



# TOWN OF FAIRFAX

## STAFF REPORT

### November 1, 2017

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager

**SUBJECT:** Second reading by title only and adoption of an Ordinance Amending Chapter 17.48 of the Fairfax Town Code Pertaining to Accessory Dwelling Units 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 *to bring Town code pertaining to Accessory Dwelling Units into compliance with State law*

---

#### **RECOMMENDATION**

Waive second reading and read by title only and adopt the Ordinance Amending Chapter 17.48 of the Fairfax Town Code Pertaining to Accessory Dwelling Units 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

#### **DISCUSSION**

At their October 4th meeting, the Council held the first reading after agreeing on several changes, including the addition of duplexes, increasing the time period of the incentive program from 5 to 10 years, and clerical edits to keep the language consistent. Tonight is the second reading and adoption. Once adopted, it takes effect after 30 days.

The Governor recently signed two more bills (AB 494 and SB 229) that amend the State's ADU law, which will become effective January 1, 2018. Early next year, staff will take conforming amendments to address those changes to the Planning Commission for recommendation to the Council.

#### **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**

None

#### **ATTACHMENTS**

- A. Ordinance (with Exhibit A)
- B. Redline of Exhibit A

AGENDA ITEM # 14

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 UNITS 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 Town 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 Town Council held on the \_\_\_ day of \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

John Reed, Mayor

ATTEST: \_\_\_\_\_  
Michele Gardner, Town Clerk

**Exhibit "A"**

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

---

Section

*Article I: Residential Accessory Dwelling 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 or duplex 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 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 or duplex 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, or a duplex.

#### **§ 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, to legalize an illegal accessory dwelling unit, or to allow for the replacement, alteration or expansion of an existing legal nonconforming 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 not required to install fire sprinklers in the accessory dwelling unit if the primary residence is not 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 shall only be rented for terms of 30 days or more.

(C) *Development on Lot.* A single-family dwelling or duplex 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 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 not required to have fire sprinklers, if the primary residence is not 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. Application processing fees and building permit fees for accessory dwelling units will be reduced by fifty percent (50%) as part of an "Incentive Program" to encourage residents to legalize or create accessory dwelling units. In addition, the Town will not apply the "Penalty for Work without Valid Entitlement or Permit" for accessory dwelling unit applications submitted during the Incentive Program period. The Incentive Program will expire 120 months after the effective date of this section.

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. Application processing fees and building permit fees for junior accessory dwelling units will be reduced by fifty percent (50%) as part of an “Incentive Program” to encourage residents to legalize or create junior accessory dwelling units. In addition, the Town will not apply the “Penalty for Work without Valid Entitlement or Permit” for junior accessory dwelling unit applications submitted during the Incentive Program period. The Incentive Program will expire 60 months after the effective date of this section.

(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 a junior accessory dwelling unit permit within 120 days after receiving the complete application.

(D) *Submittal requirements.* Each application for a junior 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.

Exhibit "A"

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

---

Section

*Article I: Residential ~~Second Units~~ Accessory Dwelling 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 or duplex 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 or duplex 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, or a duplex.

#### **§ 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, to legalize an illegal accessory dwelling unit, or to allow for the replacement, alteration or expansion of an existing legal nonconforming 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 not required to install fire sprinklers in the accessory dwelling unit if the primary residence is ~~also not~~ not 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~~ shall only be rented for terms ~~longer than~~ of 30 days or more.

(C) *Development on Lot.* A single-family dwelling or duplex 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 not required to have fire sprinklers, ~~only~~ if the primary residence is ~~also~~ not 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. Application processing fees and building permit fees for accessory dwelling units will be reduced by fifty percent (50%) as part of an "Incentive Program" to encourage residents to legalize or create accessory dwelling units. In addition, the Town will not apply the "Penalty for Work without Valid Entitlement or Permit" for accessory dwelling unit applications submitted during the Incentive Program period. The Incentive Program will expire ~~60~~120 months after the effective date of this section.

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. Application processing fees and building permit fees for junior accessory dwelling units will be reduced by fifty percent (50%) as part of an “Incentive Program” to encourage residents to legalize or create junior accessory dwelling units. In addition, the Town will not apply the “Penalty for Work without Valid Entitlement or Permit” for junior accessory dwelling unit applications submitted during the Incentive Program period. The Incentive Program will expire 60 months after the effective date of this section.

(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 junior accessory dwelling unit permit within 120 days after receiving the complete application.

(D) *Submittal requirements.* Each application for an junior 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.

## PLANNING AND BUILDING PERMIT FEES

### ADU FEES (current)

Application fee	\$282	
Use Permit	\$813	
Building Permit (minor addition)	\$1,899	(part of existing home)
Building Permit (major addition)	\$2,800	("stand alone" structure)

### JUNIOR ADU (current)

Application fee	\$124
Building permit	\$250

### POSSIBLE REDUCTIONS FOR ENCOURAGING APPLICATIONS FOR ILLEGAL UNITS (new?)

#### ADUs

Application fee	\$141	(reduce 50%)
Use Permit	\$406.50	(reduce 50%)
Building Permit (minor addition)	\$949.50	(reduce 50%)
Building Permit (major addition)	\$1,400	(reduce 50%)

#### Junior ADU

Application fee	\$62	(reduce 50%)
Building permit	\$125	(reduce 50%)

Term 3-5 years