

45-DAY NOTICE PROPOSED NEW STANDARDS RULES: ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS

As you may know, California is facing a housing crisis, exemplified by the lack of sufficient affordable long-term housing units. The response from the State has been to adopt certain laws and regulations that supersede local zoning and land-use laws and require local jurisdictions to facilitate and encourage the construction and use of accessory dwelling units (ADU's) and junior accessory dwelling units (JADU's).

That state-wide effort has expanded to include homeowner's associations. Effective January 1, 2020, Assembly Bill 670 will amend the Davis Stirling Act and render void and unenforceable any restriction in association governing documents that would effectively prohibit or unreasonably increase the cost of constructing or using an ADU or JADU.

Tahoe Donner's Covenants and Restrictions has a prohibition of accessory dwelling units. With the passing of AB670, that prohibition will no longer be in force starting January 1, 2020.

The challenge for our unique community is to adopt new Architectural Standards Rules for the construction and use of ADU's and JADU's, while ensuring that residents of our community are not adversely impacted by a proliferation of new structures, an exponential increase in short-term rentals, parking, noise and other nuisances that often result from an increase in density.

We have attempted to balance those interests in the enclosed proposed ADU and JADU rules. The board of directors is expected to take action to adopt the proposed new rules, as they are presented here, at its February 2020 meeting, currently scheduled for Saturday, February 22, 2020. The board welcomes any input you may wish to offer regarding the proposed rules and process.

BACKGROUND

In 2017, in an effort to provide more affordable local housing, the State revised Gov. Code sections 65852.2 to allow the

construction of accessory dwelling units in many areas otherwise zoned for single-family use only. This law applies only to a "local agency" i.e. to a "city, county, or city and county..." Thus, this law does not apply to homeowners' associations. The 2017 law provided upper limits on unit size, lot size, setbacks and other aspects of construction, and allowed cities and counties to enact more stringent regulations that "include, but are not limited to, parking, height, setback, lot coverage, architectural review, [and] maximum size of a unit."¹

On August 30, 2019 Governor Newsom signed into law Assembly Bill 670 (AB670) which becomes effective January 1, 2020. The stated intent of this new law is to "... encourage the construction of affordable accessory dwelling units and junior accessory dwelling units that are owner-occupied and that are used for rentals of terms longer than 30 days."

As noted above, as of January 1, 2020, these units are no longer prohibited in our community. However, in accordance with this new law, our community can enforce existing restrictions and rules, and adopt new rules, in order to implement the intent of this law while ensuring that any adverse impacts on our community are minimized.

Following an informative presentation at the October 19, 2019 board of directors meeting (for further background information see tahoedonner.com/meeting-documents), the board of directors directed staff and the Architectural Standards Committee to draft rules pertaining to the construction and use of accessory dwelling units. Draft rules were developed, reviewed and discussed by staff and the Architectural Standards Committee.

Among other things, the new rules are intended to:

- Express the intent of the legislation;
- Define the regulations on construction and use of accessory dwelling units in Tahoe Donner;
- Protect the character of the community; and

- Encourage affordable housing as one way to address the lack of affordable housing in the Truckee community.

The new proposed rules would:

- Provide definitions for an accessory dwelling unit and a junior accessory dwelling unit, and applicable regulations and restrictions;
- Provide guidance to members and the TDA as to application of the governing documents to these units, including size, parking, and setback requirements;
- Clarify the application process for permitting for accessory dwelling units (detached and attached) and junior accessory dwelling units will fall under existing permit categories.
- Expressly permit members to construct or use accessory dwelling units as long as they are rented for terms longer than 30 days.

The permitting for an accessory dwelling unit either attached, detached or as a junior accessory dwelling unit is proposed to fall under existing permitting categories and fees. Depending on the project scope of the accessory dwelling or junior accessory dwelling, the project permit application will fall under one of the following categories:

Major Projects: this includes new houses, multiples, commercial buildings, additions (500 square feet and over) and garages with addition. All these projects require neighbor notification. *Detached and attached accessory dwelling units (500 square feet and over)*

Minor Projects with Neighbor Notification: garages, additions (under 500 square feet), decks, sheds, auxiliary structures, variances and miscellaneous, including fences. *Detached and attached accessory dwelling units (under 500 square feet)*

Minor Projects without Neighbor Notification: changes to existing, including but not limited to, driveway parking pads, small deck extensions, window size changes, patio pavers, walkways, etc.

Detached and attached accessory dwelling, and junior accessory dwelling units with changes to existing exterior only, and junior accessory dwelling units with no changes to existing exterior.

For more background information on the topic and September and October regular board of directors meetings' discussions visit tahoedonner.com/meeting-documents.

The proposed new rules for accessory dwelling units and junior accessory dwelling units are as follows:

DEFINITIONS

Accessory Dwelling Unit (ADU) shall mean an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, on the same parcel as the single-family dwelling is situated.

Junior Accessory Dwelling Unit (JADU) shall mean a unit that is no more than 500 square feet in size and contained entirely within the living space of an existing single-family residence. A JADU may include separate sanitation facilities or may share sanitation facilities with the existing structure.

California ADU Law shall mean Sections 65852.150, 65852.2 and 65852.22 of the California Government Code.

Truckee Municipal Code shall mean any and all applicable laws, ordinances, and regulations applicable to ADU's and JADU's, including Section 18.58.230 of the Town of Truckee Municipal Code titled "Secondary Residential Units."

Governing Documents shall mean any and all applicable provisions of the Tahoe Donner Association First Restated Declaration of Covenants and Restrictions (CC&Rs), Bylaws, Articles, Rules, and Policies, including the Tahoe Donner Architectural Standards Rules Procedures and Restrictions.

The following rules apply to ADU's and JADU's:

1. One ADU or JADU per Lot: Only one accessory dwelling unit or junior accessory dwelling unit may be constructed and/or used or occupied on any single-family residential lot.

2. Compliance with the Truckee Municipal Code: Any proposed accessory dwelling unit and junior accessory dwelling unit shall comply with the requirements of the Truckee Municipal Code.

3. Compliance with the Governing Documents: Any proposed accessory dwelling unit and junior accessory dwelling unit shall also comply with the requirements of the governing documents. The governing documents may be more restrictive than the Truckee Municipal Code but shall not be applied in situations where the Architectural Standards Committee has determined that such application would unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to construct an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of the California ADU Law. For certain common issues that may arise under the governing documents, the ASC shall follow the guidelines below in making a decision on an application for approval of an ADU or JADU.

3.1 Setbacks and Coverage: Any proposed accessory dwelling unit and junior accessory dwelling unit shall comply with the setback and coverage requirements set forth in the governing documents.

3.2 Floor Area Limitation: An ADU shall have no less than 150 square feet and no more than 800 square feet of fully enclosed floor area devoted to living purposes and a JADU shall have no more than 500 square feet of fully enclosed floor area devoted to living purposes.

3.3 Parking: An ADU or JADU shall provide for one designated on-site parking space in addition to the 400 square feet minimum parking paved on-site area required for the lot. The number of cars permitted for the accessory dwelling and junior accessory dwelling unit tenants shall not exceed the available off-street parking spaces provided. ADU and JADU tenants shall be required to utilize the parking spaces provided.

4. Unpermitted or Unapproved Accessory and Junior Accessory Dwelling Units: These rules shall not validate any existing ADU or JADU's that have not been permitted by the Town of Truckee and approved by Tahoe Donner Association. To convert such a unit to a permitted and approved ADU or JADU, the applicant must meet the requirements of the Truckee Municipal Code and the governing documents,

and the Town of Truckee must permit the unit and the Tahoe Donner ASC must approve the unit for it to be legal. Applicants with existing units must apply for permit and/or approval within 90 days of adoption of these rules. Unpermitted units discovered not to be compliant after this period shall be subject to an enforcement process.

5. Short-Term Rental of an ADU or JADU: If a lot has an ADU or JADU, both the primary dwelling and ADU or JADU shall be prohibited from being used as a short-term rental (a rental for term less than 30 days). As a condition of approval, the applicant shall be required to record a covenant against title to the lot, which shall set forth this restriction and confirm that this restriction shall run with the land and will bind successors in interest. This prohibition does not affect the ability of a lot owner from using the primary living area for long-term rental purposes (a rental for term more than 30 days).

6. Conditions and Variances: The ASC shall retain the right to impose reasonable conditions on its approval of an ADU or JADU, and to grant variances on a case by case basis, as provided for in the governing documents.

KEY DATES:

January 1-February 22, 2020: 45-Day Member Notification and Comment Period

January 31, 2020: Board of Directors meeting; hears member comment, discussion item only

February 22, 2020: Board of Directors consider acting on proposed changes to the Architectural Standards Fee Schedule with or without some modifications.

Written comments can be submitted between January 1-February 21, 2020. To ensure the board of directors has time to review all member comments, written comments must be submitted by 12PM on February 21, 2020.

Please submit your written comments to: 45daynotice@tahoedonner.com, or US Mail: Tahoe Donner Association, Attn: Annie Rosenfeld, 11509 Northwoods Blvd., Truckee, CA 96161.

¹ Following the 2017 legislation, the Town of Truckee adopted Ordinance 18.58.230 to govern the construction and use of secondary residential units which includes accessory dwelling units and junior accessory dwelling units. Permits issued by Truckee will presumably require compliance with this new ordinance, as well as ordinances and regulations applicable to short-term rentals, and the town's obligation to provide long-term affordable housing stock.