

**TOWN OF FAIRFAX  
STAFF REPORT**

**To:** Planning Commission

**From:** Garrett Toy, Town Manager  
Linda Neal, Principal Planner

**Date:** May 18, 2017

**Subject:** Consideration of 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 (Formerly Residential Second Units and Junior Second Units) and Amending Chapters 17.052, 17.076, 17.080, 17.084, 17.088, 17.116 and 17.124 to Make Conforming Changes.

**BACKGROUND**

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.

This staff report has been prepared with input from Town Legal Counsel. The report provides a revised Chapter 17.48 that conforms to the new State laws for the Planning Commission's review and recommendation to the Town Council.

*The New Laws*

Assembly Bill 2299<sup>1</sup> and Senate Bill 1069<sup>2</sup> (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.

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<sup>1</sup> Bloom, Chapter 735, Stats. 2016.

<sup>2</sup> Wieckowski, Chapter 720, Stats. 2016.

AB 2299

Under AB 2299, a town faces several limitations in restricting ADUs generally, but it still has discretion to retain certain restrictions. These requirements and discretionary areas are summarized in the chart below:

Chart 1

Category	The ordinance must...	But the Town has discretion to...
Conversion of existing residence or existing accessory structure	Approve a building permit (no other permit may be required) for any ADU that: <ol style="list-style-type: none"> <li>1. is the only ADU on a single-family lot,</li> <li>2. lies entirely within the existing space of a single-family residence or accessory structure,</li> <li>3. has its own exterior access, and</li> <li>4. provides side and rear setbacks that are sufficient for fire safety (typical setbacks for the zone are considered sufficient).<sup>3</sup></li> </ol> <p><i>These ADUs are exempt from most other requirements.</i></p>	
Location	Allow ADUs in single-family or multifamily residential zones. <sup>4</sup>	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). <sup>5</sup>
Review	Review all ADUs ministerially (no discretionary review or hearing) and approve or deny within 120 days of application. <sup>6</sup>	
Lot Development	Allow ADUs to be detached, attached, or located within (as in converted from) the existing living area of the primary residence. <sup>7</sup>	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.

<sup>3</sup> Gov. Code § 65852.2(e).

<sup>4</sup> Gov. Code § 65852.2(a)(1)(A) & (a)(1)(D)(ii).

<sup>5</sup> Gov. Code § 65852.2(a)(1)(A).

<sup>6</sup> Gov. Code § 65852.2(a)(3)

<sup>7</sup> Gov. Code § 65852.2(a)(1)(D)(iii).

Category	The ordinance must...	But the Town has discretion to...
Occupancy	Not limit the number of occupants, short of the limits imposed by the Building Code.	Restrict occupancy to an owner-occupant. <sup>8</sup>
Parking Requirement	Not require any parking for an ADU: <ol style="list-style-type: none"> <li>1. that is within a half mile of public transit, or</li> <li>2. that is in an architecturally or historically significant district, or</li> <li>3. that is in an existing primary residence or an existing accessory structure, or</li> <li>4. when an on-street parking permit is required but not offered to the occupant of the ADU, or</li> <li>5. when there is a care share vehicle located within one block of the ADU.<sup>9</sup></li> </ol>	Require up to one parking space per ADU or per ADU bedroom, except where parking requirements are prohibited. <sup>10</sup>
Parking Location	Accept parking in setbacks and tandem parking to satisfy ADU parking requirements. <sup>11</sup>	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. <sup>12</sup>
Height		Set height restrictions for ADUs. <sup>13</sup>
Setbacks	Allow a garage-to-ADU conversion, without imposing setbacks on the former garage. <sup>14</sup>	Require setbacks up to 5 feet for an ADU that is built above the existing garage. <sup>15</sup> Require setback minimums for new detached and attached ADUs. <sup>16</sup>
Lot Coverage		Set lot coverage standards for ADUs. <sup>17</sup>

<sup>8</sup> Gov. Code § 65852.2(a)(6).

<sup>9</sup> Gov. Code § 65852.2(d).

<sup>10</sup> Gov. Code § 65852.2(a)(1)(D)(x)(I).

<sup>11</sup> Gov. Code § 65852.2(a)(1)(D)(x).

<sup>12</sup> Gov. Code § 65852.2(a)(1)(D)(x).

<sup>13</sup> Gov. Code § 65852.2(a)(1)(B)(i).

<sup>14</sup> Gov. Code § 65852.2(a)(1)(D)(vii).

<sup>15</sup> Gov. Code § 65852.2(a)(1)(D)(vii).

<sup>16</sup> Gov. Code § 65852.2(a)(1)(B)(i).

<sup>17</sup> Gov. Code § 65852.2(a)(1)(B)(i).

Category	The ordinance must...	But the Town has discretion to...
Landscape		Require and restrict ADU landscaping. <sup>18</sup>
Architecture Review		Regulate ADU architecture. <sup>19</sup>
Impacts to Historic Places		Impose standards to avoid impacts to historic property. <sup>20</sup>

*AB 2406: The junior ADU option.*

AB 2406 adds Government Code section 65852.22, which authorizes, but does not require, a city or town to enact an ordinance to regulate junior ADUs separately from other ADUs. The Town of Fairfax had previously enacted a Junior Second Unit Ordinance. Chart 3 later in this report summarizes proposed changes to the existing town ordinance to ensure compliance with the new state law.

By definition, a junior ADU is “a unit that is not more than 500 square feet in size and contained entirely within an existing single-family structure.”<sup>21</sup> Under a junior ADU ordinance:

1. Only one junior ADU is allowed on a residential lot, the lot must be zoned single-family, and there must already be a single-family residence on the lot.
2. The junior ADU must be constructed within in the existing dwelling, it must include at least one existing bedroom and an efficiency kitchen, and it must have both a separate exterior entrance and an interior entry to the main residence.
3. The owner must live in either the main residence or the junior ADU.
4. The owner must record a deed restriction prohibiting the separate sale of the junior ADU and restricting the size and other attributes of the junior ADU to just what complies with AB 2406.
5. No additional parking may be required for the junior ADU.
6. The junior ADU may not be treated as a separate or new dwelling for purposes of fire and safety or for utility service or connection fees.<sup>22</sup>

<sup>18</sup> Gov. Code § 65852.2(a)(1)(B)(i).

<sup>19</sup> Gov. Code § 65852.2(a)(1)(B)(i).

<sup>20</sup> Gov. Code § 65852.2(a)(1)(B)(i).

<sup>21</sup> Gov. Code § 65852.22(g)(1).

<sup>22</sup> Gov. Code § 65852.22(a)–(b).

7. The Town must ministerially approve or deny a junior ADU permit within 120 days of submittal of an application.<sup>23</sup>

Most, if not all, junior ADUs would qualify for the building-permit-only option available under Government Code section 65852.2(e) (noted at the beginning of the table above), provided the unit is located in a single-family zone.

## DISCUSSION

### *Compliance with AB 2299 and AB 2406*

The Town has four options for addressing AB 2299 and AB 2406.

1. Amend the current ADU ordinance to be as restrictive as AB 2299 and AB 2406 allow.
2. Amend the current ADU ordinance to be more lenient than AB 2299 and AB 2406 require.
3. Amend the current ADU ordinance to be a hybrid of what AB 2299 and AB 2406 require, with some sections more lenient and others as restrictive.
4. Do nothing. Since the effective date of the new state legislation (January 1, 2017) existing local ordinances have been replaced by AB 2299. The Town is required to approve or deny ADUs based solely on the provisions of AB 2299. The “do nothing” option would result in confusion for staff and the public, since AB 2299 essentially requires a ministerial use permit for most ADUs. The proposed changes to the Town Code will provide clarity to property owners and the public.

### Consideration of Option 1 – Preserve the Town’s Discretion as allowed by AB 2209 and AB 2406

The revised ADU ordinance has been developed consistent with Option 1. The proposed ordinance maintains the Town’s discretion to be as restrictive as AB 2299 allows. Staff has prepared a revised ADU ordinance (see Attachment A) that includes a new Chapter 17.048 (Exhibit A to the new ordinance) and makes conforming changes to other parts of the Town Code.

This is accomplished by simply requiring that other than in the areas where state law is required, current zoning standards in the various districts would apply to ADUs.

The following chart (Chart 2, next page) provides the proposed changes to the ADU ordinance to ensure consistency. Sections that preserve Town discretion and address previous policy recommendations of the Planning Commission (e.g. regarding short term rentals) are highlighted in **bold**.

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<sup>23</sup> Gov. Code § 65852.22(c).

Chart 2

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><b>One ADU per lot restriction.</b></p> <p><b>Setback requirements other than those imposed by state law shall remain as currently established in the Town Code.</b></p> <p><b>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.</b></p> <p><b>Physical development standards (e.g. height and lot size) shall remain as established in the zoning district.</b></p> <p><b>Short term rentals would not be restricted in ADUs.</b></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.

<p>17.048.080 Compliance with the Subdivision Map Act</p>	<p>Added clarification regarding Subdivision Map Act and tax assessments.</p>
<p>17.048.090 Exceptions</p>	<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>
<p>17.048.100 Use permit; expiration date</p>	<p>Eliminated discretionary use permit procedure.</p>
<p>17.048.110 Use permit; revocation</p>	<p>Eliminated discretionary use permit procedure.</p>
<p>17.048.120 Other existing residential second units; violations</p>	<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><b>Reserve discretion for the Town Council to adopt programs by resolution to encourage legalization of illegal ADUs.</b></p>
<p>17.048.130 Abatement of illegal units</p>	<p>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.</p>
<p>17.048.140 Appeals</p>	<p>Section eliminated. Appeals are address generally by Chapter 17.036 of the Town Code.</p>
<p>17.048.150 Fees</p>	<p>Section eliminated and content moved to Section 17.048.090, which now governs fees.</p>
<p>17.048.160 Enforcement and penalties</p>	<p>Section renumbered as 17.048.120 and cross references corrected</p>
<p>17.048.170 Administration</p>	<p>Section eliminated and content moved to Section 17.048.050 on application processing and review.</p>
<p>17.048.180 Residential second unit amnesty program</p>	<p>Section eliminated since deadline for participation expired.</p>



*Unit Size*

If an ADU is *newly built* (whether as a new standalone structure or as a new addition to an existing structure), then AB 2299 provides that the increased floor area of an attached ADU shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet, and the total floorspace of a detached accessory dwelling unit shall not exceed 1,200 square feet. These size limits are contained in the mandatory content of the ordinance a city or town must adopt. A city or town could also adopt a maximum unit size that is greater than 1,200 square feet. The California Department of Housing and Community Development has interpreted AB 2299 to allow a local government to choose a maximum unit size less than 1,200 square feet as long as the size limit is not burdensome on the creation of ADUs. The example HCD gives is anywhere from 800 to 1,200 square feet. There is not adequate certainty that this is a correct interpretation of state law and HCD has no authority to implement AB 2299; accordingly, the draft ordinance follows the unit size maximums provided in AB 2299. As a practical matter, given the setbacks, lot coverage, floor area ratio and other development standards, in conjunction with the existing lot sizes in Fairfax, it seems unlikely that the Town will see many new 1,200 square foot ADUs constructed following adoption of this ordinance.

*Residential Second Unit Amnesty Program*

The draft ordinance would eliminate Section 17.048.180 because the amnesty period ended sometime in 2010. Staff will be seeking policy direction from the Town Council regarding a new amnesty program or other program to encourage the legalization of illegal ADUs when the ordinance is presented to Council.

*Compliance with AB 2406*

Proposed amendments to the junior ADU ordinance to comply with AB 2406 have also been prepared for the Planning Commission’s review. They are summarized in the chart below:

Chart 3

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.

*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.

**RECOMMENDATION**

Staff recommends that the Planning Commission adopt a resolution recommending that the Town Council adopt Ordinance No. 17-XX.

**FISCAL IMPACTS**

None

**ATTACHMENTS**

Attachment A – Resolution

Attachment B – 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.

Attachment C – Current Chapter 17.048



RESOLUTION NO. 17-11

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX RECOMMENDING THE TOWN COUNCIL ADOPT ORDINANCE NO. \_\_\_\_ AMENDING FAIRFAX TOWN CODE CHAPTERS 17.048 ('RESIDENTIAL SECOND UNITS'), 17.052 ('OFF-STREET PARKING AND LOADING REQUIREMENTS'), 17.076 ('RS-7.5 SINGLE FAMILY RESIDENTIAL ZONE, MEDIUM DENSITY'), 17.080 ('RS-6 SINGLE FAMILY RESIDENTIAL ZONE, HIGH DENSITY'), 17.084 ('RD 5.5-7 RESIDENTIAL ZONE, HIGH DENSITY'), 17.116 ('SF-RMP SINGLE-FAMILY RESIDENTIAL MASTER PLANNED DISTRICT'), AND 17.124 ('UR UPLAND RESIDENTIAL ZONE'), OF TITLE 17 ('ZONING') OF THE FAIRFAX TOWN CODE TO ADOPT ACCESSORY DWELLING UNIT REGULATIONS IN COMPLIANCE WITH STATE ASSEMBLY BILL 2299, SENATE BILL 1069 AND ASSEMBLY BILL 2406

WHEREAS, the Housing Element update adopted by the Town Council on May 27, 2015, recognizes that the local need for housing can be met through a combination of various dwelling types, including second units and junior second units; and

WHEREAS, Housing Element Goal H-6 is to create additional opportunities for the development of second units; and

WHEREAS, under Housing Element Policy H-6.1.2: New Second Unit Approach, the Town has committed to permit construction of well-designed second units in both new and existing residential neighborhoods, consistent with parking and street capacity standards; and

WHEREAS, Housing Element Program H-6.1.2.1 requires the Town to modify and update the second unit development requirements to, among other things, establish second units as a permitted use by right when the single-family lot, primary structure, and second unit meet all the established zoning and building development and density standards, when adequate traffic safety and parking are available, and to create standards for applications to be reviewed at the ministerial level, consistent with state law; and

WHEREAS, Housing Element Program H-6.1.2.6 requires that, within one year of the adoption of the Housing Element, the Town must "review and adopt standards and fees that serve to incentivize the creation of junior units" and provides zoning standards to consider in conjunction with such regulations; and

WHEREAS, 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), which impose new limitations on local authority to regulate second units and junior second units, which are now referred to as "accessory dwelling units" and "junior accessory dwelling units" respectively; and

WHEREAS, the Planning Commission is tasked with considering amendments to the Town's zoning ordinance to bring the local accessory dwelling unit regulations into conformance with the terms those bills; and

WHEREAS, the adoption of the ordinance is exempt from the California Environmental Quality Act 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. Further, the ordinance as to junior accessory dwelling units is exempt from CEQA pursuant to the Class One categorical exemption for existing facilities (14 CCR § 15301) 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; and

**WHEREAS**, the Planning Commission has conducted a duly-noticed public hearing on March 30, 2017 to consider the draft ordinance, hear the presentation of a staff report, and receive public comment on the matter.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Commission of the Town of Fairfax as follows:

**SECTION 1.** The recitals set forth above are adopted as findings of the Planning Commission.

**SECTION 2.** The Planning Commission has reviewed the draft ordinance attached hereto as **Attachment 1** and finds that it is consistent with the Town General Plan, specifically with Housing Element Goal H-6, Housing Element Policy H-6.1.2, and Housing Element Programs H-6.1.2.1 and H-6.1.2.6 to create additional opportunities for the development of accessory dwelling units (second units) in both new and existing residential neighborhoods consistent with state law.

**SECTION 3.** The Planning Commission hereby recommends that the Town Council adopt **Attachment 1** hereto in order to amend the Fairfax Town Code provisions pertaining to the standards and procedures governing the approval of accessory dwelling units and junior accessory dwelling units.

The forgoing Resolution was duly passed and adopted at a regular meeting of the Planning Commission of the Town of Fairfax held in said Town on the 26th day of April 2017 by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Norma Fragoso, Chair

Attest:

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Linda Neal, Principal Planner

**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 17.052, 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 became effective on January 1, 2017 and rendered 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 OFF-STREET PARKING AND LOADING REQUIREMENTS.**

Section 17.052.030 (Required Parking Spaces) of the Fairfax Town Code is hereby amended to add the following as a new subsection (A)(1)(e):

“(e) Accessory dwelling units: as provided in Chapter 17.048.”

All other provisions of Section 17.052.030 shall remain in full force and effect.

**SECTION 4. AMENDMENT TO THE OFF-STREET PARKING AND LOADING REQUIREMENTS.**

Subsection (E) of Section 17.052.040 (Standards for Parking Spaces) of the Fairfax Town Code is hereby amended and restated as follows:

“(E) No tandem parking stall shall be allowed, except for a guest space in tandem with required parking for the principal residence or as provided in Chapter 17.048.”

**SECTION 4. 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 5. 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 6. 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 7. 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 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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:**

**TOWN OF FAIRFAX**

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Mayor

**ATTEST:**

---

Town Clerk

**APPROVED AS TO FORM:**

**BEST BEST & KRIEGER LLP**

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Town Attorney

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

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Section

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## 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.

**DETACHED.** A detached unit does not sharing 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* 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) *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 is not intended for sale separate from the primary residence and may be rented.

(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 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, 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.

