GUIDE TO THE 2021 AMENDMENTS TO THE MARIN COUNTY DEVELOPMENT CODE

Explanations of the key topics addressed in the 2021 amendments to the Development Code are provided below. This guide is not intended to be all inclusive and is intended to be used in conjunction with the draft code amendments shown in track changes format in Exhibit A (2021 Development Code Amendments). All code sections listed are in Marin County Code Title 22.

A. INTERNAL CONSISTENCY, CLARIFICATIONS, AND STANDARDS

The amendments related to internal consistency, clarifications, and standards include the following sections:

06.020 (Zoning Districts Established)
08.030 (Agricultural District Land Uses and Permit Requirements)
10.020 (Applicability of Residential Zoning Districts)
12.030 (Commercial/Mixed-Use and Industrial District Land Uses and Permit Requirements)
14.030 (Special Purpose District Land Uses and Permit Requirements)
20.040 (Outdoor Construction Activities)
20.060 (Height Measurement and Height Limit Exceptions)
20.090 (Setback Requirements and Exceptions)
20.100 (Solid Waste/Recyclable Materials Storage)
32.168 (Tidelands)
40.050 (Application Review for Discretionary Permits)
40.070 (Staff Report and Recommendations for Discretionary Permits)
42.010 (Purpose of Chapter)
42.020 (Applicability)
52.020 (Applicability)
84.030 (Tentative Map Application Filing and Initial Processing)
130.030 (Definitions: Accessory Structure, Detached; Dock; Childcare Facility; Floor Area; Grade; In-kind Reconstruction; Lot Area; Outbuilding; Pier; Planned District; Setback)

There are several amendments proposed that do not result in significant changes to the current regulatory framework but that clarify the code requirements. The thresholds for Design Review are also modified to incorporate a Design Review requirement for paper streets, when such a requirement is referenced by a Community Plan. Planned district density standards are better explained as are definitions related to residential and accessory building development.

Two amendments are made to the outdoor construction standards in response to requests made by the Marin Municipal Water District and the local surveyor's association. The first of these would help MMWD to ensure that landscape irrigation meets State requirements. The second would simplify the means of verifying setbacks to reflect current practice.

B. ACCESSORY DWELLING UNITS

The amendments related to Accessory Dwelling Units (ADUs) include the following sections:

06.050 (Exemptions from Land Use Permit Requirements)
08.030 Table 2-1 (Allowed Uses and Permit Requirements for Agricultural and Resource Related Districts)
12.30 Tables 2-3 and 2-4 (Residential District Land Uses and Permit Requirements)
12.30 Tables 2-6 and 2-7 (Commercial/Mixed Use District Land Uses and Permit Requirements)
16.030 Discretionary Development Standards
32.120 (Residential Accessory Dwelling Units)
40.030 (Application Submittal and Filing)
52.020 (Applicability)
54.040 (Exemptions)
56.010 (Purpose of Chapter)
56.020 (Applicability)
56.040 (Exemptions)
Chapter 22.56 – Residential Accessory Dwelling Unit Permits (Deleted)
130.030 (Definitions: Accessory Dwelling Unit; Accessory Dwelling Unit, Attached; Accessory Dwelling Unit, Detached; Junior Accessory Dwelling Unit; Kitchen; Kitchenette; Proposed Dwelling; Proposed Single Family Dwelling; Wet Bar (Deleted))

The State legislature has continued to reduce local control over the approval of Accessory Dwelling Units (ADUs). While in the past the legislature has limited statutes to local zoning controls over the use of buildings for ADUs, the State extended its preemptions of local control related to construction and development in 2019.

In an effort to immediately address changes to State law, the Board adopted urgency Ordinance 3729 on January 28, 2020. The urgency Ordinance will remain in effect until the amendments necessary to implement State law are permanently codified into the Development Code. The urgency Ordinance reflects a conservative interpretation of State law, intended to maintain local control to the degree possible. The proposed Development Code amendments are based on a more in-depth review of the legislation and on longer-term objectives related to providing additional housing opportunities and the constraints posed by substandard streets in fire prone areas.

Instead of copying and pasting the text of the State regulations into the Development Code amendments, the meaning of the text is clarified by adding important definitions, using terms consistently, and breaking up text related to different ideas into separate sub-sections.

Perhaps the most important interpretation is the meaning of the State law's term "Proposed Dwelling" defined in the State code as follows:

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

The "requirements for permitting" is interpreted to including all zoning requirements as well as building code, fire code, septic and water well regulations.

Another important interpretation is to clarify the meaning of the term "space" when translating State code into Development Code text. The term is interpreted to mean "Building Area" as defined in the Development Code as follows:

> Building Area. The sum of the floor area of all floors in all buildings on a site. Unlike "Floor Area", building area includes garages, carports, storage buildings, and other attached or detached accessory structures.

Building Area is area that is enclosed by a floor, walls, and a roof in every case except for carports, which are partially open.

The amendments related to ADUs revolve around a revised Development Code section 22.32.120, which has been separated from the JADU section and moved to a new section 22.32.125. Section 22.32.120 contains all the substantive requirements for ADUs, and other sections throughout the code cross reference section 32.120. The revised section follows State law by breaking down different types of ADUs into different categories, based on the different categories of ADUs in Government Code section 65852.2, as described and discussed in the California Housing and Community Development Department's (HCD) "Summary of Recent Changes to Accessory Dwelling Unit Laws" and related guidance from HCD. Four separate categories of ADUs are established, as discussed below. Every proposed ADU must fall within at least one of the four categories to be approved.

Category 1 is based on what the HCD refers to as "Subdivision (e)" ADUs, which are governed by Govt. Code section 65852.2 subdivision (e). State legislation has limited local control the most over this category, which includes conversions of existing floor area of a single-family dwelling or an outbuilding that meet certain strict criteria. The Planning Commission imposed a standard in this category that ADUs cannot be built on properties that do not have emergency access and evacuation routes along streets that are less than 20-feet wide in fire prone areas. This type of ADU does not need an ADU permit, just a Building Permit to determine compliance.

Category 2 is based on what the HCD refers to as "Statewide Exemption" ADUs, which are governed by Govt. Code section 65852.2 subdivision (c)(2)(C). State legislation has limited local control the second most over this category, and allows an 800 square foot ADU, which is no higher than 16 feet above grade, and meets four-foot side and rear setbacks. However, State law does grant the County a certain degree of control by indicating that ADUs must "be constructed in compliance with all other local development standards." State law does not allow any discretionary review for these types of ADUs, but does allow those standards to include limiting whether they can be built on streets with a minimum width of 20 feet in fire prone areas or near environmentally sensitive areas. It is necessary to require ADU permits to determine compliance with these standards.

Category 3 is based on the State requirement to allow ADUs of at least 850 square feet for a one bedroom and 1,000 square feet for a two or more bedroom ADU. In this category, the County is not allowed to require a discretionary review, but can establish standards, including limiting whether an ADU can be built on a street with a minimum width of 20 feet in fire prone areas or near environmentally sensitive areas. An ADU permit is necessary to determine compliance with these standards.

Category 4 allows ADUs to be established that the County is not required by State law to approve, and therefore may be subject to the County's discretionary review, such as requiring Design Review or Variance approval. Provided all discretionary requirements are satisfied, this category allows ADUs to be developed in conformance with established standards, including limiting

whether an ADU can be built on a street with a minimum width of 20 feet in fire prone areas or near environmentally sensitive areas. This category provides some flexibility with respect to the 20-foot required street width. Although this standard remains ministerial, property owners can have an ADU on a street that is less than 20 feet wide if the fire department determines that adequate emergency access and evacuation routes will be provided.

Amendments to other sections of the Development Code are proposed to cross reference section 32.120 and tie it into the framework of the code. These related amendments include the following:

- Revise the Exemptions From Land Use Permit Requirements in section 22.06.050 to refer to section 22.32.120.
- Revise the references in the land use tables in Article II.
- Simplify amendments related to JADUs and moved them to new section 22.32.125
- Revise the ADU permit chapter to refer to the standards in section 32.120 rather than setting forth findings in the ADU permit chapter (22.56).
- Add ADU exemptions to the permit chapters in Article IV related to Site Plan Reviews, Design Reviews, Variances, and Floating Home Exceptions.
- Modify the height limit for detached accessory buildings from 15 feet to 16 feet throughout the code, in order to have a consistent standard.

In combination, these amendments comply with State law while also protecting community safety and environmentally sensitive areas.

In an effort to provide for additional regulatory flexibility and promote the construction of ADUs, a new Variance exemption is also proposed in section 54.040, as copied below:

> Accessory Dwelling Units that meet the applicable standards set forth in Section 22.32.120. A (category 1), B (category 2), and C (category 3). Further, a floor area ratio standard may be exceeded to allow up to a 1,000 square foot Accessory Dwelling Unit, if that unit is within an addition built entirely underneath and within the footprint of an existing single-family dwelling. This new Variance exemption section is consistent with State code requirements to allow for ADUs even where they would normally conflict with conventional zoning standards.

This new Variance exemption is consistent with State law requirements to allow for ADUs even where they would normally conflict with conventional zoning standards.

C. AFFORDABLE HOUSING REGULATIONS AND INCENTIVES

The amendments related to affordable housing regulations and incentives include the following sections:

22.020 (Applicability)
22.030 (Application Filing)
22.050 (Exemptions)
22.080 (General Affordable Housing Standards)
24.010 (Purpose of Chapter)

24.020 (Density Bonus and Other Incentives Pursuant to State Law)
24.030 (County Incentives for Affordable Housing)
40.050 (Application Review for Discretionary Permits)
40.065 (Limit on Public Hearings)
130.030 (Definitions: Affordable Ownership Cost; Affordable Rent; Base Density (deleted); Countywide Plan Land Use Element; Development Standard; Density Bonus; Housing Development; Lower Income Households; Maximum Allowable Residential Density; Multi-Family Dwellings)

Over the past three years, the State adopted several statutes to facilitate the development of market rate and affordable housing. The purpose of the proposed revisions to the existing affordable housing incentives is to ensure the County's regulations and processes conform to the minimum requirements of California State law.

The State Density Bonus Law is one of the main ways in which State law encourages affordable housing development. Government Code section 65915 (Density Bonus Law) allows applicants that provide sufficient affordable housing in their housing development projects to receive, in return, an increase over the otherwise maximum allowable residential density (a "density bonus"), as well as other benefits. The Density Bonus Law enables eligible applicants to receive (1) a density bonus, (2) incentives and concessions, (3) waivers and reductions of development standards, and (4) reduced parking requirements. To determine how many bonus units are awarded, the Density Bonus Law uses a sliding scale based on the percentage of affordable units provided and their level of affordability.

Chapter 22.24 (Affordable Housing Incentives) has been substantially modified for both clarity and consistency with State law. Previously, the chapter began with a discussion of County incentives which were separate from State law. However, State law has become more robust than the County incentives. Therefore, the County incentive sections at the beginning of the chapter were cut and pasted to the end of the chapter without major substantive changes being made.

Numerous changes to the section of the chapter related to the State density bonus have been made, including substantive changes. Those substantive changes include:

- Providing a full list of the types of projects to which the density bonus law applies
- Updating the means of calculating allowed density and additional units allowed
- Clarifying the process for reviewing requests for concessions and waivers
- Aligning definitions with State law

The definitional changes and related standards clarify that the density bonus chapter relates to "housing development" projects of five or more primary residential units. What used to be called "base density" is now clearly defined as "maximum allowable residential density," and the bonus units are allowed above this number. In practice, "maximum residential density" is the highest number of primary units allowable under the "Land Use Element" of the Countywide Plan, which consists of the Community Development and Planning Areas elements. Finally, the term "multi-family" is any structure designed for human habitation that has been divided into two or more legally created independent living quarters.

In addition to the changes related to density bonuses, the Housing Accountability Act was amended to require that the County limit the number of public hearings on a housing development project once the application has been deemed complete. This has been reflected in a new section

22.40.065 (Limit on Public Hearings) in Article IV. Additional changes to other sections of the code relate to affordable housing regulations, which involve not including affordable housing and ADUs for purposes of calculating required affordable units and notifying an applicant of eligibility for density bonus concessions.

D. MASTER PLAN AMENDMENT AND PDP AMENDMENT WAIVERS AND FINDINGS

The amendments related to Master Plan amendments include the following sections:

44.040 (Waiver of Master Plan Amendment and Precise Development Plan Amendment)
44.070 (Action on Master Plan and Master Plan Amendment Applications)

Master Plan requirements were overhauled and Precise Development Plans were replaced with Design Reviews for multiple lots in the 2017 Development Code amendments. Since those amendments, the CDA has received more Master Plan applications than in the previous 10 years combined, which is considered a success of the previous amendments. However, the waiver criteria continue to be better aligned with the previous Master Plan requirements than with the Master Plan requirements of today. Therefore, the waiver criteria is proposed to be simplified and some of the most specific criteria are proposed to be removed to better reflect the current code provisions related to Master Plans and Design Review.

Finally, the finding for Master Plan approval in conventional zoning districts is proposed to be eliminated because Master Plans are not allowed in conventional districts.

E. STREAMLINING BUILDING PERMIT REVIEW

The amendments related to streamlining Building Permit review include the following sections:

42.020 (Applicability)
42.025 (Exemptions from Design Review)
42.060 (Decision and Findings)

Streamlining the review of Building Permits by the CDA and other agencies is a high priority of the Planning Division. Some larger scale Building Permit applications are subject to review by Planning Division staff to determine whether the proposal requires a planning permit. Making this zoning compliance process as efficient as possible reduces the cost and the time involved for projects to move forward to construction. While many Building Permits are for minor projects, they are exceedingly important due to high volumes. For example, the County receives more than 300 Building Permit applications for emergency generators during a typical year. Simplifying the zoning compliance review process opens up the possibility that Building and Safety Division staff can conduct simple zoning compliance reviews rather than relying on Planning staff.

Some of the key amendments related to Design Review exemptions include the following:

- Community Plan policies and discretionary standards would no longer modify the Design Review exemptions.
- Recent work under separate building permits would no longer prevent Design Review exemptions from applying to new work.
- Second story porches would be exempt from Design Review as long as they meet certain setbacks.

- The installation of power generators would be exempt from Design Review as long as they meet 10-foot side and rear yard setbacks (or the setbacks required in the governing conventional zoning district).

Simplifying the process requires avoiding the time consuming task of conducting policy analysis or reviewing planning permit history and entails adopting straightforward standards that are easy to understand and implement. These amendments will reduce the regulatory burden on development applicants and result in faster service to customers seeking Building Permits.

F. MERGERS

The amendment related to Mergers includes the following section:

92.020 (Requirements for Merger)
92.040 (Notice of Intent to Determine Status)

The Development Code's procedural requirements for mergers do not distinguish between those mergers that are initiated by the County that owners may not want and those applied for by owners themselves. As a result, a "notice of intent to determine status" is currently required even when owners initiate mergers to serve their own purposes. This results in an unnecessary delay of a month. Although the currently codified procedure is consistent with the State Subdivision Map Act, County Counsel attorneys have advised the Planning Division that courts have allowed Counties to dispense with the process of filing the "intent to determine status" for voluntary mergers, which would save our customers time. The proposed amendment to the merger section would achieve this objective. In addition, there is currently a 90-day deadline to record mergers, but this is being made more flexible to allow for extensions when mutually agreed to by the County and the property owner.

G. SMALL ANIMALS INCLUDING MINIATURE GOATS AND POTBELLIED PIGS

The amendments related to small animal keeping include the following sections:

32.030 (Animal Keeping)
130.030 (Definitions: Goat Shed; Miniature Goat; Potbellied Pig)

The Development Code does not allow for the keeping of miniature goats or potbellied pigs in residential zones. However, miniature goats and potbellied pigs are similar to other small household animals. In order to ensure that miniature goats and potbellied pigs are kept in a manner that ensures the health and safety of both the animals and surrounding community, standards for the keeping of miniature goats and potbellied pigs are proposed.

The amendments to the Code establish standards for the number and type of miniature goats and potbellied pigs that can be kept on a residential property, the minimum lot area suitable for the keeping them, and standards for the location of them and their enclosures. Additionally, while recognizing the agricultural resources miniature goats provide, there are standards for keeping goats that produce milk.

Finally, Table 3-9 related to keeping small animals is changed to require all standards to apply in the A2 and ARP zoning districts. These zoning districts are often more residential in nature than

other agricultural districts such as A-3 through A-60 and APZ districts, so it is appropriate to have the typical standards apply.

H. SOLAR ENERGY SYSTEMS

The amendments related to solar electric systems include the following sections:

06.050 (Exemptions from Land Use Permit Requirements)
20.060 (Height Limit and Height Limit Exceptions)
130.030 (Definitions: Solar Energy Systems)

Solar energy systems are treated one of two ways in the existing Development Code: (1) systems that primarily serve the site they are on, and (2) systems that are designed for commercial energy generation that feeds into the electrical grid and is used by other properties. Development Code updates were approved by the Board in 2017, which established a new land use type for commercial solar facilities, distinct from other types of utilities. Commercial solar facilities normally require Design Review approval and may require Conditional Use Permit approval in residential and agricultural zoning districts. The commercial solar standards have worked well since they were adopted and there is no proposal to modify them in these Development Code amendments.

The Solar Rights Act (Govt Code section 65850-65863.13) states that "a city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law." The State and the courts have continued to clarify the scope of the Solar Rights Act as relating mainly to the installation of solar energy systems most often used to supplement the energy for homes and businesses, rather than relating to large scale commercial solar facilities. The State has also taken steps to restrict the ability of local governments to impose zoning restrictions on the development of these smaller systems, which are typically mounted on roofs or installed in parking lots.

In the winter of 2019 the California Governor's Office of Planning and Research published the "California Solar Permitting Guidebook: Improving Permit Review and Approval for Small Solar Systems." Adopting regulations that substantially conform to this State guidebook's streamlining measures for residential rooftop panels is mandated by Assembly Bill 2188 (2014, Muratsuchi). This Assembly Bill allowed local jurisdictions to limit the height of solar electrical systems so long as such limits are consistent with other building height standards, which is reflected in the guidebook. The guidebook also clarified the intent and scope of the State's efforts to restrict local government's zoning control authority over solar energy systems.

In recognition of the State's legislative intent to promote distributed solar generation capacity, the proposed Development Code amendments exempt non-commercial solar energy systems from all land use entitlements and define solar energy systems in a manner consistent with State law and the Solar Permitting Guidebook.

I. ELECTRIC VEHICLE CHARGING STATIONS

The amendments related to electric vehicle charging stations include the following sections:

06.050 (Exemptions from Land Use Permit Requirements)

130.030 (Definitions: Electric Vehicle Charging Stations)

Electric Vehicle Charging stations are being installed in greater numbers due to the increase in popularity of plug-in electric cars. County policy generally supports installing the infrastructure necessary to transition away from fossil fuels, but the Development Code needs to be updated to conform to State law. California Govt. Code section 65850.7 (Assembly Bill 1236, 2015, Chiu) states that "a city or County shall administratively approve an application to install electric vehicle charging stations through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install an electric vehicle charging station shall be limited to the building official's review of whether it meets health and safety requirements of local, state, and federal law."

In July 2019, the California Governor's Office of Business and Economic Development published the "Electric Vehicle Charging Station Permitting Guidebook". This guidebook clarifies the scope of the legislation, which is broader than previously understood. It is evident from the guidebook that the charging station includes all components of the station, including solar electric systems and electrical cabinets. In recognition of the State's legislative intent to promote distributed electric vehicle charging stations, the proposed Development Code amendments exempt all components of electrical vehicle charging stations from land use entitlements and define charging stations in a manner consistent with State law and the Electric Vehicle Charging Station Permitting Guidebook.

J. HELPING SENIORS AND THE DISABLED

The amendments related to helping seniors and the disabled include the following sections:

08.030 Table 2-1 (Allowed Uses and Permit Requirements for Agricultural and Resource Related Districts)
10.030 Table 2-3 (Allowed Uses and Permit Requirements for Single-Family Residential Districts)
10.030 Table 2-4 (Allowed Uses and Permit Requirements for Multi-Family Residential Districts)
12.030 Table 2-6 (Allowed Uses and Permit Requirements for Commercial/Mixed Use Districts)
12.030 Table 2-7 (Allowed Uses and Permit Requirements for Commercial/Mixed Use and Industrial Districts)
14.030 Table 2-9 (Allowed Uses and Permit Requirements for Special Purpose Districts)
50.040 (Allowable Temporary Uses)
130.030 (Definitions: Adult Day Program)

Changes to ADU regulations assist seniors and the disabled indirectly by creating the possibility for new living spaces close to family. However, two additional sets of amendments are also proposed that are intended to help seniors and the disabled more directly.

The first set of amendments would allow what are called "adult day programs" in a variety of districts. Adult day programs are provided by facilities licensed by the State to provide caregiving services to seniors and those with disabilities. They are not medical facilities, but they do provide supervision and activities to those they serve. They are distinguished from residential care facilities in that they are only open for limited hours during the day rather than providing a place to live.

The second amendment related to this topic creates a new category in the Temporary Use Permit Chapter, which would allow for the temporary occupation of an RV by caregivers assisting the

occupant of a residence. Under existing code provisions, Temporary Use Permits can only last for a maximum of two years and cannot allow any permanent development, but this normal time limit would be reduced to a maximum of six months for temporary caregiver RVs.