



TOWN OF FAIRFAX

STAFF REPORT

July 12, 2017

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *Gr*

SUBJECT: Discuss an ordinance to bring the Town code pertaining to Accessory Dwelling Units (formerly residential second units and junior second units) into compliance with new State regulations

RECOMMENDATION

Discuss an ordinance to bring Town code pertaining to Accessory Dwelling Units (formerly residential second units and junior second units) into compliance with State law and direct staff to return to Council with a revised ordinance incorporating Council's comments.

DISCUSSION

New California laws impose greater limits on a city or town's ability to restrict residential second units, which are now referred to as "accessory dwelling units" or "ADUs." Cities and towns still have some discretion to restrict ADUs, but their options for responding to the new laws are few.

The New Laws

Assembly Bill 2299¹ and Senate Bill 1069² (collectively, "AB 2299") took effect on January 1, 2017, and both amend Government Code section 65852.2, which addresses ADUs generally and in many ways limits a city or town's ability to restrict ADUs. These changes are compulsory for cities and towns. AB 2299 supplanted the Town's general ADU codes on January 1, 2017 and will be effect until a conforming ordinance is adopted by the Town.

Assembly Bill 2406 took effect as an urgency statute on September 28, 2016, but it merely provides a city or town with the additional option of adopting a "junior" ADU ordinance. Amendments to the Town's junior second unit ordinance have been drafted to comply with AB 2406. Although AB 2406 does not expressly supplant local junior ADU ordinances, the Town should adopt conforming amendments as promptly as possible.

Attachment A describes the State law changes and the remaining discretion of local agencies regarding ADUs.

Proposed ADU Ordinance

The proposed ADU ordinance has been developed in a manner that is as restrictive as AB 2299 and AB 2406 allow. A chart has been prepared (see Attachment B) that summarizes the proposed changes to the Town Code regarding the ADU policies. Proposed amendments to the junior ADU ordinance to comply with AB 2406 have also been included in the ordinance. These proposed Junior ADU changes are summarized in Attachment C.

¹ Bloom, Chapter 735, Stats. 2016.

² Wieckowski, Chapter 720, Stats. 2016.

The revised ADU ordinance makes conforming changes to Chapter 17.048 as well as other sections of Town Code, as appropriate. The Planning Commission recommended approval of the ordinance at its meeting on May 18, 2017 with several revisions.

Other than in the areas where state law is required, current zoning standards in the various districts would apply to ADUs. In a nutshell, the proposed revisions comply with State law by only requiring a building permit for the creation of an ADU in an existing residence or accessory structure. On-site parking is not required for ADU's if it meets certain standards or, if parking is required, it can be located in the setback area without the need for a variance.

Policy Considerations

While the proposed revisions are responsive to Housing Element Policy H-6.1.2: New Second Unit Approach, the greater policy issue pertains to the Town's Regional Housing Needs Allocation (RHNA) assigned to it by the State Department of Housing and Community Development (HCD). RHNA is the number of units that the Town must plan for (not develop) during the current Housing Element plan period (2014-2022). The Town's current Housing Element only projects the creation of 17 second units from 2014-2022. HCD requires the Town to base its projections on our actual experience of approving ADU's (approx. 2/yr) as opposed to less scientific methods. The creation of more ADU's will allow the Town to project more units during the next Housing Element cycle which in turn could reduce the number of units the Town is required to plan for in other areas of Town such as the downtown area.

Fire Code

As clarification, sprinklers are required for all second units except for those units that qualify for one of the following four exceptions in Town of Fairfax Building Code Section 903.2.2 a-d:

- a. Parcels that are not within the Wildland Urban Interface, as established by the Town.
- b. Parcels for which there is less than a thirty percent (30%) grade change between the subject parcel and Sir Francis Drake Boulevard as illustrated in the "Map of Parcels Qualifying for Exceptions to Sprinkler System Requirements for Newly Created Second Units" or as hereafter designated by resolution of the Town of Fairfax.
- c. Junior second units.
- d. One newly created second unit upon a single-family lot within a single-family residential zone that is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety, shall not be required to provide fire sprinklers if they are not required for the primary residence.

Amnesty Program

The draft ordinance eliminates Section 17.048.180 because the former one year amnesty period ended. The former amnesty program reduced Planning and Building Permit fees by 50% and waived fines for unpermitted dwelling units. The new ordinance allows for future programs that would encourage the legalization of illegal ADUs. The capacity of staff to proactively enforce compliance of existing illegal units is limited. If the Town Council is interested in considering another amnesty or "incentive" program for existing illegal ADUs, staff suggests considering the following simple criteria:

- For those existing illegal ADU's that submit a permit application and can meet the standards in the proposed ordinance, the Town could reduce the building permit by 50%. The Building Permit fee is \$1,899 (Addition Minor). This would reduce the fee to \$950.
- For those existing illegal ADU's that may not be able to comply with the proposed standards, the Town could reduce the use permit fee by 50% in order to encourage owners to submit applications. The current Use Permit fee is \$813. This would reduce the fee to \$407. The Town would also not apply the Penalty for Work without Valid Entitlement or Permit which is 1.5 times the cost of the required permit. These units would also be eligible for the above reduction in the Building Permit Fee.
- For new proposed units, the Town could also apply the reductions for use permit and building permit fees to encourage the creation of new ADUs.
- Term of amnesty/incentive programs – Three to five (3-5) years from the effective date of the adopted ordinance to allow ample time to evaluate the program incentives.

Environmental Review

The proposed action is exempt from CEQA. Public Resources Code Section 21080.17 provides that the adoption of an ordinance to implement Government Code Section 65852.2 is statutorily exempt from the California Environmental Quality Act (CEQA). To the extent that junior accessory dwelling units are not covered by the statutory exemption under Public Resources Code Section 21080.17, the ordinance as to junior accessory dwelling units is exempt from CEQA pursuant to the Class One categorical exemption for existing facilities because it provides for the creation of junior accessory dwelling units within an existing bedroom of existing single-family residences involving negligible expansion of existing residential use and any required interior and/or exterior alterations will not increase the floor area of the residential structure.

FISCAL IMPACT

Not applicable at this time

ATTACHMENTS

- A. Chart describing What State Law Allows
- B. Chart describing ADU Changes in New Ordinance
- C. Chart describing Junior ADU Changes in New Ordinance
- D. Proposed Ordinance Amending Chapter 17.48 of the Fairfax Town Code Pertaining to Accessory Dwelling Unit and Junior Accessory Dwelling Units (Formerly Residential Second Units and Junior Second Units) and Amending Chapters 17.076, 17.080, 17.084, 17.088, 17.116 and 17.124 to Make Conforming Changes, including Exhibit A: Proposed Town Code Chapter 17.048

Attachment A

Chart describing State Law Changes

Category	The ordinance must...	But the Town has discretion to...
Conversion of existing residence or existing accessory structure	<p>Approve a building permit (no other permit may be required) for any ADU that:</p> <ol style="list-style-type: none"> 1. is the only ADU on a single-family lot, 2. lies entirely within the existing space of a single-family residence or accessory structure, 3. has its own exterior access, and 4. provides side and rear setbacks that are sufficient for fire safety (typical setbacks for the zone are considered sufficient).³ <p><i>These ADUs are exempt from most other requirements.</i></p>	
Location	Allow ADUs in single-family or multifamily residential zones. ⁴	Restrict ADU areas based on supported findings about the inadequacy of water and sewer services, the adverse impacts on traffic flow and safety, and other similar factors (not yet defined). ⁵
Review	Review all ADUs ministerially (no discretionary review or hearing) and approve or deny within 120 days of application. ⁶	
Lot Development	Allow ADUs to be detached, attached, or located within (as in converted from) the existing living area of the primary residence. ⁷	Restrict ADUs to one per lot.
Rentals and Sales	Allow the ADU to be rented.	Prohibit short-term rentals and sale of the ADU separate from the primary dwelling.
Occupancy	Not limit the number of occupants, short of the limits imposed by the Building Code.	Restrict occupancy to an owner-occupant. ⁸

³ Gov. Code § 65852.2(e).

⁴ Gov. Code § 65852.2(a)(1)(A) & (a)(1)(D)(ii).

⁵ Gov. Code § 65852.2(a)(1)(A).

⁶ Gov. Code § 65852.2(a)(3)

⁷ Gov. Code § 65852.2(a)(1)(D)(iii).

⁸ Gov. Code § 65852.2(a)(6).

Category	The ordinance must...	But the Town has discretion to...
Parking Requirement	Not require any parking for an ADU: <ol style="list-style-type: none"> 1. that is within a half mile of public transit, or 2. that is in an architecturally or historically significant district, or 3. that is in an existing primary residence or an existing accessory structure, or 4. when an on-street parking permit is required but not offered to the occupant of the ADU, or 5. when there is a care share vehicle located within one block of the ADU.⁹ 	Require up to one parking space per ADU or per ADU bedroom, except where parking requirements are prohibited. ¹⁰
Parking Location	Accept parking in setbacks and tandem parking to satisfy ADU parking requirements. ¹¹	Prohibit tandem parking or parking in setbacks based on supported findings about specific site or regional topographic or fire and life safety conditions, or that such parking arrangements are not permitted anywhere else in the jurisdiction. ¹²
Height		Set height restrictions for ADUs. ¹³
Setbacks	Allow a garage-to-ADU conversion, without imposing setbacks on the former garage. ¹⁴	Require setbacks up to 5 feet for an ADU that is built above the existing garage. ¹⁵ Require setback minimums for new detached and attached ADUs. ¹⁶
Lot Coverage		Set lot coverage standards for ADUs. ¹⁷
Landscape		Require and restrict ADU landscaping. ¹⁸
Architecture Review		Regulate ADU architecture. ¹⁹

⁹ Gov. Code § 65852.2(d).

¹⁰ Gov. Code § 65852.2(a)(1)(D)(x)(I).

¹¹ Gov. Code § 65852.2(a)(1)(D)(x).

¹² Gov. Code § 65852.2(a)(1)(D)(x).

¹³ Gov. Code § 65852.2(a)(1)(B)(i).

¹⁴ Gov. Code § 65852.2(a)(1)(D)(vii).

¹⁵ Gov. Code § 65852.2(a)(1)(D)(vii).

¹⁶ Gov. Code § 65852.2(a)(1)(B)(i).

¹⁷ Gov. Code § 65852.2(a)(1)(B)(i).

¹⁸ Gov. Code § 65852.2(a)(1)(B)(i).

¹⁹ Gov. Code § 65852.2(a)(1)(B)(i).

Category	The ordinance must...	But the Town has discretion to...
Impacts to Historic Places		Impose standards to avoid impacts to historic property. ²⁰

²⁰ Gov. Code § 65852.2(a)(1)(B)(i).

Attachment B

Chart describing Proposed Town Code ADU Changes

Town Code Section	Proposed Change
17.048.010 Purpose	Renamed second units to accessory dwelling units (ADU) throughout ordinance. Deleted text regarding discretionary conditions. Revised text regarding illegal ADUs and alteration of legal nonconforming ADUs.
17.048.020 Applicability	Retitled "locations permitted" and allow ADUs where existing and proposed SFDs are allowed. Add UR district for consistency with Junior ADU regulations.
17.048.030 Definitions	Add definitions of ADU, junior ADU, living area and primary residence. Rename "other existing second unit" as "illegal accessory dwelling unit" for clarity.
17.048.040 Requirements for conforming residential second units	Replaced with state law effects of conforming ADUs.
17.048.050 Application review and inspections	Replaced discretionary use permit process with ministerial ADU permit process.
17.048.060 Standards for ADUs	<p>Design review eliminated. Replace with development standards permitted by AB 2299. Note: design review replaced with ministerial architecture review standard in proposed 17.48.060(N).</p> <p>One ADU per lot restriction.</p> <p>Setback requirements other than those imposed by state law shall remain as currently established in the Town Code.</p> <p>Parking Standards other than those imposed by state law shall remain as currently established in the Town Code. Tandem parking shall be allowed unless findings can be made that specific site or regional topographic or fire and life safety conditions preclude safe tandem parking.</p> <p>Physical development standards (e.g. height and lot size) shall remain as established in the zoning district.</p> <p>Short term rentals would not be restricted in ADUs.</p>
17.048.070 Building permits	Eliminated duplicative provisions regarding building permits, which are governed by the local building code (Chapter 15.04). Added deed restriction requirement.

17.048.080 Compliance with the Subdivision Map Act	Added clarification regarding Subdivision Map Act and tax assessments.
17.048.090 Exceptions	<p>Eliminate duplicative variance and use permit procedures. Variances may generally be made under Town Code Ch. 17.028. ADUs may not be subject to a discretionary use permit. Legal nonconforming units may either be permitted as an existing accessory structure under Chapter 17.048 or under Chapter 17.016.</p> <p>Retitled section as "Fees" and added text clarifying that ADUs may be subject to development fees adopted by the Town pursuant to the Mitigation Fee Act, if any.</p>
17.048.100 Use permit; expiration date	Eliminated discretionary use permit procedure.
17.048.110 Use permit; revocation	Eliminated discretionary use permit procedure.
17.048.120 Other existing residential second units; violations	<p>Renumbered to Section 17.048.100. Added statement that illegal ADUs constitute a public nuisance and corrected cross-references to enforcement provisions of the Town Code.</p> <p>Reserve discretion for the Town Council to adopt programs by resolution to encourage legalization of illegal ADUs.</p>
17.048.130 Abatement of illegal units	Renumbered to Section 17.048.110. Inspection fee language revised to allow actual costs to be recouped, rather than a "nominal" fee. Any fee amounts would be approved by Town Council per Section 17.048.090.
17.048.140 Appeals	Section eliminated. Appeals are address generally by Chapter 17.036 of the Town Code.
17.048.150 Fees	Section eliminated and content moved to Section 17.048.090, which now governs fees.
17.048.160 Enforcement and penalties	Section renumbered as 17.048.120 and cross references corrected
17.048.170 Administration	Section eliminated and content moved to Section 17.048.050 on application processing and review.
17.048.180 Residential second unit amnesty program	Section eliminated since deadline for participation expired.

Attachment C

Chart describing Proposed Town Code Junior ADU Changes

Town Code Section	Proposed Change
17.048.220 Applicability	Retitled section to "locations permitted" and replace "junior second unit" with term "junior ADU."
17.048.230 Definitions	Revised definition of Junior ADU to be consistent with AB 2406..
17.048.240 Requirements for junior second units	Retitled section to "Effect of Conforming Junior ADU" and add state law effects of ADUs and junior ADU.
17.048.250 Application processing and review	Revised permitting process to be ministerial and completed within 120 days.
17.048.260 Deed restriction	Minor text revisions and revised deed restrictions for consistency with AB 2406.

Attachment D

Proposed Ordinance of the Town Council of the Town of Fairfax Amending Chapter 17.48 of the Fairfax Town Code Pertaining to Accessory Dwelling Unit and Junior Accessory Dwelling Units (Formerly Residential Second Units and Junior Second Units) and Amending Chapters 17.076, 17.080, 17.084, 17.088, 17.116 and 17.124 to Make Conforming Changes including Exhibit A with proposed Town Code Chapter 17.048

ORDINANCE NO. ____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING CHAPTER 17.48 OF THE FAIRFAX TOWN CODE PERTAINING TO
ACCESSORY DWELLING UNIT AND JUNIOR ACCESSORY DWELLING UNITS
(FORMERLY RESIDENTIAL SECOND UNITS AND JUNIOR SECOND UNITS) AND
AMENDING CHAPTERS 17.076, 17.080, 17.084, 17.088, 17.116 AND 17.124
TO MAKE CONFORMING CHANGES**

The Town Council of the Town of Fairfax does ordain as follows:

SECTION 1. FINDINGS. The Town Council of the Town of Fairfax hereby finds that:

A. The Town of Fairfax, California (the “Town”) is a municipal corporation, duly organized under the constitution and laws of the State of California.

B. The Planning and Zoning Law authorizes cities to provide by ordinance for the creation of second units.

C. To address California’s shortage of housing supply, the California Legislature approved, and the Governor signed into law, Assembly Bill 2299 (Bloom, Chapter 735, Stats. 2016), Senate Bill 1069 (Wieckowski, Chapter 720, Stats. 2016) and Assembly Bill 2406 (Thurmond, Chapter 755, Stats. 2016).

D. Assembly Bill 2299 and Senate Bill 1069 are double jointing bills, which among other things, amend California Government Code Section 65852.2. These statutes impose new limitations on local authority to regulate second units, which are now referred to as “accessory dwelling units” (“ADU”).

E. Assembly Bill 2299 will become effective on January 1, 2017 and will render all non-compliant local ordinances null and void on that date unless and until an agency adopts an ordinance that complies with Government Code Section 65852.2.

F. Assembly Bill 2406 adds California Government Code Section 65852.22, which authorizes a local agency to provide by ordinance for the creation of junior accessory dwelling units, as defined, in single-family residential zones.

G. As an urgency statute, Assembly Bill 2406 became effective upon signing on September 28, 2016.

H. The Town desires to amend the local regulatory scheme for the construction of residential second units to fully comply with Assembly Bill 2299 and for the construction of junior accessory dwelling units to fully comply with Assembly Bill 2406.

SECTION 2. RESIDENTIAL ACCESSORY DWELLING UNIT AND JUNIOR ACCESSORY DWELLING UNIT REGULATIONS. Chapter 17.048 of the Fairfax Town Code is hereby amended and restated as provided in Exhibit “A”, attached hereto and incorporated herein by reference.

SECTION 3. AMENDMENT TO THE RS-7.5 SINGLE FAMILY RESIDENTIAL ZONE. Section 17.076.030 (Conditional Uses and Structures) of the Fairfax Town Code is hereby amended to delete subsection (J) in its entirety.

SECTION 4. AMENDMENT TO THE RS-7.5 SINGLE FAMILY RESIDENTIAL ZONE. Section 17.076.040 (Accessory Uses and Structures) of the Fairfax Town Code is hereby amended to add the following as a new subsection (D):

“(D) One residential accessory dwelling unit or one junior accessory dwelling unit, which must be approved in accordance with the procedures and standards in Chapter 17.048 of this title.”

SECTION 5. AMENDMENT TO THE RS-6 SINGLE-FAMILY RESIDENTIAL ZONE. Section 17.080.030 (Conditional Uses and Structures) of the Fairfax Town Code is hereby amended to delete subsection (J) in its entirety.

SECTION 6. AMENDMENT TO THE RS-6 SINGLE-FAMILY RESIDENTIAL ZONE. Section 17.080.040 (Accessory Uses and Structures) of the Fairfax Town Code is hereby amended to add the following as a new subsection (D):

“(D) One residential accessory dwelling unit or one junior accessory dwelling unit, which must be approved in accordance with the procedures and standards in Chapter 17.048 of this title.”

SECTION 7. AMENDMENT TO THE RD 5.5-7 RESIDENTIAL ZONE. Section 17.084.030 (Conditional Uses and Structures) of the Fairfax Town Code is hereby amended to delete subsection (J) in its entirety.

SECTION 8. AMENDMENT TO THE RD 5.5-7 RESIDENTIAL ZONE. Section 17.084.040 (Accessory Uses and Structures) of the Fairfax Town Code is hereby amended to add the following as a new subsection (D):

“(D) One residential accessory dwelling unit or one junior accessory dwelling unit, which must be approved in accordance with the procedures and standards in Chapter 17.048 of this title.”

SECTION 9. AMENDMENT TO THE RM MULTIPLE-FAMILY RESIDENTIAL ZONE. Section 17.088.030 (Conditional Uses and Structures) of the Fairfax Town Code is hereby amended to delete subsection (H) in its entirety.

SECTION 10. AMENDMENT TO THE RM MULTIPLE-FAMILY RESIDENTIAL ZONE. Section 17.088.040 (Accessory Uses and Structures) of the Fairfax Town Code is hereby amended to add the following as a new subsection (C):

“(C) One residential accessory dwelling unit or one junior accessory dwelling unit, which must be approved in accordance with the procedures and standards in Chapter 17.048 of this title.”

SECTION 11. AMENDMENT TO THE SF-RMP SINGLE-FAMILY RESIDENTIAL MASTER PLANNED DISTRICT. Subsection (J) of Section 17.116.040 (Principal Permitted Uses) of the Fairfax Town Code is hereby amended to read as follows:

“(J) Reserved.”

SECTION 12. AMENDMENT TO THE SF-RMP SINGLE-FAMILY RESIDENTIAL MASTER PLANNED DISTRICT. Section 17.116.050 (Accessory Uses) of the Fairfax Town Code is hereby amended to add the following as a new subsection (D):

“(D) One residential accessory dwelling unit or junior accessory dwelling unit per lot when approved in accordance with procedures and standards in Chapter 17.048 of this title; provided that, for all units established after September 8, 1983, the owner(s) of record maintain their principal residence on the same parcel unless an exception to this residency requirement is granted pursuant to this Chapter 17.116.”

SECTION 13. AMENDMENT TO THE UR UPLAND RESIDENTIAL ZONE. Section 17.124.030 (Conditional Uses and Structures) of the Fairfax Town Code is hereby amended to delete subsection (J) in its entirety.

SECTION 14. AMENDMENT TO THE UR UPLAND RESIDENTIAL ZONE. Section 17.124.040 (Accessory Uses and Structures) of the Fairfax Town Code is hereby amended to add the following as a new subsection (D):

“(D) One residential accessory dwelling unit or one junior accessory dwelling unit, which must be approved in accordance with the procedures and standards in Chapter 17.048 of this title.”

SECTION 15. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The Town Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION 16. CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDING. The Town Council of the Town of Fairfax finds the adoption of this ordinance to be statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 21080.17 of the Public Resources Code because it is an ordinance regarding second units in a single-family or multifamily residential zone to implement the provisions of Government Code Section 65852.2. To the extent that junior accessory dwelling units are not covered by the statutory exemption in Public Resources Code Section 21080.17, the ordinance as to junior accessory dwelling units is exempt from CEQA pursuant to the Class One categorical exemption for existing facilities because it provides for the creation of junior accessory dwelling units within an existing bedroom of existing single-family residences involving negligible expansion of existing residential

use and any required interior and/or exterior alterations will not increase the floor area of the residential structure.

SECTION 17. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 18. PUBLICATION. The Town Clerk shall certify to the adoption of this ordinance. Not later than fifteen (15) days following the passage of this ordinance, the ordinance, or a summary thereof, along with the names of the City Council members voting for and against the ordinance, shall be posted in three places in the Town.

SECTION 19. FILING. The Town Clerk shall submit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption.

PASSED, APPROVED AND ADOPTED by the Town Council of the Town of Fairfax, California, at a regular meeting of the City Council held on the ___ day of _____, 2017, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Mayor

ATTEST:

Town Clerk

Exhibit "A"

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

Section

Article I: Residential Second Units

- 17.048.010 Purpose
- 17.048.020 Locations Permitted
- 17.048.030 Definitions
- 17.048.040 Effect of Conforming Accessory Dwelling Unit
- 17.048.050 Accessory Dwelling Unit Permit Application Processing and Review
- 17.048.060 Standards for Accessory Dwelling Units
- 17.048.070 Deed Restriction
- 17.048.080 Compliance with the Subdivision Map Act
- 17.048.090 Fees
- 17.048.100 Illegal Accessory Dwelling Units
- 17.048.110 Abatement of Illegal Units
- 17.048.120 Enforcement and Penalties

Article II: Junior Accessory Dwelling Units

- 17.048.210 Purpose
- 17.048.220 Locations Permitted
- 17.048.230 Definitions
- 17.048.240 Effect of Conforming Junior Accessory Dwelling Unit
- 17.048.250 Junior Accessory Dwelling Unit Permit Application Processing and Review
- 17.048.260 Standards for Junior Accessory Dwelling Units
- 17.048.270 Deed Restriction

ARTICLE I: RESIDENTIAL ACCESSORY DWELLING UNITS

§ 17.048.010 PURPOSE.

The purpose of this chapter is to implement the housing element of the general plan and state law (California Government Code Sections 65852.150 through 65852.22) in order to increase housing opportunities for all economic segments of the community. The intent is to provide for retention in the housing stock of existing units that comply with health and safety standards and to encourage construction of new accessory dwelling units in full compliance with such standards. Furthermore, it is the purpose of this chapter to allow the more efficient use of the town's existing housing stock of dwellings, to provide rental housing units for persons who are elderly or disabled, to provide economic support for resident families of limited income, and to protect the single-family character of a neighborhood.

The conversion of an illegal accessory dwelling unit into a lawful accessory dwelling unit, or the replacement, alteration or expansion of an existing nonconforming accessory dwelling unit shall be subject to the requirements of this chapter.

§ 17.048.020 LOCATIONS PERMITTED.

Accessory dwelling units may be located on lots with existing or proposed single-family residential development within the RD 5.5-7, RS-6, RS 7.5, SF-RMP, UR and RM zoning districts. Accessory dwelling units are not allowed in conjunction with duplex or multiple residential developments.

§ 17.048.030 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY DWELLING UNIT. An attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following: (A) an efficiency unit, as defined in Section 17958.1 of Health and Safety Code, and (B) a manufactured home, as defined in Section 18007 of the Health and Safety Code. The term "accessory dwelling unit" shall mean and be coterminous with "accessory dwelling unit" as defined by California Government Code Section 65852.2, subsection (i)(4), as may be amended from time to time.

COMPLETE APPLICATION. An application that meets the requirements of Town Code Section 17.048.050.D as determined by the Town Director of Planning and Building Services.

DETACHED. A detached unit does not share a common building wall.

EXISTING LEGAL NON-CONFORMING ACCESSORY DWELLING UNIT. An existing accessory dwelling unit that was constructed in accordance with the town ordinances in effect at the time of construction. Evidence substantiating the date of construction of the specific improvements which constitute the accessory dwelling unit must be provided. An example of the evidence would include County Assessor's or town records which specifically refer to the construction of the subject improvements and/or document approval by the town of the subject use.

ILLEGAL ACCESSORY DWELLING UNIT. An illegal accessory dwelling unit that was not constructed or established in accordance with the town ordinances in effect at the time of construction or establishment or for which evidence of the unit's legal construction has not been provided. The units shall be subject to securing permits in accordance with the provisions of this chapter.

JUNIOR ACCESSORY DWELLING UNIT. See Town Code Section 17.048.230.

KITCHEN. Any portion of a structure with any combination of the following: sink, other than that within a bathroom, food storage and preparation area(s), refrigerator, stove, microwave oven, convection oven, cooking burners or similar appliances which may reasonably be used for the preparation of food.

LIVING AREA. The interior habitable area of a dwelling unit, including basements and attics, but not including a garage or any accessory structure.

NEW ACCESSORY DWELLING UNIT. An accessory dwelling unit constructed subsequent to adoption of, and in conformance with, this chapter.

PRIMARY RESIDENCE. A single residential dwelling on a lot that contains no other dwellings, other than an accessory dwelling unit as defined in this section.

§ 17.048.040 EFFECT OF CONFORMING ACCESSORY DWELLING UNIT.

An accessory dwelling unit that conforms to this chapter shall:

- (A) Be deemed an accessory use or an accessory building and not be considered to exceed the allowable density for the lot upon which it is located;
- (B) Be deemed a residential use that is consistent with the general plan and the zoning designations for the lot;
- (C) Not be considered in the application of any ordinance, policy, or program to limit residential growth;
- (D) Not be considered a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service; and
- (E) If an accessory dwelling unit conforms to the requirements of this chapter, no other local ordinance, policy, or regulation shall be the basis for the denial of a permit.

§ 17.048.050 ACCESSORY DWELLING UNIT PERMIT APPLICATION PROCESSING AND REVIEW.

(A) *Accessory Dwelling Unit Permit* Except as set forth in Section 17.048.050 (E), an accessory dwelling unit permit shall be required for any proposed accessory dwelling unit. The applicant shall also obtain a building permit as required by the building code and record a deed restriction as provided in Section 17.048.070.

(B) *Application processing.* Applications for an accessory dwelling unit permit must be submitted to the Director of Planning and Building Services (or the Town Manager’s designee) on a form and with the information and materials required by subdivision (D) of this section. The Director may collect a fee for processing the application, provided such fee is approved by resolution of the Town Council.

(C) *Review.* The Director will review and approve complete applications for an accessory dwelling unit permit that comply with the requirements of Sections 17.048.060 (Standards For Accessory Dwelling Units) and 17.048.070 (Deed Restriction). The accessory dwelling unit permit application shall be considered ministerially without any discretionary review or a hearing. The Director will approve or disapprove of an application for an accessory dwelling unit permit within 120 days after receiving the complete application.

(D) *Submittal requirements.* Each application for an accessory dwelling unit shall include a completed application form with the information and materials as adopted by the Director of Planning and Building Services, which shall include:

(1) *Plot plan (drawn to scale).* Dimension the perimeter of parcel on which the accessory dwelling unit will be located. Indicate the location and use of all existing and proposed structures on the project site and the location of required parking.

(2) *Floor plans.* A dimensioned plan drawn to scale of the residential accessory dwelling unit identifying the use of each room, including an exterior entrance. For new accessory dwelling units that will not be located within the existing space of the primary residence or accessory structure, the resulting floor area calculation of the accessory dwelling unit shall be included, which shall include the area of any dedicated bathroom for the exclusive use of the accessory dwelling unit.

(3) *Kitchen plan.* A dimensioned plan drawn to scale indicating proposed kitchen improvements, including a kitchen sink, cooking appliance(s) food preparation counter and food storage cabinets.

(4) Information sufficient to demonstrate compliance with other applicable development and design standards.

(5) *Required inspection.* The property owner(s) shall provide written consent to a physical inspection of the property.

(E) *Exception.* An accessory dwelling unit is exempt from the requirement to obtain an accessory dwelling unit permit in subsection (A) of this Section if the unit meets all of the requirements of subsection (E)(1) below.

(1) The accessory dwelling unit:

(a) Is one accessory dwelling unit per single-family lot located within a single-family residential zone (the RD 5.5-7, RS-6, RS 7.5 and UR zoning districts);

(b) Is contained within the existing space of a legally established single-family residence or accessory structure;

(c) Has independent exterior access from the existing residence; and

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

(2) If the requirements of subparagraph (E)(1) are met, then the applicant:

(a) Is required to install fire sprinklers in the accessory dwelling unit if the primary residence is also required to have fire sprinklers;

(b) Is not required to install a new or separate utility connection directly between the accessory dwelling unit and the utility, and shall not be charged a related connection fee or capacity charge.

(c) Shall record a deed restriction as provided in Section 17.048.070 and obtain a building permit as required by the building code as adopted and amended by Chapters 8.04 and 15.04 of the Fairfax Municipal Code.

§ 17.048.060 STANDARDS FOR ACCESSORY DWELLING UNITS.

An accessory dwelling unit shall meet the following standards listed below.

(A) *Owner occupancy.* Either the primary residence or the accessory dwelling unit shall be owner-occupied.

(B) *Rental.* The unit shall not be sold separately from the primary residence and may be rented for terms longer than 30 days.

(C) *Development on Lot.* A single-family dwelling must exist on the lot or will be constructed in conjunction with the accessory dwelling unit and be located within the RD 5.5-7, RS-6, RS 7.5, SF-RMP, UR or RM zoning districts. Accessory dwelling units are not allowed in conjunction with duplex or multiple residential development.

(D) *Maximum number.* A maximum of one accessory dwelling unit or junior accessory dwelling unit is allowed per lot.

(E) *Unit.* The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(F) *Maximum size.*

(1) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

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

(G) *Minimum size.* The accessory dwelling unit shall contain no less than the 150 square feet area minimum required for an efficiency dwelling unit as defined in Section 17958.1 of the Health & Safety Code.

(H) *Facilities.* An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. No passageway shall be required in conjunction with the construction of an accessory dwelling unit. "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(I) *Setback.* No setback shall be required for a legally created existing garage that is converted to an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a legally created garage. All other accessory dwelling units shall comply with the front, rear and side yard setback requirements of the underlying zoning district.

(J) *Building and Fire Code Compliance.* The accessory dwelling unit shall comply with the Fairfax building and fire code requirements that apply to detached dwellings, as appropriate, including any requirements to obtain a building permit. See Town Municipal Code, Chapter 8.04 and Chapter 15.04. An accessory dwelling unit is required to have fire sprinklers, only if the primary residence is also required to have fire sprinklers.

(K) *Sanitary service requirements.* If an existing private septic system is to be utilized, the applicant must provide written confirmation from the Marin County Environmental Health Department that the existing sanitary system is adequate to handle the dwelling units it will serve.

(L) *Parking.*

(1) Except as provided in subparagraph (2):

(a) Accessory dwelling units must meet the following parking standards:

1. For accessory dwelling units with no separate bedrooms, one off-street parking space shall be provided for the accessory dwelling unit.

2. For accessory dwelling units with at least one separate bedroom, one off-street parking space shall be provided per bedroom.

(b) If parking is required:

1. The required parking spaces may be located on setback areas approved by the Director or tandem parking on an existing driveway, unless specific findings are made under subparagraph (2).

2. Parking arrangements in subparagraph (1) may be prohibited if the Director makes specific findings that such parking arrangements are not feasible based upon specific site or regional topographical or fire or life safety conditions, or that such arrangements are not permitted anywhere in the jurisdiction.

3. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, the replacement parking spaces may be located in any configuration on the

same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, tandem spaces, or by the use of mechanical automobile parking lifts.

(2) Parking standards shall not be imposed on an accessory dwelling unit if any of the following circumstances exist on the property:

(a) The accessory dwelling unit is located within one-half mile of public transit. For purposes of this section, “public transit” shall mean a public transit stop or station.

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

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

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

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

(M) *Physical Development Standards.* Except as otherwise provided in this chapter, the accessory dwelling unit shall meet all physical property development standards of the zoning district in which it is located, including but not limited to, height, lot size, floor area ratio and lot coverage.

(N) *Architectural Design Standards.* Any modifications to the exterior of the building, or construction of new structures, shall be strictly in keeping with the architectural character of the principal residence. The design of the accessory dwelling unit shall relate to the design of the primary residence by use of the similar exterior wall materials, colors, window types, door and window trims, roofing materials and roof pitch.

(O) *Utilities.* Utility service for sewer, water, electricity and gas (if necessary) shall be provided to the accessory dwelling unit.

§ 17.048.070 DEED RESTRICTION.

(A) Prior to issuance of a building permit for an accessory dwelling unit, a deed restriction shall be recorded against the title of the property in the Marin County Recorder’s office and a copy filed with the Town Planning and Building Services. Said deed restriction shall run with the land, and shall bind all future owners, heirs, successors, or assigns. The form of the deed restriction shall be provided by the Town and shall provide that:

(1) The accessory dwelling unit shall not be sold separately from the primary residence.

(2) The unit is restricted to the approved size and attributes of this article.

(3) The deed restrictions run with the land and may be enforced against future purchasers.

(4) The deed restrictions may be removed if the owner eliminates the accessory dwelling unit.

(5) The deed restrictions shall be enforced by the Director of Planning and Building Services or his or her designee for the benefit of the Town of Fairfax. Failure of the property owner to comply with the deed restrictions may result in legal action against the property owner and the Town shall be authorized obtain any remedy available to it at law or equity, including but not limited to obtaining an injunction enjoining use of the accessory dwelling unit in violation of the recorded restrictions or abatement of the illegal unit.

§ 17.048.080 COMPLIANCE WITH THE SUBDIVISION MAP ACT.

Notwithstanding other provisions of the law, accessory dwelling units which receive a permit under this chapter shall be deemed apartments for the purpose of meeting the requirements of the Subdivision Map Act. Approval of an accessory dwelling unit or a junior accessory dwelling unit shall not be deemed to be a division of land for purposes of Government Code Section 66410 et seq. or Title 16 of the Town Code, nor shall any ministerial approval (including an accessory dwelling unit permit or building permit) entitle the applicant to such a division of land; or to have each of the two (2) dwelling units on the parcel separately assessed for property tax purposes.

§ 17.048.090 FEES.

Fees for accessory dwelling unit permit processing, review and inspections, and for abatement of illegal accessory dwelling units shall be set by resolution of the Town Council. Except as otherwise provided in this chapter, the construction of an accessory dwelling unit shall be subject to any applicable fees adopted by the Town pursuant to the requirements of California Government Code, Title 7, Division 1, Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012), if any.

§ 17.048.100 ILLEGAL ACCESSORY DWELLING UNITS.

Illegal accessory dwelling units are deemed a public nuisance subject to Section 17.004.160, except during and until such time as an application for an accessory dwelling unit permit and/or building permit to legalize such unit is submitted and approved. From time to time, the Town Council may adopt programs by resolution to encourage legalization of illegal accessory dwelling units.

§ 17.048.110 ABATEMENT OF ILLEGAL UNITS.

Abatement of violations shall include removal of the violating improvements to conform with the last approved building permit issued by the town. Illegally installed utilities serving the illegal accessory dwelling unit kitchens and bathrooms shall be removed back to their point of origin within the wall or below the finished floor, and the remaining access ways through the walls, and ceilings or flooring, sealed to the satisfaction of the Chief Building Official. An inspection fee shall be charged to the property owner commensurate with the time required of the town staff to verify conformance.

§ 17.048.120 ENFORCEMENT AND PENALTIES.

Failure to comply with any provisions of this chapter constitutes a violation of this chapter, and any conditions permitted to exist in violation of this chapter are subject to the provision of §§ 17.004.160 and 17.004.170 of this title, and any other remedy available at law or equity.

ARTICLE II: JUNIOR ACCESSORY DWELLING UNITS

§ 17.048.210 PURPOSE.

The purpose of this article is to implement direction in the Housing Element of the General Plan to offer additional housing opportunities within the Town of Fairfax.

§ 17.048.220 LOCATIONS PERMITTED.

Junior accessory dwelling units shall be permitted within the RD 5.5-7, RS-6, RS 7.5, SF-RMP, and UR zoning districts. Junior accessory dwelling units are not allowed in conjunction with duplex or multiple residential developments.

§ 17.048.230 DEFINITIONS.

For the purpose of this article, the following definition shall apply unless the context clearly indicates or requires a different meaning.

JUNIOR ACCESSORY DWELLING UNIT. A type of accessory dwelling unit that is no more than 500 square feet in size and contained entirely within an existing primary single-family residence. A junior accessory dwelling unit provides independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, and cooking. Sanitation facilities may be independently provided for the junior accessory dwelling unit or may be shared with occupants of the primary residence. The term “junior accessory dwelling unit” shall mean and be coterminous with “junior accessory dwelling unit” as defined by California Government Code Section 65852.22, subsection (g)(1), as may be amended from time to time.

§ 17.048.240 EFFECT OF CONFORMING JUNIOR ACCESSORY DWELLING UNIT.

In addition to the effects stated in Section 17.48.040, a junior accessory dwelling unit:

(A) Shall not be considered a separate or new dwelling unit for the purposes of any fire or life protection ordinance or regulation. This section shall not be construed to prohibit fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(B) Shall not be considered a separate or new dwelling unit for the purposes of providing service for water, sewer, or power, including a connection fee.

§ 17.048.250 JUNIOR ACCESSORY DWELLING UNIT PERMIT APPLICATION PROCESSING AND REVIEW.

(A) *Junior Accessory Dwelling Unit Permit* A junior accessory dwelling unit permit shall be required for any proposed junior accessory dwelling unit, to legalize an illegal junior accessory dwelling unit, or to allow for the replacement, alteration or expansion of an existing legal nonconforming junior accessory dwelling unit. The applicant shall also obtain a building permit as required by the building code and record a deed restriction as provided in Section 17.48.270.

(B) *Application processing.* Applications for a junior accessory dwelling unit permit must be submitted to the Director of Planning and Building Services (or the Town Manager’s designee) on a form and with the information and materials required by subdivision (D) of this section. The Director may collect a fee for processing the application, provided such fee is approved by resolution of the Town Council.

(C) *Review.* The Director will review and approve complete applications for a junior accessory dwelling unit permit that comply with the requirements of Sections 17.048.260 (Standards For Junior Accessory Dwelling Units) and 17.48.270 (Deed Restriction). The junior accessory dwelling unit permit application shall be considered ministerially without any discretionary review or a hearing. The junior accessory dwelling unit may be subject to inspection to determine whether the unit is in compliance with applicable building standards. The Director will approve or disapprove of an application for an accessory dwelling unit permit within 120 days after receiving the complete application.

(D) *Submittal requirements.* Each application for an accessory dwelling unit shall include a completed application form with the information and materials as adopted by the Director of Planning and Building Services, which shall include:

(1) *Floor plans.* A dimensioned plan drawn to scale of the junior accessory dwelling unit identifying the use of each room, including an exterior entrance. The floor area calculation of the proposed junior accessory dwelling unit shall be included, which shall include the area of any dedicated bathroom, if any, for the exclusive use of the unit.

(2) *Kitchen plan.* A dimensioned plan drawn to scale indicating proposed kitchen improvements, including a kitchen sink, cooking appliance(s) food preparation counter and food storage cabinets.

(3) *Required inspection.* The property owner(s) shall provide written consent to a physical inspection of the property.

(E) *Exception.* A junior accessory dwelling unit is exempt from the requirement to obtain a junior accessory dwelling unit permit in subsection (A) of this Section if the unit meets all of the requirements of Section 17.048.050(E)(1). If the requirements of Section 17.048.050(E)(1) are met, then the applicant shall record a deed restriction as provided in Section 17.048.270 and obtain a building permit as required by the building code as adopted and amended by Chapters 8.04 and 15.04 of the Fairfax Municipal Code.

§ 17.048.260 STANDARDS FOR JUNIOR ACCESSORY DWELLING UNITS.

A junior accessory dwelling unit shall meet the standards listed below.

(A) *Number of units allowed.* Only one junior accessory dwelling unit may be allowed per lot developed with an existing single-family residence and located within the RD 5.5-7, RS-6, RS 7.5, SF-RMP, or UR zoning districts.

(B) *Owner occupancy.* Either the primary residence or the junior accessory dwelling unit shall be owner-occupied. Owner occupancy shall not be required if the owner is another governmental agency, land trust or housing organization.

(C) *Deed Restriction.* The property owner shall sign and record a deed restriction as provided in Section 17.048.270.

(D) *Size limits.* Junior accessory dwelling units shall be no less than 150 square feet and no more than 500 square feet in size.

(E) *Unit type.* Junior accessory dwelling units shall be limited to those contained within the existing walls of an existing primary single-family residential structure, and must include conversion of an existing bedroom.

(F) *Parking.* No additional parking is required for a junior accessory dwelling unit.

(G) *Construction and Fire Code compliance.* The junior accessory dwelling unit shall meet the requirements of the building code, as adopted and amended by Fairfax Town Code, Chapter 8.04 and Chapter 15.04, provided the unit shall not be considered a separate or new dwelling unit for the purposes of any fire or life protection regulation.

(H) *Separate entry.* Each junior accessory dwelling unit shall have an exterior entry to serve the unit.

(I) *Interior access.* Each junior accessory dwelling unit shall have internal access to the single-family home of which it is a part. A second interior doorway may be included for sound attenuation.

(J) *Kitchen facilities.* Each junior accessory dwelling unit shall include an efficiency kitchen, which includes the following components:

(1) A sink with a maximum waste line diameter of one-and-a-half (1.5) inches;

(2) A cooking facility or appliance which does not require electrical service greater than one-hundred-and-twenty (120) volts or natural or propane gas; and

(3) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the accessory dwelling unit (typically six (6) feet in length).

(K) *Sanitation facilities.* A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing primary residence.

(L) *Indivisible interest.* A junior accessory dwelling unit remains an indivisible part of the single-family residence within which it is located and, as such, may not be sold independently of said single-family residence.

§ 17.048.270 DEED RESTRICTION.

(A) Prior to issuance of a building permit for a junior accessory dwelling unit, a deed restriction shall be recorded against the title of the property in the Marin County Recorder's office and a copy filed with the Town Department of Planning and Building Services. Said deed restriction shall run with the land, and shall be binding upon any future owners, heirs, successors or assigns. The form of the deed restriction shall be provided by the Town and shall provide that:

- (1) The junior accessory dwelling unit shall not be sold separately from the primary residence.
- (2) The unit is restricted to the approved size and attributes of this article.
- (3) The deed restrictions run with the land and may be enforced against future purchasers.
- (4) The deed restrictions may be removed if the owner eliminates the junior accessory dwelling unit.

(5) The deed restrictions shall be enforced by the Director or his or her designee for the benefit of the Town of Fairfax. Failure of the property owner to comply with the deed restrictions may result in legal action against the property owner and the Town shall be authorized obtain any remedy available to it at law or equity, including but not limited to obtaining an injunction enjoining use of the accessory dwelling unit in violation of the recorded restrictions or abatement of the illegal unit.