
Paula Riesen,
Secretary of the Commission