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## MEMORANDUM

DATE: February 27, 2018

TO: The Board of Supervisors

FROM: Michael Oliphant, Building Official  
Matthew Kiedrowski, Deputy County Counsel

Subject: Proposed Revisions to Mendocino County Code Chapter 18.23 –  
Regulations for Limited Density Rural Dwellings (Class K)

### Background

Ordinance No. 3343 was adopted by the Board of Supervisors in 1981, establishing Chapter 18.23 of the Mendocino County Code, Regulations for Limited Density Rural Dwellings, commonly known as the Class K Ordinance.

The Board of Supervisors directed the Building Official to research and propose pertinent revisions to the Class K Ordinance, and also referred the matter to the Public Health, Safety and Resources (“PHSR”) Committee, which reviewed the Class K ordinance at three separate meetings in 2017.

### Direction of PHSR Committee

Over the course of the three Committee meetings, the Committee asked for additional research by staff and discussed various particular changes. The following summarizes what staff believes was the direction of the Committee, and contains additional discussion or recommendations of staff based on issues identified by staff during the preparation of this agenda item.

1) Require a three-year deed restriction to be recorded on parcels containing Class K structures.

Section 18.23.060 currently provides that the Building Department shall record with the County Recorder a notice that a permit has been issued pursuant to Chapter 18.23.

Section 92 of the State’s Class K regulations (25 Cal. Code Regs. 80, *et seq.*) provides that a local governing body may establish and enforce reasonable regulations for the recording of information regarding the materials, methods of construction, alternative facilities, or other factors that may be of full value in the full disclosure of the nature of the dwelling and appurtenant structures.

Section 92 provides clear authority for the County to require the recordation of a notice against real property regarding the methods and materials of construction. The recordation of a deed restriction would go beyond providing notice, but possibly place a covenant on the property restricting occupancy to the owner for a period of time.

Staff has prepared language consistent with Committee direction, found in section 18.23.060, that would require a declaration of covenants, conditions and restrictions to be recorded against the property at the time a certificate of occupancy is issued. In addition, Section 18.23.033 changes the relevant period of time from one year to three years.

However, staff has concerns regarding enforcement of the covenant, in particular what the

desired outcome of the County would be following the sale of a parcel prior to the expiration of the three year period (a voiding of the contract, fines against the seller, or other potential remedies, not all of which are easy to obtain). An alternative could be the recordation of a notice to ensure that future buyers are aware that the unit was constructed pursuant to the Class K Ordinance.

- 2) Limit Class K houses to 2,000 square feet of habitable space, with an allowance for an addition of up to 750 square feet as an attached accessory unit.

The Committee spoke at several meetings regarding whether to place a limit on the size of a house that may be constructed pursuant to the Class K ordinance. The final direction of the Committee was a limit of 2,000 square feet, plus the allowance for an addition of up to 750 square feet. Section 18.23.250 has been amended to include both the existing requirement that the dwelling not exceed two and one half stories, and not exceed 2,000 square feet of conditioned habitable space.

Direction from the Committee used the phrase "habitable space." The ordinance uses the phrase "conditioned habitable space," which is the entire square footage within the single family residence. This term is suggested as being more precise in defining the square footage number.

Government Code section 65852.2, regarding accessory dwelling units, does permit the County to establish minimum and maximum unit size requirements for both attached and detached accessory dwellings. However, ordinances adopted regarding accessory dwelling units are supposed to be referred to the California Department of Housing and Community Development. The Department of Planning and Building Services is working on an ordinance regarding accessory dwelling units.

Staff strongly recommends placing limitations specific to accessory dwelling units to Class K in the accessory dwelling unit ordinance and has drafted the ordinance without the provision related to the accessory unit square footage limitation.

- 3) Require a one acre minimum parcel size for all new Class K dwellings.

The direction of the Committee was to limit Class K dwellings to parcels of one acre or larger.

Section 18.23.260 defines the word "rural." The section currently limits rural to mean areas of the unincorporated County designated and zoned for one acre minimums or larger acre minimums. The section is proposed to be amended to add a second requirement, which is that for a legal parcel to qualify as rural, the parcel shall be no less than one acre in size.

- 4) Require Wildland Urban Interface (WUI) standards for all new single family residences.

This requirement has been added to the ordinance in a new section 18.23.345.

The direction of the Committee was specific to single-family residences. The requirement has been worded as "all new structures," as Chapter 7A, specifically in section 701A.3, contains exceptions for certain buildings of an accessory structure, certain Group U Agricultural Buildings, and additions to and remodels of buildings originally constructed prior to the applicable application date.

At its first meeting regarding the Class K ordinance, the Committee provided direction that would have excluded tempered glass from the WUI fire standards. This direction was not repeated at later meetings, but the Committee did give subsequent broad direction to require WUI standards in all residences. In addition, state statute would appear to require WUI standards by code sections separate than those requiring the adoption of the California Building Standards Code, and County Counsel has provided the opinion that the County must require WUI standards.

- 5) Requirements related to fire sprinklers.

The Committee directed that fire sprinklers should only be required in dwellings greater than 1,250 square feet. Separately, the committee directed that sprinklers should be required on parcels of one acre in size, but not on larger parcels. These requirements have been placed in a separate paragraph in the new section 18.23.345.

As directed by the Committee, the first requirement is that any dwelling, regardless of size, on a one-acre parcel would be required to have sprinklers. Staff would note that because it is proposed that there be a one-acre parcel size minimum, this added requirement will only impact parcels of exactly one acre in size. Secondly, for all larger parcel sizes, fire sprinklers will only be required in dwellings greater than 1,250 square feet.

6) Require three (3) inspections to obtain a Class K permit.

Section 18.23.160 has been amended to state this requirement, at intervals recommended by staff. In addition, sections 18.23.150 and 18.23.200 have been amended to reflect the requirement of inspections.

7) Amend the Class K ordinance to state that the most recently adopted version of the Uniform Building Code to be the operative code. Allow for grandfathering existing Class K structures.

The Class K ordinance previously referred to the 1976 codes. Section references have been updated to refer generally to the various titles of the California Building Standards Code in Title 24 of the California Code of Regulations.

Separate Committee direction asked staff to determine if the County had the ability to grandfather existing Class K structures.

County Counsel finalized an opinion regarding certain Class K issues in January 2018. That opinion found that the County appears to have the ability to modify its regulations to review buildings pursuant to standards other than those found in the current California Building Standards Code, after making required findings. The County would need to make findings based on local climatic, geological or topographical conditions to support the changes.

The potential breadth of the authority of the statute authorizing cities and counties to adopt Class K-style regulations would seem to include the ability to modify the version of the building codes that should be relied upon in reviewing applications for Class K building permits. As such, staff has drafted a second paragraph to section 18.23.310 that would allow applications for Class K permits for already-constructed buildings to be reviewed pursuant to the building codes that were applicable at the time of construction of the building, so long as the applicant is able to substantiate the date of construction to the satisfaction of the Department of Planning and Building Services. This provision would allow an applicant to present evidence to the Department regarding the date of construction, and if a date of construction can be shown, the Department would use the building codes applicable for that year as the basis for approval, instead of the current building codes.

8) Extensions of Class K permits.

The Committee also asked if the County could provide options for hardship exemptions or time extensions. For normal building permits, Chapter 18.04 authorizes the building official to grant one or more extensions of time, for periods of not more than 180 days each. Extensions shall be requested in writing and justifiable cause demonstrated.

Section 18.23.140 is proposed to be amended to allow extensions of time subject to the same standards as apply to a building permit.

9) Require Class K houses to have a perimeter foundation, as required by the Uniform Building Code, for all new single family residences and all accessory structures greater than one story in height, unless otherwise determined by an engineer.

In discussing suggested changes to the Class K ordinance with the Committee, the County's building official had been of the opinion that perimeter foundations should be required.

While preparing the ordinance amendments, staff reviewed the current existing California Residential Code, in particular section R301.1.1.1, which specifically speaks to alternative provisions for limited-density owner-built rural dwellings. These provisions mirror sections of the County's existing Class K ordinance, specifically sections 18.23.320, 18.23.330, 18.23.340, 18.23.360 and 18.23.390. Section 18.23.330 and section R301.1.1.1 both allow pier foundations.

Because the current edition of the Residential Code, in the context of limited density owner-built rural dwellings, specifically allows foundations other than perimeter foundations, the Building Division is no longer recommending such a requirement. The ordinance drafted for the Board of Supervisors' review does not modify section 18.23.330 regarding foundations.

### **FINDINGS**

The proposed ordinance also modifies the title of existing section 18.23.440 to reflect that those findings were made at the adoption of the ordinance in 1981, and contains a new section 18.23.442. Section 18.23.442 contains the findings required for adoption of modifications to the Class K regulations. These findings include referencing the local climatic, geographical and topographical conditions of the County and the findings made in the ordinance as adopted, as those findings are still generally relevant today.

### **ENVIRONMENTAL REVIEW**

The adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA"). Section 15061(b)(3) of the State CEQA Guidelines exempts activities where it can be seen with certainty that there is no possibility that the activity may have a significant impact on the environment. The proposed changes do not alter the zoning of property, the number of dwellings or structures allowed on a property, or requirements regarding where on a property a dwelling or structure may be located. The ordinance amends the existing limited density rural dwelling ordinance to limit the sizes of parcels and structures that might be eligible for the ordinance, and makes certain changes to building code applicability and requirements. There is no possibility that these changes will cause a significant impact on the environment.