



FAIRFAX TOWN COUNCIL MEETING

STAFF REPORT

MEETING DATE	May 7, 2025
PREPARED FOR	Mayor and Town Council
PREPARED BY	Jeffrey Beiswenger, AICP, Planning & Building Services Director
SUBJECT	Waive second reading, read by title only and adopt ordinance to amend Chapter 17.048 (Residential Accessory Dwelling Units and Junior Accessory Dwelling Units) of the Fairfax municipal code to comply with recent changes in state law.
CEQA	Statutorily Exempt. Under California Public Resources Code section 21080.17, CEQA does not apply to the adoption of an ordinance by a town implementing the provisions of Article 2 of Chapter 13 of Division 1 of Title 7 of the Government Code, which is California's ADU law, as defined by section 66313.

RECOMMENDATION

Waive second reading, read by title only and adopt ordinance to amend Chapter 17.048 (Residential Accessory Dwelling Units and Junior Accessory Dwelling Units) of the municipal code to comply with recent changes in state law.

DISCUSSION

In recent years numerous bills have amended various sections of the Government Code to impose new limits on local authority to regulate ADUs and JADUs.

In 2024, two new bills — AB 2533 and SB 1211 — were put in place as summarized below. Other than the amendments contained within these bills as well as various formatting and clarifying revisions, the ADU ordinance remains unchanged.

AB 2533 – Unpermitted ADUs and JADUs.

Subject to limited exceptions, existing state law prohibits a Town from denying a permit to legalize an unpermitted ADU that was constructed before January 1, 2018, if the denial is based on the ADU not complying with applicable building, state, or local ADU standards. One exception allows a Town to deny a permit to legalize an unpermitted ADU if the Town makes a written finding that correcting the violation is necessary to protect the health and safety of the public or the occupants of the structure.

AB 2533 changes this by: (1) expanding the above prohibition to also include JADUs; (2) moving the construction-cutoff date from January 1, 2018, to January 1, 2020; and (3) replacing the above exception with a requirement that local agencies find that correcting the violation is necessary to comply with the standards specified in Health and Safety Code section 17920.3 (substandard Buildings). (See amended Gov. Code, § 66332(a)–(f).)

SB 1211 – Replacement Parking Requirements

Multifamily ADUs Replacement Parking. Existing state law prohibits jurisdictions from requiring off-street parking spaces to be replaced when a garage, carport, or covered parking structure is demolished in conjunction with the construction of, or conversion to, an ADU.

SB 1211 amends this prohibition to now also prohibit a jurisdiction from requiring replacement parking when an uncovered parking space is demolished for, or replaced with, an ADU (see amended Gov. Code, § 66314(d)(11)).

For multifamily ADUs, SB 1211 further defines livable space in connection with converted ADUs inside a multifamily dwelling structure. Existing state law requires the Town to ministerially approve qualifying building-permit applications for ADUs within “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” The term “livable space” is not defined by existing state ADU law. SB 1211 changes this by adding a new definition: “‘Livable space’ means a space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation” (see amended Gov. Code, § 66313(e)).

SB 1211 also increases the number of detached ADUs permitted on lots with an existing multifamily dwelling. Existing state law allows a lot with an existing or proposed multifamily dwelling to have up to two detached ADUs. Under SB 1211, a lot with an existing multifamily dwelling can have up to eight detached ADUs, or as many detached ADUs as there are primary dwelling units on the lot, whichever is less (see amended Gov. Code, § 66323(a)(4)(A)(ii)). SB 1211 does not alter the number of ADUs that a lot with a proposed multifamily dwelling can have – the limit remains at two (see amended Gov. Code, § 66323(a)(4)).

Both AB 2533 and SB 1211 took effect January 1, 2025, temporarily superseding the Fairfax municipal code regulations. The Town’s ADU ordinance must comply with requirements imposed by AB 2533 and SB 1211. The Planning Commission is recommending that the Town Council adopt the proposed ordinance.

Since the Town’s current ordinance is currently invalid, provisions under California Government Code § 66310 to § 66342 (Chapter 13: Accessory Dwelling Units) are currently in effect until the Town’s municipal code can be updated.

At the April 2, Town Council meeting, minor changes to the zoning text were made, as follows:

- Size limits. The original text restricted ADUs and JADUs created by converting an existing structure to no more than 50% of the total square footage. This is not consistent with state law and this limitation was eliminated.
- Rent reporting. The text was amended to allow the rent data to be collected in an anonymous manner and to not connect the data to specific addresses to ensure confidentiality.

The ordinance is attached to this staff report (Attachment A) with Exhibit 1 as the replacement for Chapter 17.048 (Residential Accessory Dwelling Units and Junior Accessory Dwelling Units). The existing chapter would be rescinded and replaced in its entirety.

ATTACHMENTS

A – Ordinance

- Exhibit 1 - Chapter 17.048: Residential Accessory Dwelling Units and Junior Accessory Dwelling Units

ORDINANCE ____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX, CALIFORNIA AMENDING CHAPTER 17.048: RESIDENTIAL ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS OF THE TOWN OF FAIRFAX MUNICIPAL CODE

WHEREAS, the Town of Fairfax, California ("Town") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, state law authorizes cities to act by ordinance to provide for the creation and regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"); and

WHEREAS, in recent years, the California Legislature has approved, and the Governor has signed into law, numerous bills that, among other things, amend various sections of the Government Code to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, in 2024, the California Legislature approved, and the Governor signed into law, Assembly Bill 2533 ("AB 2533") and Senate Bill 1211 ("SB 1211"), which further amend state ADU law; and

WHEREAS, AB 2533 and SB 1211 took effect on January 1, 2025, and for the Town's ADU ordinance to remain valid, it must be amended to reflect the requirements of AB 2533 and SB 1211; and

WHEREAS, the Town desires to amend its local regulatory scheme for the construction of ADUs and JADUs to reflect AB 2533's and SB 1211's changes to state law; and

WHEREAS, the Town seeks to implement Program 1-K (Fee Discounts) and Program 1-M (Zoning Incentives for ADUs/JADUs) of the Town of Fairfax 2023-31 Housing Element; and

WHEREAS, the Planning Commission conducted a public hearing on February 20, 2025 to consider zoning ordinance amendments, and continued the public hearing to March 20, 2025 for additional discussion and deliberation; and

WHEREAS, on March 20, 2025, the Planning Commission of the Town of Fairfax voted to recommend Town Council adoption of ordinance amendments; and

WHEREAS, a duly and properly noticed public hearing regarding the Ordinance was conducted by the Town Council on April 2, 2025, and the Town Council carefully considered all pertinent testimony and the staff report offered at the public hearing.

WHEREAS, the Town Council finds that this ordinance is Statutorily Exempt from the requirements of the California Environmental Quality Act (CEQA) under the California Public Resources Code § 21080.17.

NOW, THEREFORE, BE IT RESOLVED, the Town Council of the Town of Fairfax hereby finds and determines that that the recitals are true and correct and incorporated as findings herein by this reference and adopts an ordinance to amend Title 17 of the Fairfax municipal code as included as **Exhibit 1**, incorporated herein by this reference.

ORDINANCE PASSED AND ADOPTED, at the regular meeting of the Fairfax Town Council on May 7, 2025 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Lisel Blash, Mayor

ATTEST:

Christine Foster, Deputy Town Clerk

Attachment:

Exhibit 1 – Amended Chapter 17.048: Residential Accessory Dwelling Units and Junior Accessory Dwelling Units

EXHIBIT 1

CHAPTER 17.048: RESIDENTIAL ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS

Section

17.048.010 Accessory dwelling units

§ 17.048.010 Residential Accessory Dwelling Units and Junior Accessory Dwelling Units

- (A) **Purpose.** The purpose of this section is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in compliance with Chapter 13 of Division 1 of Title 7 of the California Government Code.
- (B) **Effect of Conforming.** An ADU or JADU that conforms to the standards in this section will not be:
- (1) Deemed to be inconsistent with the town's general plan and zoning designation for the lot on which the ADU or JADU is located.
 - (2) Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.
 - (3) Considered in the application of any local ordinance, policy, or program to limit residential growth.
 - (4) Required to correct a nonconforming zoning condition, as defined in subsection (C) below. This does not prevent the town from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.
- (C) **Definitions.** As used in this section, terms are defined as follows. Other definitions are included in section 17.008.020 (Definitions):

ACCESSORY DWELLING UNIT or "ADU" 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 zoned for residential or mixed uses with a proposed or existing dwelling . An ACCESSORY DWELLING UNIT also includes the following:

- (a) An efficiency unit, as defined by section 17958.1 of the California Health and Safety Code; and
- (b) A manufactured home, as defined by section 18007 of the California Health and Safety Code.

ACCESSORY STRUCTURE means a structure that is accessory and incidental to a dwelling located on the same lot.

COMPLETE INDEPENDENT LIVING FACILITIES means 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.

EFFICIENCY KITCHEN means a kitchen that includes all of the following:

- (a) A cooking facility with appliances.
- (b) A food preparation counter and storage cabinets that are of a reasonable size in relation to the size of the JADU.

JUNIOR ACCESSORY DWELLING UNIT or “JADU” means a residential unit that satisfies all of the following:

- (a) It is no more than 500 square feet in size.
- (b) It is contained entirely within an existing or proposed single-family structure. An enclosed use within the residence, such as an attached garage, is considered to be a part of and contained within the single-family structure.
- (c) It includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure.
- (d) If the unit does not include its own separate bathroom, then it contains an interior entrance to the main living area of the existing or proposed single-family structure in addition to an exterior entrance that is separate from the main entrance to the primary dwelling.
- (e) It includes an Efficiency Kitchen, as defined above.

LIVABLE SPACE means a space in a dwelling intended for human habitation, including living, sleeping, eating, cooking, or sanitation.

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.

MULTI-FAMILY DWELLING means a structure with two or more attached dwellings on a single lot (e.g., apartments, attached townhomes, and row houses).

MULTI-FAMILY LOT means a property with one or more multi-family dwellings.

NATURAL PERSON means a living human being.

NONCONFORMING ZONING CONDITION means a physical improvement on a property that does not conform with current zoning standards.

PASSAGEWAY means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

PROPOSED DWELLING means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

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.

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.

(D) **Approvals.** The following approvals apply to ADUs and JADUs under this section:

(1) **Building-permit Only.** If an ADU or JADU complies with each of the general requirements below, it is allowed with only a building permit in the following scenarios:

(a) **Converted on Single-family or Mixed-use Lot:** One ADU as described in this subsection (1) and one JADU on a lot zoned for residential or mixed uses with a proposed or existing dwelling, where the ADU or JADU:

1. Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or (in the case of an ADU only) within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress; and
2. Has exterior access that is independent of that for the single-family dwelling; and
3. Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes; and
4. The JADU complies with the requirements of Government Code sections 66333 through 66339.

(b) **Limited Detached on Single-family Lot:** One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under subsection (D)(1) above), if the detached ADU satisfies each of the following limitations:

1. The side- and rear-yard setbacks are at least four feet.
2. The total floor area is 1,200 square feet or smaller.
3. The peak height above grade does not exceed the applicable height limit in subsections (E)(2)(a), (E)(2)(b), or (E)(2)(c) below.
4. Lots that are larger than 10,000 square feet may have a second detached ADU, subject to the approval of an ADU Permit.

(c) **Converted on Multifamily Lot:** One or more ADUs within 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 converted ADU complies with state building standards for dwellings. Under this subsection, at least one converted ADU is allowed within an existing multifamily dwelling, up to a quantity equal to 25 percent of the existing multifamily dwelling units.

(d) **Limited Detached on Multifamily Lot:** No more than two detached ADUs on a lot with a proposed multifamily dwelling, or up to eight detached ADUs on a lot with an existing multifamily dwelling, if each detached ADU satisfies all of the following:

1. The side- and rear-yard setbacks are at least four feet. If the existing multifamily dwelling has a rear or side yard setback of less than four feet, the town will not require any modification to the multifamily dwelling as a condition of approving the ADU.
2. The peak height above grade does not exceed the applicable height limit provided in subsections (E)(2)(a), (E)(2)(b) or (E)(2)(c) below.
3. If the lot has an existing multifamily dwelling, the quantity of detached ADUs does not exceed the number of primary dwelling units on the lot.

(2) ADU Permit.

(a) Except as allowed under subsection (D)(1) above, no ADU may be created without a building permit and an ADU permit in compliance with the standards set forth in subsections (E) and (F) below.

(b) An ADU Permit is required for:

1. Additions to existing structures (e.g. attached ADUs) not specified under (d)(1) above.
2. A second detached or attached ADU on lots larger than 10,000 square feet.
3. All qualifying ADUs not specified under (D)(1) above.

(c) The ADU-permit processing fee is established by Town Ordinance No. 844. Any building permit fees shall be in addition to the ADU-permit processing fee. Application processing fees and building permit fees for ADUs and JADUs, as applicable, will be reduced by 50 percent as part of an "Incentive Program" to encourage residents to legalize or create accessory dwelling units. In addition to the foregoing, while the Incentive Program remains in effect, any property with a non-permitted ADU or JADU that is legalized pursuant to this section will not be assessed a financial penalty for failing to obtain a permit required by this section. This Incentive Program expires on January 1, 2032.

(3) Process and Timing.

- (a) An ADU permit is considered and approved ministerially, without discretionary review or hearing.
- (b) The Town must approve or deny an application to create an ADU or JADU within 60 days from the date that the town receives a completed application. If the town has not approved or denied the completed application within 60 days, the application is deemed approved unless either:
 - 1. The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or
 - 2. When an application to create an ADU or JADU is submitted with a permit application to create a new single-family or multifamily dwelling on the lot, the town may delay acting on the permit application for the ADU or JADU until the town acts on the permit application to create the new single-family or multifamily dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.
- (c) If the town denies an application to create an ADU or JADU, the town must provide the applicant with comments that include, among other things, a list of all the defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments must be provided to the applicant within the 60-day time period established by subsection (D)(3)(a) above.
- (d) A demolition permit for a detached garage that is to be replaced with an ADU is reviewed with the application for the ADU and issued at the same time.

(E) General ADU and JADU Requirements. The following requirements apply to all ADUs and JADUs that are approved under subsections (D)(1) or (D)(2) above:

(1) Zoning.

- (a) ADUs are permitted in the zoning districts and overlay zones listed below that allow residential use, and must be accessory to a permitted residential use.
 - 1. RS-7.5 Single-family Residential Zone, Medium Density
 - 2. RS-6 Single-family Residential Zone, High Density
 - 3. RD 5.5-7 Residential Zone, High Density
 - 4. RM Multiple-family Residential Zone
 - 5. RM-S Multiple-family Residential Senior Residential Zone

6. CL Limited Commercial Zone
7. CH Highway Commercial Zone
8. CC Central Commercial Zone
9. PDD Planned Development District Zone
10. SF-RMP Single-family Residential Master Planned District
11. A-A Agricultural and Conservation District
12. UR Upland Residential Zone
13. WHO Workforce Housing Overlay Zone

- (b) In accordance with Government Code section 66333(a), a JADU may only be created on a lot zoned for single-family residences.

(2) Height.

- (a) Except as otherwise provided by subsections (E)(2)(b) and (E)(2)(c) below, a detached ADU created on a lot with an existing or proposed single family or multifamily dwelling unit may not exceed 16 feet in height.
- (b) A detached ADU may be up to 18 feet in height if it is created on a lot with an existing or proposed single family or multifamily dwelling unit that is located within one-half mile walking distance of a major transit stop or high quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code, and the ADU may be up to two additional feet in height (for a maximum of 20 feet) if necessary to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.
- (c) A detached ADU created on a lot with an existing or proposed multifamily dwelling that has more than one story above grade may not exceed 18 feet in height.
- (d) An ADU that is attached to the primary dwelling may not exceed 25 feet in height or the height limitation imposed by the underlying zone that applies to the primary dwelling, whichever is lower.
- (e) Notwithstanding subsections (E)(2)(a) through (d) above, ADUs may not exceed two stories.
- (e) For purposes of this subsection (E)(1)(b), height is measured from existing legal grade or the level of the lowest floor, whichever is lower, to the peak of the structure.

(3) Fire Sprinklers.

- (a) Fire sprinklers are required in an ADU if sprinklers are required in the primary residence and may be required by the Fire Department.
 - (b) The construction of an ADU does not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.
- (4) Rental Term.** No ADU or JADU may be rented for a term that is shorter than 31 days. An ADU/JADU constructed prior to January 1, 2020 with a building permit issued for the construction of the ADU/JADU is not subject to this rental term.
- (5) No Separate Conveyance.** An ADU or JADU may be rented, but, except as otherwise provided in Government Code section 66341, no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multifamily lot).
- (6) Septic System.** If the ADU or JADU will connect to an onsite wastewater-treatment system, the owner must include with the application demonstration of compliance with applicable County of Marin Environmental Health Services requirements for onsite wastewater treatment.
- (7) Owner Occupancy.**
 - (a) ADUs created under this section on or after January 1, 2020 are not subject to an owner-occupancy requirement.
 - (b) As required by state law, all JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement in this subsection (E)(7)(a) does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.
- (8) Deed Restriction.** Prior to issuance of a certificate of occupancy for a JADU, a deed restriction must be recorded against the title of the property in the County Recorder's office and a copy filed with the Director. The deed restriction must run with the land and bind all future owners. The form of the deed restriction will be provided by the town and must provide that:
 - (a) Except as otherwise provided in Government Code section 66341, the JADU may not be sold separately from the primary dwelling.
 - (b) The JADU is restricted to the approved size and to other attributes allowed by this section.
 - (c) The deed restriction runs with the land and may be enforced against future property owners.

- (d) The deed restriction may be removed if the owner eliminates JADU, as evidenced by, for example, removal of the kitchen facilities. To remove the deed restriction, an owner may make a written request of the Director, providing evidence that the JADU has in fact been eliminated. The Director may then determine whether the evidence supports the claim that the JADU has been eliminated. Appeal may be taken from the Director's determination consistent with other provisions of this Code. If the JADU is not entirely physically removed, but is only eliminated by virtue of having a necessary component of a JADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this Code.
 - (e) The deed restriction is enforceable by the director or his or her designee for the benefit of the town. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the town is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the JADU in violation of the recorded restrictions or abatement of the illegal unit.
- (9) Rent Reporting.** In order to facilitate the city's obligation to identify adequate sites for housing in accordance with Government Code sections 65583.1 and 66330, the following requirements must be satisfied:
- (a) With the building-permit application, the applicant must provide the town with an estimate of the projected annualized rent that will be charged for the ADU or JADU.
 - (b) Within 90 days after each January 1 following issuance of the building permit, the owner must report the actual rent charged for the ADU or JADU during the prior year. If the town does not receive the report within the 90-day period, the owner is in violation of this Code, and the town may send the owner a notice of violation and allow the owner another 30 days to submit the report. If the owner fails to submit the report within the 30-day period, the town may enforce this provision in accordance with the provisions in Town Code Chapter 1.10: Administrative Citation and Hearing Process Enforcement.
 - (c) The rent reporting data will not be connected to the street address and will be reported anonymously to protect confidentiality.

(10) Building & Safety.

- (a) **Must comply with building code.** All ADUs and JADUs must comply with all local building code requirements.
- (b) **No change of occupancy.** Construction of an ADU does not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code, unless the building official or code enforcement officer makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public

health and safety. Nothing in this subsection (E)(10)(a) prevents the town from changing the occupancy code of a space that was uninhabitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this section.

(11) Setbacks. No setback is required for an ADU that is constructed in the same location and to the same dimensions as an existing structure.

(F) Specific ADU Requirements. The following requirements apply only to ADUs that require an ADU permit under subsection (D)(2) above.

(1) Maximum Size.

- (a)** The maximum size of a detached or attached ADU subject to this subsection (F) is 850 square feet for a studio or one-bedroom unit and 1,200 square feet for a unit with two or more bedrooms.
- (b)** An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.
- (c)** Application of other development standards in this subsection (F), such as FAR or lot coverage, might further limit the size of the ADU, but no application of the percent-based size limit, FAR, front setback, lot coverage limit, or open-space requirement may require the ADU to be less than 850 square feet for a one-bedroom unit or 1,200 square feet for a two- bedroom unit.

(2) Floor Area Ratio (FAR). No ADU subject to this subsection (F) may cause the total FAR of the lot to exceed 40 percent, subject to subsections (F)(1)(b) and (F)(1)(c) above.

(3) Setbacks.

- (a)** ADUs that are subject to this subsection (F) must conform to 4-foot side and rear setbacks. ADUs that are subject to this subsection (F) must conform to 10-foot front setbacks, subject to subsections (F)(1)(b) and (F)(1)(c) above.

(4) Lot Coverage. No ADU subject to this subsection (F) may cause the total lot coverage of the lot to exceed 35 percent, subject to subsection (F)(1)(b) above.

(5) Minimum Open Space. No ADU subject to this subsection (F) may cause the total percentage of open space of the lot to fall below 50 percent, subject to subsection (F)(1)(b) above.

(6) Minimum Open Space (usable). No ADU on a lot subject to this division (F) may cause the open space area to fall below 300 square feet per unit. “Open space area” shall not include any required yard or setback, required building separation, access area, or area with dimensions of less than ten feet or slope of greater than 10%, subject to division (F)(1)(c) above.

(7) Passageway. No passageway, as defined by subsection (C) above is required for an ADU.

(8) Parking.

(a) Generally. One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking, as defined by subsection (C) above.

(b) Exceptions. No parking under subsection (F) is required in the following situations:

1. The ADU is located within one-half mile walking distance of public transit, as defined in subsection (C) above.
2. The ADU is located within an architecturally and historically significant historic district.
3. The ADU is part of the proposed or existing primary residence or an accessory structure under subsection (1) above.
4. When on-street parking permits are required but not offered to the occupant of the ADU.
5. When there is an established car share vehicle stop located within one block of the ADU.
6. When the permit application to create an ADU is submitted with an application to create a new single-family or new multifamily dwelling on the same lot, provided that the ADU or the lot satisfies any other criteria listed in subsections 1 through 5 above.

(c) No Replacement. When a garage, carport, covered parking structure, or uncovered parking space is demolished in conjunction with the construction of an ADU or converted to an ADU, those off-street parking spaces are not required to be replaced.

(9) Stream Buffer. No ADU shall be constructed closer to the top of the stream bank of the Fairfax and San Anselmo Creeks than 20 feet or two times the average depth of the creek bank, whichever is greater.

(10) Architectural Requirements.

- (a)** The materials and colors of the exterior walls, roof, windows and doors of an ADU addition to a primary dwelling must appear similar to those of the primary dwelling.
- (b)** The materials and colors of the exterior walls, roof, windows and doors of a second detached ADU must appear similar to either those of the primary dwelling or those of the other detached ADU on the property.
- (c)** The roof slope must appear similar to that of the dominant roof slope of the primary dwelling. The dominant roof slope is the slope shared by the largest portion of the roof.
- (d)** The exterior lighting must be dark sky compliant (fully shielded and emit no light above the horizontal plane with no sag or drop lenses, side light panels or uplight panels) as well as compliant with color temperature to minimize blue rich lighting. The lighting shall not emit direct offsite illumination and shall be the minimum necessary for safety.
- (e)** The ADU must have an independent exterior entrance, apart from that of the primary dwelling.
- (f)** The interior horizontal dimensions of an ADU must be at least 10 feet wide in every direction, with a minimum interior wall height of seven feet.

(11) Historical Protections. An ADU that is on or within 600 feet of real property that is listed in the California Register of Historic Resources is subject to objective development requirements of the State Historical Building Code.

(12) Allowed Stories. No ADU subject to this subsection (F) may have more than one story, except that an ADU that is attached to the primary dwelling may have the stories allowed under subsection (E)(2)(d).

(G) Fees. The following requirements apply to all ADUs that are approved under subsections (D)(1) or (D)(2) above.

(1) Impact Fees.

- (a)** No impact fee is required for an ADU that is less than 750 square feet in size. For purposes of this subsection (G), “impact fee” means a “fee” under the Mitigation Fee Act (Gov. Code § 66000(b)) and a fee under the Quimby Act (Gov. Code § 66477). “Impact fee” here does not include any connection fee or capacity charge for water or sewer service.
- (b)** Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary

dwelling unit. (E.g., the floor area of the ADU, divided by the floor area of the primary dwelling, times the typical fee amount charged for a new dwelling.)

(2) Utility Fees.

- (a)** If an ADU is constructed with a new single-family home, a separate utility connection directly between the ADU and the utility and payment of the normal connection fee and capacity charge for a new dwelling are required.
- (b)** Converted ADUs on a single-family lot that are created under subsection (D)(1) above are not required to have a new or separate utility connection directly between the ADU and the utility. Nor is a connection fee or capacity charge required.
- (c)** All ADUs that are not covered by subsection (G)(2)(a) require a new, separate utility connection directly between the ADU and the utility for any utility. All utilities are subject to the connection and fee requirements of the utility provider.
 - 1.** The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer system.
 - 2.** The portion of the fee or charge that is charged by the town may not exceed the reasonable cost of providing this service.

(H) Nonconforming Zoning Code Conditions, Building Code Violations, and Unpermitted Structures.

- (1) Generally.** The town will not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that does not present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.

(2) Unpermitted ADUs and JADUs Constructed before 2020.

- (a) Permit to Legalize.** As required by state law, the town may not deny a permit to legalize an existing but unpermitted ADU or JADU that was constructed before January 1, 2020, if denial is based on either of the following grounds:
 - 1.** The ADU or JADU violates applicable building standards, or
 - 2.** The ADU or JADU does not comply with state ADU or JADU law or this ADU chapter.

(b) Exceptions:

1. Notwithstanding subsection (H)(2) above, the town may deny a permit to legalize an existing but unpermitted ADU or JADU that was constructed before January 1, 2020, if the town makes a finding that correcting a violation is necessary to comply with the standards specified in California Health and Safety Code section 17920.3.
2. Subsection (H)(2) above does not apply to a building that is deemed to be substandard in accordance with California Health and Safety Code section 17920.3.

(I) **Nonconforming ADUs and Discretionary Approval.** Any proposed ADU or JADU that would otherwise be allowed under this section but that does not conform to the objective design or development standards set forth in subsections (A) through (G)(2)(c)2 of this section may be allowed by the town with a variance and/or conditional use permit or waiver, as applicable in accordance with the other provisions of this title.