

## William OShea

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**From:** Sarah Schenk  
**Sent:** Monday, July 20, 2020 6:12 PM  
**To:** William OShea  
**Cc:** Mitchell Palmer; William Clague; Anne Morris; Lisa Barrett  
**Subject:** Amt. LDC Accessory Dwelling Units (Matter No. 2020-0099)

Bill,

The above referenced Request for Legal Services requested legal review of Version 4 of the Draft LDC Text Amendment amending the LDC to enable the use of accessory dwelling units as a use in specified zone districts. The CAO responded on April 14, 2020 that the CAO has no further legal comments and was awaiting the BOCC work session on this topic.

On June 15, 2020 Staff inquired what impact, if any, the recent state legislation adopted as CS/CS/HB 1339 would have on the proposed LDC Text Amendment. The effective date of the state legislation is July 1, 2020.

The comments of the CAO as to Draft No. 4 of the Staff Report and responses to Staff's questions are as follows:

1. Page 3, the summary regarding "Senate Bill 998" should be revised. The SB 998, now CS/CS/HB 1339 does not require the County to allow accessory dwelling units in any area zoned for single-family residential use. The provisions of CS/CS/HB 1339 uses the term "may" when referring to a county's authority to adopt certain ordinances regarding accessory dwelling units. Specifically, Section 125.01055(6), F.S. is created to provide as follows:

"Notwithstanding any other law or local ordinance or regulation to the contrary, the board of county commissioners may approve the development of housing that is affordable, as defined in Section 420.0004, F.S. on any parcel zoned for residential, commercial, or industrial use."

It would be a policy decision of the Board as to whether the LDC should be amended to allow residential units that meet the definition of "affordable" as defined in Section 420.0004, F.S. in residential, commercial or industrial zone districts.

2. Section 163.31771(2)(a), F.S defines "accessory dwelling unit" slightly differently than the Draft LDC Text Amendment. It is also not clear whether the intent of the LDC Amendment is to require the accessory dwelling units to be affordable rentals as defined in Section 163.31771(2)(b), F.S. If it was, then the amended provision in Section 163.31771(4) F.S would be applicable that requires an affidavit to be filed by the applicant for a building permit to construct an accessory dwelling unit to attest that the unit will be rented at an affordable rate to an extremely low- income, very low- income ,low- income or moderate -income person or persons.

In summary if the County relies on Section 163.31771, F.S. as the authority to amend the LDC to encourage the permitting of accessory dwelling units in single family residential areas in order to increase the availability of affordable rentals for extremely low- income, very low- income, low- income or moderate- income persons, then the Applicant would have to submit the required affidavit.

It would be a policy decision of the Board as to whether the LDC should be amended to require the accessory dwelling units to be income qualified, as provided in Section 163.31771, F.S.

3. Staff has inquired as to the state reporting requirements regarding affordable housing. The applicable County department should handle any required reporting requirements for affordable housing. This issue is outside the scope of the LDC Text Amendment under consideration.

There were no specific legal issues raised in this Request for Legal Services. Therefore the CAO has limited legal review to identifying any errors or omissions that could give rise to a legal claim or case against the County. Except for matters that fall into the previous category, the CAO has not reviewed the Draft Staff Report submitted with this RLS for thoroughness, accuracy, or typographical errors, or commented upon the policy merits of the staff recommendation.

**Conclusion:**

This response concludes the CAO response to the above RLS.

Sarah A. Schenk  
Assistant County Attorney  
Manatee County Attorney's Office  
1112 Manatee Ave. W., Ste.969  
Bradenton, FL 34206  
941-745-3750