TAHOE REGIONAL PLANNING AGENCY (TRPA)
AND TRPA COMMITTEE MEETINGS

NOTICE IS HEREBY GIVEN that on **Wednesday, February 12, 2020** commencing at **1:00 p.m.,** at the **Tahoe Regional Planning Agency, 128 Market Street, Stateline, NV** the Governing Board **Local Government and Housing Committee** of the Tahoe Regional Planning Agency will conduct its regular meeting. The agenda is attached hereto and made part of this notice.

February 5, 2020

Joanne S. Marchetta, Executive Director

This agenda has been posted at the TRPA office and at the following locations: Post Office, Stateline, NV, North Tahoe Event Center in Kings Beach, CA, IVGID Office, Incline Village, NV, North Tahoe Chamber of Commerce, Tahoe City, CA, and South Shore Chamber of Commerce, Stateline, NV

TAHOE REGIONAL PLANNING AGENCY	
LOCAL GOVERNMENT AND HOUSING COMMITTEE	
TRPA	February 12, 2020
Stateline, NV	1:00 p.m.

All items on this agenda are action items unless otherwise noted. Items on the agenda, unless designated for a specific time, may not necessarily be considered in the order in which they appear and may, for good cause, be continued until a later date.

All public comments should be as brief and concise as possible so that all who wish to speak may do so; testimony should not be repeated. The Chair of the Committee shall have the discretion to set appropriate time allotments for individual speakers (3 minutes for individuals and 5 minutes for group representatives as well as for the total time allotted to oral public comment for a specific agenda item). No extra time for speakers will be permitted by the ceding of time to others. Written comments of any length are always welcome. So that names may be accurately recorded in the minutes, persons who wish to comment are requested to sign in by Agenda Item on the sheets available at each meeting. In the interest of efficient meeting management, the Chairperson reserves the right to limit the duration of each public comment period to a total of 2 hours. In such an instance, names will be selected from the available sign-in sheet. Any individual or organization that is not selected or otherwise unable to present public comments during this period is encouraged to submit comments in writing to the Governing Board. All such comments will be included as part of the public record.

"Teleconference locations for Board meetings are open to the public ONLY IF SPECIFICALLY MADE OPERATIONAL BEFORE THE MEETING by agenda notice and/or phone message referenced below."

In the event of hardship, TRPA Board members may participate in any meeting by teleconference. Teleconference means connected from a remote location by electronic means (audio or video). The public will be notified by telephone message at (775) 588-4547 no later than 6:30 a.m. PST on the day of the meeting if any member will be participating by teleconference and the location(s) of the member(s) participation. Unless otherwise noted, in California, the location is 175 Fulweiler Avenue, Conference Room A, Auburn, CA; and in Nevada the location is 901 South Stewart Street, Second Floor, Tahoe Hearing Room, Carson City, NV. If a location is made operational for a meeting, members of the public may attend and provide public comment at the remote location.

TRPA will make reasonable efforts to assist and accommodate physically handicapped persons that wish to attend the meeting. Please contact Marja Ambler at (775) 589-5287 if you would like to attend the meeting and are in need of assistance.

AGENDA

I. CALL TO ORDER AND DETERMINATION OF QUORUM

II. PUBLIC INTEREST COMMENTS – All comments may be limited by the Chair

Any member of the public wishing to address the Governing Board Regional Plan Implementation Committee on any item listed or not listed on the agenda may do so at this time. TRPA encourages public comment on items on the agenda to be presented at the time those agenda items are heard. Individuals or groups commenting on items listed on the agenda will be permitted to comment either at this time or when the matter is heard, but not both. The Governing Board Regional Plan Implementation Committee is prohibited by law from taking immediate action on or discussing issues raised by the public that are not listed on this agenda.

III. APPROVAL OF AGENDA

IV. PLANNING MATTERS

A. Discussion and Possible Direction Regarding Alignment between TRPA code and State of California Accessory Dwelling Unit Legislation	**Approval**	**Page 1**

V. COMMITTEE MEMBER REPORTS

VI. PUBLIC COMMENT

VII. ADJOURNMENT

TAHOE REGIONAL PLANNING AGENCY

Mail
PO Box 5310
Stateline, NV 89449-5310

Location
128 Market Street
Stateline, NV 89449

Contact
Phone: 775-588-4547
Fax: 775-588-4527
www.trpa.org

STAFF REPORT

Date: February 5, 2020

To: TRPA Local Government and Housing Committee

From: TRPA Staff

Subject: Discussion and Possible Direction Regarding Alignment between TRPA Code and State of California Accessory Dwelling Unit Legislation

---

Summary and Staff Recommendation:
Staff recommends that the Local Government and Housing Committee (LGHC) discuss and provide direction on proposed conceptual changes to the TRPA Code of Ordinances to align with California Accessory Dwelling Unit (ADU) legislation (Government Code Section 65852.2).

Motion:
The Committee should make the following motion:

1) A motion to direct staff to draft TRPA Code of Ordinances changes to support the California Accessory Dwelling Unit (ADU) legislation (Government Code Section 65852.2) for the Local Government and Housing Committee's consideration at its next meeting.

A simple majority of the quorum of the Committee is needed to pass the motion.

Background:
At the January 22, 2020, meeting of the Tahoe Regional Planning Agency (TRPA) Governing Board, staff and speakers presented information on TRPA's Housing Work Plan and on recent changes to California and Nevada housing legislation. The presentations highlighted that not only have both the States of California and Nevada passed major new housing legislation, but that collaborative work is also underway by coalitions of local organizations and entities to develop housing action plans for the South Shore and the Tahoe-Truckee region of the North Shore. The goal of the Housing Work Plan is to create a targeted TRPA Housing Action Plan by July 2020 that would identify how TRPA can best add value to these processes, while maintaining TRPA's environmental protections, and support the provision of workforce housing. Staff also noted in the presentation that priority code changes could move forward ahead of the overall TRPA Action Plan if necessary.

The presentation on California housing legislation and the ensuing board discussion brought into focus that differences between new California requirements regarding ADUs and existing TRPA code requirements present an urgent dilemma. These two codes present conflicting standards for local property owners who wish to construct an ADU. As ADUs could prove an effective strategy for reducing per capita greenhouse gas emissions and providing smaller, affordable living opportunities within TRPA's existing growth management system, staff recommends reconciling where possible the differences

between California and TRPA code, to allow for a simple and clear permitting process for property owners.

After consultation with the planning staff and legal counsel of the California jurisdictions, TRPA staff has crafted a conceptual plan for aligning with California ADU law.

Discussion:
The new California ADU legislation places several requirements on local jurisdictions for processing ADU permits that do not align with existing TRPA code or process. Some California requirements conflict with TRPA regulations at a procedural level, others technically conflict with TRPA code but likely are consistent with the 2012 Regional Plan Environmental Impact Statement, while some requirements directly conflict with TRPA Regional Plan goals. The following table summarizes the major differences between what is required by California law when processing an ADU permit and what is allowed by the TRPA rules and regulations.

A. Procedural:

Issue	**California Government Code 65852.2**	**TRPA Code of Ordinances**
Permit approval timeframe	Within 60 days from the date the local agency receives a completed application if there is an existing dwelling on the lot.	Under the delegation MOU, TRPA requires local jurisdictions processing permits on TRPA's behalf to review for completeness within 30 days and issue a conditional permit within 120 days of a project being deemed complete. Nothing prevents a local jurisdiction from processing permits under a shorter timeframe.
Approval level	Requires ADU permits to be approved at a ministerial level without discretionary review or a hearing.	Requires noticing to affected property owners (within 300 feet of the project area boundaries).

B. Likely Consistent with 2012 Regional Plan EIS:

Issue	California Government Code 65852.2	TRPA Code of Ordinances
Parking requirements	A local agency ordinance shall require that ADUs comply with parking requirements that do not exceed 1 parking space per ADU or per bedroom, whichever is less; If a garage or carport is converted to an ADU, no replacement parking can be required; Notwithstanding any other law, a local agency shall not impose parking standards for an accessory dwelling unit if the accessory dwelling unit is located within one-half mile walking distance of public transit, and in several other circumstances.	TRPA code already defers to the approved Area Plans and in some instances local jurisdiction codes for parking standards.
Number of ADUs per parcel	One ADU and one Junior ADU[1]	One ADU
Minimum lot size	A local agency shall not establish by ordinance minimum lot size.	Minimum lot size of 1 acre or within a jurisdiction with a TRPA-certified local government housing program and the ADU is restricted to affordable, moderate, or achievable housing. Area plans may allow local jurisdictions to deviate from this rule.

C. In conflict with Regional Plan goals:

Issue	California Government Code 65852.2	TRPA Code of Ordinances
Impact fees	Local agencies shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an ADU of 750	TRPA waives the permit fees for ADUs deed restricted affordable, moderate, or local achievable. An ADU

[1] California law defines a Junior ADU as no more than 500 square feet and typically a bedroom in a single-family home that has an entrance into the unit from the main home and an entrance to the outside from the JADU. The JADU must have cooking facilities, including a sink, but is not required to have a private bathroom. https://www.hcd.ca.gov/policy-research/docs/FAQsADUJr.pdf

	square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.	project may require the payment of air quality, water quality, and/or excess coverage mitigation fees. Air quality mitigation fees are charged based on the number of units, not proportional to the size. TRPA collects a security fee, which is returned once a project is completed.
Coverage	A local agency shall not establish by ordinance limits on lot coverage.	TRPA's Land Coverage programs sets limits on the amount of land coverage that can occur in different land capability districts.
Growth caps	The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.	Growth management system/Development Rights: To construct an ADU TRPA requires either: 1) a Residential Unit of Use (can be a Residential Allocation plus a Potential Residential Unit of Use, an existing residential unit, or a unit converted from commercial floor area, tourist or multi-family units) or 2) a Bonus Unit.

On January 27, 2020, TRPA and local jurisdiction planning staffs and legal counsel convened to discuss a path forward for handling the differences identified above. The goal of the discussion was to identify TRPA code changes and permitting procedures that would allow local jurisdictions to comply with state law while supporting a simple approval process to facilitate construction of ADUs consistent with TRPA, local and state environmental protections and housing goals.

Based on that conversation, staff proposes the following steps and timeline:

1. **Near-term relief for local jurisdictions being forced to deny ADU permits that are not compliant with TRPA regulations.**

   California ADU legislation, Government Code Section 65852.2 went into effect on January 1, 2020. In their delegation MOUs, both the City of South Lake Tahoe and El Dorado County have responsibility for issuing permits for ADUs. Since several elements of the existing TRPA Code of Ordinances would preclude local jurisdictions from complying with the California law (for

instance, noticing of affected property owners, minimum lot size and number of ADUs per parcel), the City and El Dorado County would be forced to deny a property owner a permit for an ADU under TRPA code in most or all cases. Until such time as the TRPA Governing Board approves changes to the TRPA code to rectify these inconsistencies, TRPA staff proposes to work with the local jurisdictions to temporarily amend the MOU Procedural Guidelines to indicate that ADU permits will be processed by TRPA, and not by the local jurisdiction, in the interim. This can be completed at a staff level, and no board action is necessary. Placer County's MOU Procedural Guidelines already contain this caveat. Once the changes in Step 2, below have been completed, this section of the Procedural Guidelines would be removed to again allow local jurisdictions to approve ADUs on behalf of TRPA.

Timeline: MOU Procedural Guidelines modified by February 28, 2020.

2. **Draft TRPA Code of Ordinance changes related to ADUs that could be approved with an Initial Environmental Checklist.**

   TRPA staff proposes to draft changes to TRPA code that would allow jurisdictions that are compliant with an applicable state law relating to ADUs to handle the issues identified in items A and B above consistent with that state law. Staff also proposes to conduct the necessary environmental analysis to determine whether there would be any significant environmental effects associated with these code changes.

   Timeline: Draft Code Changes and Initial Environmental Checklist completed by the March 11, 2020, Local Government and Housing Committee meeting.

   Changing TRPA code to allow local jurisdictions to apply state law for the items identified in A and B would both expedite the permitting process for ADUs and allow the local jurisdictions to issue both a City building permit for an ADU, compliant with state law, and a TRPA permit for applications that comply with TRPA regulations that are not easily modified under an Initial Environmental Checklist, including coverage, the growth management system, and Best Management Practices (BMPs). Local jurisdictions would need to instruct applicants that an application cannot be deemed complete until it complies with TRPA regulations.

There are still several issues to be resolved. TRPA staff will work with local jurisdiction staff prior to the March LGHC meeting to identify potential solutions to these issues. These include:

a. Process for enforcement on properties where the decision was made to build an ADU that is compliant with California state law but not with TRPA rules.
b. Process for appealing conditional permits or permits denied based on non-compliance with TRPA regulations such as coverage or growth management.

Contact Information:
For questions regarding this agenda item, please contact Karen Fink, at (775) 589-5258 or kfink@trpa.org.

Attachments:
1. California Government Code Section 65852.2 (Accessory Dwelling Units)
2. TRPA Code of Ordinances Section 21.3.2 (Secondary Residences)

Attachment A

California Government Coe Section 6582.2 (Accessory Dwelling Units)

State of California

GOVERNMENT CODE

Section 65852.2

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph,

including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a

delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure.

An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Neighborhood" has the same meaning as set forth in Section 65589.5.

(7) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(10) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(11) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(*l*) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

(Amended by Stats. 2019, Ch. 659, Sec. 1.5. (AB 881) Effective January 1, 2020. Repealed as of January 1, 2025, by its own provisions. See later operative version added by Sec. 2.5 of Stats. 2019, Ch. 659.)

Attachment B

TRPA Code of Ordinances Section 21.3.2 (Secondary Residences)

B. Tourist Accommodation

Accessory uses such as garages, parking lots, swimming pools, tennis courts, bars and restaurants, equipment rental, maintenance facilities, laundries, gymnasiums, coin operated amusements, meeting rooms, managers quarters, child care facilities, emergency facilities, employee facilities other than housing, secondary residence, restricted gaming (Nevada only), and other uses listed in the definition of a "primary use" as accessory.

Figure 21.3.1-B: Example Tourist Accommodation Accessory Use

C. Commercial

Accessory uses such as garages, parking lots, emergency facilities, maintenance facilities, employee facilities other than housing, secondary residence, restricted gaming (Nevada only), storage buildings, and other uses listed in the definition of a "primary use" as accessory.

D. Public Service

Accessory uses such as garages, secondary residence, and emergency facilities.

E. Recreation

Accessory uses such as garages, emergency facilities, child care, related commercial sales and services such as ski shops, pro shops, marine sales and repairs, parking lots, maintenance facilities, swimming pools, tennis courts, employee facilities other than housing, secondary residence, outdoor recreation concessions, bars and restaurants, and other uses listed in the definition of a "primary use" as accessory.

Figure 21.3.1-C: Example Recreation Accessory Use

21.3.2. Secondary Residence

One secondary residence shall be considered an accessory use to the primary use it serves and may be permitted where the primary use is a permissible use. Secondary units may include a guest house; an affordable or market-rate rental unit; a caretaker residence for a

residential use, commercial use, public service or recreational use; and a manager's quarters for a tourist accommodation or multi-residential use. A secondary residence shall be considered a residential unit subject to the residential allocation limitations and transfer provisions. If the primary use is residential, a secondary unit may be permitted only if either subparagraph 21.3.2.A.1 or 21.3.2.A.2 below is met.

A. Residential Secondary Unit Parcel Size

A secondary residence may be permitted as accessory to a single-family house if:

1. The parcel on which the residence is located is greater in size than one acre; or

2. The parcel on which the secondary residence would be located is within a jurisdiction certified by TRPA to possess an adequate local government housing program and the secondary unit is restricted to affordable, moderate, or achievable housing.

B. TRPA-Certified Local Government Housing Program

TRPA may certify by resolution a local government housing program upon a finding that it adequately addresses, at a minimum, subparagraphs 1 through 3 below.

1. A local government-adopted housing element that addresses the housing needs and issues of the jurisdiction pursuant to state standards;

2. Special ordinance standards for development of secondary residences, including but not limited to:

a. Minimum parcel size;

b. Maximum unit floor area for the secondary unit;

c. Parking standards; and

d. Building setback standards; and

3. An adequately funded and staffed compliance and monitoring program. This program shall through deed restriction limit the project area to the approved use and restrict both rental rates and occupants' household income to affordable housing limits. Secondary units approved under this program shall be made available for long-term occupancy and shall be occupied for at least ten months in each calendar year. Failure to comply for more than six months with use, rental rates/household income levels, or occupancy requirements shall require removal of the unit or modification of the use to bring the project area into compliance with otherwise applicable development standards.

The local government shall document and enforce the special standards through an MOU with TRPA. The MOU shall include objective compliance standards to ensure adequate funding, staff resources, permitting, compliance, and monitoring consistent with the local government housing program.