



TOWN OF FAIRFAX

STAFF REPORT

December 18, 2019

TO: Mayor and Town Council

FROM: Ben Berto, Planning and Building Services Director *GB*
Janet Coleson, Town Attorney

SUBJECT: Introduce and read by title only an Ordinance of the Town Council of the Town of Fairfax amending Chapter 17.048 of the Fairfax Town Code Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units and determining the ordinance to be exempt from CEQA

(CONTINUED FROM THE DECEMBER 4, 2019 TOWN COUNCIL MEETING)

RECOMMENDATION

- 1) Conduct Public Hearing
- 2) Introduce and read by title only an ordinance titled "AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING 17.048 OF THE FAIRFAX TOWN CODE RELATING TO RESIDENTIAL ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA."

BACKGROUND

In 2019, the California Legislature approved, and the Governor signed into law a number of bills ("New ADU Laws") that, among other things, amended Government Code sections 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs. The New ADU Laws take effect January 1, 2020, and if the Town's ADU ordinance does not comply with the New ADU Laws, the Town's ordinance becomes null and void on that date as a matter of law.

The Planning Commission reviewed the draft regular and urgency ADU ordinances at their November 21, 2019 meeting. Following close of the public hearing, the PC unanimously voted to recommend both ordinances (with amendments) to the Town Council for adoption. Both the regular and urgency ADU ordinances are on the Council's agenda for consideration this evening.

DISCUSSION

The proposed ordinance amends Chapter 17.048 of the Fairfax Town Code to impose new limits on local authority to regulate Accessory Dwelling Units and Junior Accessory Dwelling Units in compliance with the provisions of Government Code sections 65852.2 and 65852.22 as amended by recently approved legislation that will take effect on January 1, 2020.

Failure to comply with Government Code sections 65852.2 and 65852.22 (as amended) as of January 1, 2020 renders the Town's ordinance regulating ADUs and JADUs null and void, thereby limiting the Town to the application of the few default standards provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs.

The approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, fire safety, flooding and earthquake safety, soil stability in landslide prone areas, and emergency evacuation.

The ADU code amendments are proposed for adoption by both urgency ordinance, in accordance with Government Code section 36937, subdivision (b), and, in parallel, by a regular, non-urgency ordinance as recommended by the Planning Commission. The urgency ordinance takes effect immediately upon approval and allows the Town to have development standards in place by January 1, 2020, while the regular ordinance works its way through the approval process.

The Planning Commission (PC) considered both the Urgency Ordinance and Regular Ordinance and recommends approval of both ordinances. The PC did make the same revisions to both ordinances. In addition to revisions that are incorporated into the revised ordinances and code text, the PC raised a number of topics and issues which will require further analysis and discussion. Staff also noted some modifications to be further discussed. The topics, issues, and potential modifications include, but are not limited to:

- Limiting the size of an ADU converted from an existing structure.
- Requiring that an ADU cannot be converted from an illegal nonconforming structure with (unless the nonconformities are legalized via a separate approval process (Variance, Use Permit).
- Require an ADU to meet the Town's creek setback requirements.
- Require that an ADU being processed via an ADU permit meet certain setback requirements.
- Factor fire safety and evacuation concerns into where ADU's are/are not allowed in Fairfax.
- List the specific zoning districts where ADU's are allowed.

Due to the complexity of the issues, staff will discuss the standards and PC revisions in more detail as part of the staff presentation at the meeting. For reference, attached is a table summarizing the ADU regulations.

The ordinance does have a provision which allows the Director of Planning and Building Services to establish submittal requirements. Attachment C contains the current submittal application that is used for ADU/JADU permits. Staff has been using a version of this application, which contains the submittal requirement, since 2017.

The Council may also note that the ordinance does not reflect the “Incentive Program” reestablished for ADU/JADUs in the 2017 amendment to the ordinance. The Incentive Program reduced fee/permit costs by 50% for a ten year period. Attachment D contains a table indicating the number of ADU/JADU permits issued (19) since 12/1/17 (i.e., effective date of last ordinance amendment). The table also shows the amount of the permit fees collected (Permit Fee 50% column) and a column showing the amount if 100% of the fees were collected. All this data is provided so the Council can determine if it would like to continue the Incentive Program.

CEQA ANALYSIS

Under California Public Resources Code section 21080.17, the California Environmental Quality Act (“CEQA”) does not apply to the adoption of an ordinance by a city or county implementing the provisions of section 65852.2 of the Government Code, which is California’s ADU law and which also regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State’s ADU law.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of appurtenant accessory structures and garages as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the conversion of existing structures into, and the new construction of, ADUs and JADUs, which are, by definition, structures that are accessory to a primary dwelling on the lot. Moreover, the Town Council finds that none of the “exceptions” to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply here.

ATTACHMENTS

- A. Ordinance
- B. Regulation Summary
- C. Submittal requirements
- D. Table on ADU’s permits issued
- E. Planning Commission Resolution

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING CHAPTER 17.048 OF THE TOWN OF FAIRFAX TOWN CODE RELATING TO RESIDENTIAL JACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

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

WHEREAS, the Planning and Zoning Law authorizes cities and towns to act by ordinance to provide for the creation and regulation of accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”); and

WHEREAS, in 2019, the California Legislature approved, and the Governor signed into law a number of bills (“New ADU Laws”) that, among other things, amended Government Code section 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, the New ADU Laws take effect January 1, 2020, and if the Town’s ADU ordinance does not comply with the New ADU Laws, the Town’s ordinance becomes null and void on that date as a matter of law; and

WHEREAS, the Town desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22; and

WHEREAS, failure to comply with Government Code sections 65852.2 and 65852.22 (as amended) as of January 1, 2020 renders the Town’s ordinance regulating ADUs and JADUs null and void, thereby limiting the Town to the application of the few default standards provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs; and

WHEREAS, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety.

WHEREAS, the Town Council has reviewed and considered the public testimony and agenda reports prepared in connection with this ordinance, including the policy considerations discussed therein, and the consideration and recommendation by the Town’s Planning Commission; and

WHEREAS, in accordance with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (“CEQA”) and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), the Town has determined that the revisions to the Fairfax Town Code are exempt from environmental review.

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the Town Council.

Section 2. Under California Public Resources Code section 21080.17, the California Environmental Quality Act (“CEQA”) does not apply to the adoption of an ordinance by a city, town or county implementing the provisions of section 65852.2 of the Government Code, which is California’s ADU law and which also regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State’s ADU law.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of appurtenant accessory structures and garages as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the conversion of existing structures into, and the new construction of, ADUs and JADUs, which are, by definition, structures that are accessory to a primary dwelling on the lot. Moreover, the Town Council finds that none of the “exceptions” to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply here. Specifically, the Town Council finds that the ordinance will:

- (1) Not result in the construction of ADUs or JADUs within a particularly sensitive environment because these accessory structures will necessarily be built on a lot already developed with a primary dwelling;
- (2) Not result in a potentially significant cumulative impact because the units will be built within or attached to or on lots already developed with a primary dwelling.
- (3) Not result in a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances because they will be developed on properties with existing infrastructure.
- (4) Not result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway because no such designation exists for any roadways within the Town limits in the adopted 2010-2030 Fairfax General Plan.
- (5) Not be located on a hazardous waste site included on any list compiled pursuant to § 65962.5 of the Government Code because no residentially zoned property within the Town’s residential zones are located on any known hazardous waste site. ; or
- (6) Not result in a substantial adverse change in the significance of a historical resource because development of an accessory dwelling unit or junior accessory dwelling unit on a site developed with a historic residential structure will be subject to review and development under State of California State Historic Building Code.

- (7) Comply with Goal H-6 of the 2015-2023 Fairfax Housing Element and create additional opportunities for the development of second units.

Section 3. 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 4. This ordinance shall take effect 30 days following its adoption.

Section 5. The Town Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code.

Section 6. The Town Clerk shall submit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption.

Section 7. The Town Council hereby directs staff to prepare, execute and file with the Marin County Clerk a Notice of Exemption within five working days of first reading of this ordinance.

Section 8. If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The Town Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

Section 9. The documents and materials that constitute the record of proceedings on which this Ordinance and the above findings have been based are located at Fairfax Town Hall.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Fairfax, California, on the __th day of _____, 2019, and duly adopted at the next regular meeting of the Town Council on the __th day of _____, 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

TOWN OF FAIRFAX

Mayor

ATTEST:

Town Clerk

EXHIBIT A

Amendments to Municipal Code

(follows this page)

EXHIBIT A- AMENDMENT TO TOWN CODE

Section 17.048.010 Accessory Dwelling Units

- (a) **Purpose.** The purpose of this section is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in compliance with California Government Code sections 65852.2 and 65852.22.
- (b) **Effect of Conforming.** An ADU or JADU that conforms to the standards in this section will not be:
- (1) Deemed to be inconsistent with the Town’s general plan and zoning designation for the lot on which the ADU or JADU is located.
 - (2) Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.
 - (3) Considered in the application of any local ordinance, policy, or program to limit residential growth.
 - (4) Required to correct a nonconforming zoning condition, as defined in subsection (c) below. This does not prevent the Town from enforcing compliance with applicable building standards in accordance with Health and Safety Code section 17980.12.
- (c) **Definitions.** As used in this section, terms are defined as follows:
- (1) “Accessory dwelling unit” or “ADU” means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. An accessory dwelling unit also includes the following:
 - (A) An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code; and
 - (B) A manufactured home, as defined by Section 18007 of the California Health and Safety Code.
 - (2) “Accessory structure” means a structure that is accessory and incidental to a dwelling located on the same lot.
 - (3) “Complete independent living facilities” means permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.
 - (4) “Efficiency kitchen” means a kitchen that includes each of the following:
 - (A) A cooking facility with appliances.

- (B) A food preparation counter or counters that total at least 15 square feet in area.
 - (C) Food storage cabinets that total at least 30 square feet of shelf space.
- (5) “Junior accessory dwelling unit” or “JADU” means a residential unit that
- (A) is no more than 500 square feet in size,
 - (B) is contained entirely within an existing or proposed single-family structure,
 - (C) includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure, and
 - (D) includes an efficiency kitchen, as defined in subsection (c)(4) above
- (6) “Living area” means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
- (7) “Multiple Dwelling” (i.e. Multi-family) means a building or portion thereof used for occupancy by three or more families living independently of each other and doing their own cooking in the building, including apartments, group houses and row houses.
- (8) “Multi-family Lot” means a property that is developed with three (3) or more individual living units providing occupancy for three or more families/groups living independently of each other and doing their own cooking in the building, including apartments, group houses and row houses.
- (9) “Primary Residence”, means the largest original residential structure on a site.
- (10) “Natural person” is a living human being.
- (11) “Nonconforming zoning condition” means a physical improvement on a property that does not conform with current zoning standards.
- (12) “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.
- (13) “Proposed dwelling” means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
- (14) “Public transit” means a location, including, but not limited to, a bus stop, where the public may access buses or trains and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

- (15) “Tandem parking” means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
- (16) “Tree” means any woody perennial plant characterized by having one or more trunks, any one of which has a diameter or four inches (circumference of 12 inches) or more, measured at four and one-half feet above existing lowest grade at the base of the tree.
- (d) **Approvals.** The following approvals apply to ADUs and JADUs under this section:
- (1) **Building-permit Only.** If an ADU or JADU complies with each of the general requirements in subsection (e) below, it is allowed with only a building permit in the following scenarios:
- (A) **Converted on Single-family Lot:** Only one ADU or JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:
- (i) Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress.
 - (ii) Has exterior access that is independent of that for the single-family dwelling.
 - (iii) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.
- (B) **Limited Detached on Single-family Lot:** One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under subsection (d)(1)(A) above), if the detached ADU satisfies the following limitations:
- (i) The side- and rear-yard setbacks are at least four-feet.
 - (ii) The front yard setback is at least 10 feet.
 - (iii) The total floor area is 800 square feet or smaller.
 - (iv) The peak height above grade is 16 feet or less.
- (C) **Converted on Multifamily Lot:** Multiple ADUs within portions of existing multifamily dwelling structures that are not used as livable space,

including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state building standards for dwellings. At least one converted ADU is allowed within an existing multifamily dwelling, and up to 25 percent of the existing multifamily dwelling units may each have a converted ADU under this paragraph.

(D) **Limited Detached on Multifamily Lot:** No more than two detached ADUs on a lot that has an existing multifamily dwelling, further provided that each detached ADU satisfies the following limitations:

(i) The side- and rear-yard setbacks are at least four-feet.

(ii) The front yard setback is at least 10 feet.

(iii) The total floor area is 800 square feet or smaller.

(2) **ADU Permit.**

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

(B) The ADU processing fee is \$500. Any building permit fees shall be in addition to the ADU processing fee.

(3) **Process and Timing.**

(A) An ADU permit is considered and approved ministerially, without discretionary review or a hearing.

(B) The Town must act on an application to create an ADU or JADU within 60 days from the date that the Town receives a completed application, unless either:

(i) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay, or

(ii) In the case of a JADU and the application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the Town may delay acting on the permit application for the JADU until the Town acts on the permit application to create the new single-family dwelling, but the application to create the JADU will still be considered ministerially without discretionary review or a hearing.

- (e) **General ADU and JADU Requirements.** The following requirements apply to all ADUs and JADUs that are approved under subsections (d)(1) or (d)(2) above:
- (1) **Zoning.**
 - (A) An ADU or JADU subject only to a building permit under subsection (d)(1) above may be created on a lot in a residential or other zone that allows residences.
 - (B) An ADU or JADU subject to an ADU permit under subsection (d)(2) above may be created on a lot that is zoned to allow single-family dwelling residential use or multifamily dwelling residential use.
 - (2) **Fire Sprinklers.** Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.
 - (3) **Rental Term.** No ADU or JADU may be rented for a term that is shorter than 30 days.
 - (4) **No Separate Conveyance.** An ADU or JADU may be rented, but no ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multifamily lot).
 - (5) **Septic System.** An ADU or JADU proposed to use an onsite water-treatment system, must comply with applicable County of Marin Environmental Health Services requirements.
 - (6) **Owner Occupancy.**
 - (A) All ADUs created before January 1, 2020 are subject to the owner-occupancy requirement that was in place when the ADU was created.
 - (B) An ADU that is created after that date but before January 1, 2025, is not subject to any owner-occupancy requirement.
 - (C) All ADUs that are created on or after January 1, 2025 are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property as the person's legal domicile and permanent residence.
 - (D) All JADUs are subject to an owner-occupancy requirement. A natural person with legal or equitable title to the property must reside on the property, in either the primary dwelling or JADU, as the person's legal domicile and permanent residence. However, the owner-occupancy requirement of this paragraph does not apply if the property is entirely

owned by another governmental agency, land trust, or housing organization.

- (7) **Deed Restriction.** Prior to issuance of a building permit for an ADU or JADU, a deed restriction shall be recorded against the title of the property in the County Recorder's office and a copy filed with the Director. The deed restriction must run with the land and bind all future owners, heirs or assigns. The form of the deed restriction will be provided by the Town and must provide that:
- (A) The ADU or JADU may not be sold separately from the primary dwelling.
 - (B) The ADU or JADU is restricted to the approved size and to other attributes allowed by this section.
 - (C) The deed restriction runs with the land and may be enforced against future property owners.
 - (D) The deed restriction may be removed if the owner eliminates the ADU or JADU, as evidenced by, for example, removal of the kitchen facilities and reconversion of parking facilities. To remove the deed restriction, an owner may make a written request of the Director, providing evidence that the ADU or JADU has in fact been eliminated. If the ADU or JADU is not entirely physically removed, but is only eliminated by virtue of having a necessary component of an ADU or JADU removed, the remaining structure and improvements must otherwise comply with applicable provisions of this Code. The Director may then determine whether the evidence supports the claim that the ADU or JADU has been eliminated.
 - (E) An appeal may be made of the Director's determination, consistent with other provisions of this Code.
 - (F) The deed restriction is enforceable by the Director or his or her designee for the benefit of the Town. Failure of the property owner to comply with the deed restriction may result in legal action against the property owner, and the Town is authorized to obtain any remedy available to it at law or equity, including, but not limited to, obtaining an injunction enjoining the use of the ADU or JADU in violation of the recorded restrictions or abatement of the illegal unit.
- (8) **Stream Buffer.** No accessory dwelling unit shall be constructed closer to the top of the stream bank of the Fairfax and San Anselmo creeks than 20 feet or two times the average depth of the creek bank, whichever is greater, without authorization by variance.
- (9) **Submittal Requirements.** The Director of Planning and Building Services will establish submittal requirements consistent with departmental regulations.

- (f) **Specific ADU Requirements.** The following requirements apply only to ADUs that require an ADU permit under subsection (d)(2) above.
- (1) **Maximum Size.**
 - (A) The maximum size of a detached or attached ADU subject to this subsection (f) is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two bedrooms. No more than two bedrooms are allowed.
 - (B) An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.
 - (C) Application of other development standards in this subsection (f), such as FAR or lot coverage, might further limit the size of the ADU, but no application of FAR, lot coverage, or open-space requirements may require the ADU to be less than 800 square feet.
 - (2) **Floor Area Ratio (FAR).** No ADU subject to this subsection (f) may cause the total FAR of the lot to exceed 40 percent, subject to subsection (f)(1)(C) above.
 - (3) **Lot Coverage.** No ADU subject to this subsection (f) may cause the total lot coverage of the lot to exceed 35 percent, subject to subsection (f)(1)(C) above.
 - (4) **Minimum Open Space.** No ADU on a multi-family lot subject to this subsection (f) may cause the open space area to fall below 300 square feet per unit. "Open space area" shall not include any required yard or setback, required building separation, access area, or area with dimensions of less than 10 feet or slope of greater than 10 percent, subject to subsection (f)(1)(C) above.
 - (5) **Height.**
 - (A) A single-story attached or detached ADU may not exceed 16 feet in height above grade, measured to the peak of the structure.
 - (B) A second story or two-story attached ADU may not exceed the height of the primary dwelling.
 - (C) A detached ADU may not exceed one story.
 - (6) **Passageway.** No passageway, as defined by subsection (c) above, is required for an ADU.

(7) **Parking.**

- (A) Generally. One off-street parking space is required for each ADU. The parking space may be provided in setback areas or as tandem parking, as defined by subsection (c) above.
- (B) Exceptions. No parking under subsection (f)(7)(A) is required in the following situations:
 - (i) The ADU is located within one-half mile walking distance of public transit, as defined in subsection (c) above.
 - (ii) The ADU is located within an architecturally and historically significant historic district.
 - (iii) The ADU is part of the proposed or existing primary residence or an accessory structure under subsection (d)(1)(A) above.
 - (iv) When on-street parking permits are required but not offered to the occupant of the ADU.
 - (v) When there is an established car share vehicle stop located within one block of the ADU.
- (C) No Replacement. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, those off-street parking spaces are not required to be replaced.

(8) **Architectural Requirements.**

- A. The materials and colors of the exterior walls, roof, and windows and doors must match the appearance and architectural design of those of the primary dwelling.
- B. The exterior lighting must be limited to 2 lumens at ground level, be night sky compliant, and shall be shielded from direct offsite illumination, and as otherwise required by building or fire codes.
- C. All second-story windows facing the side or rear yard of a property adjoining the side or rear yard of an adjacent property and located 30 feet or less from the property line shall have a minimum lower sill height of at least 6 feet above the finished floor.

- (9) **Landscape Requirements.**
 - (A) There shall be a 2:1 replacement planting with 36-inch box sized native trees for the removal of protected tree(s).
- (10) **Historical Protections.** The following requirements apply to ADUs on or within 600 feet of real property that is listed in the California Register of Historic Resources:
 - (A) Development will be subject to objective development requirements of the State Historical Building Code.
- (11) **Setbacks.**
 - (A) Side and rear setbacks must be at least 4 feet.
 - (B) Front setback must be at least 10 feet.
- (g) **Fees.**
 - (1) **Impact Fees.**
 - (A) No impact fee is required for an ADU that is less than 750 square feet in size.
 - (B) Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit. (E.g., the floor area of the primary dwelling, divided by the floor area of the ADU, times the typical fee amount charged for a new dwelling.) “Impact fee” here does not include any connection fee or capacity charge for water or sewer service.
 - (2) **Utility Fees.**
 - (A) Converted ADUs and JADUs on a single-family lot, created under subsection (d)(1)(A) above, are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required unless the ADU or JADU is constructed with a new single-family home.
 - (B) All ADUs and JADUs not covered by subsection (g)(2)(A) above require a new, separate utility connection directly between the ADU or JADU and the utility. The connection is subject to a connection fee or capacity charge that is proportionate to the burden created by the ADU or JADU, based on either the floor area or the number of drainage-fixture units (DFU) values, as defined by the Uniform Plumbing Code, upon the water or sewer

system. The fee or charge may not exceed the reasonable cost of providing this service.

- (h) **Nonconforming ADUs and Discretionary Approval.** Any proposed ADU or JADU that does not conform to the objective standards set forth in subsections (a) through (g)(2) of this section may be allowed by the Town with a conditional use permit, in accordance with the other provisions of this title.

REGULATION SUMMARY BASED ON ADU PROJECT TYPE

ADU PROJECT TYPE	SUMMARY OF REQUIREMENTS
Garage Conversion	<ul style="list-style-type: none"> • No parking required (single family home or ADU) • Can build within the existing footprint regardless of setback or floor area as long as it meets building and fire codes.
Converted Space from the Primary Dwelling Unit (Basement/ Attic Conversion)	<ul style="list-style-type: none"> • May be an ADU or JADU • No ADU parking required • Can build within the existing footprint regardless of setback, floor area, or size. • Must comply with zoning if creates a new nonconformity (e.g. # of stories), and building and fire codes.
Converted Space from an Existing Accessory Structure (pool house, shed, work room)	<ul style="list-style-type: none"> • No ADU parking required • Can build within the existing footprint regardless of setback, floor area, or size as long as it meets building and fire codes.
New ADU Built Over the Garage that is Attached to Single Family Home (Attached ADU)	<ul style="list-style-type: none"> • Existing standards (floor area, setbacks, heights) • Does not qualify for floor area or lot coverage increase beyond required 800 square foot ADU • ADU parking not required if within ½ mile from transit
New ADU Connected to Primary Dwelling (Attached ADU)	<ul style="list-style-type: none"> • Existing standards (floor area, setbacks, heights) • Does not qualify for floor area or lot coverage increase beyond required 800 square foot ADU • ADU parking not required if within ½ mile from transit
New Stand Alone Unit (Detached ADU)	<ul style="list-style-type: none"> • Exempt from ADU Permit - only requires a building permit for an ADU that meets state standards - 16' or less in height; 800 SF or less in area; and minimum 4' setback from the interior and rear setbacks. • New detached ADUs exceeding state standards (e.g. 25' detached garage and ADU) would be subject to variance process, garage subject to design review. • ADU parking not required if within ½ mile from transit
New ADU Associated with Other required Permits or Design Review Approval	<ul style="list-style-type: none"> • ADU development standards and approval process to be based on the project description above. • be processed independent of other required permits (e.g. grading permit, or application associated with a larger development project.

SUMMARY OF ADU DEVELOPMENT STANDARDS

General Requirement	Summary
Number of ADUs Allowed	Single Family Zoning Districts: A maximum of 1 ADU and 1 Junior ADU based on Standards summarized below.
	Multi-Family Zoning Districts: at least 1 ADU, and up to 25% of total number of dwelling units that are 16' in height or less.
Review Process <i>Building Permit Only (Planning ADU Permit Not Required)</i>	ADU Conversions, such as: > Conversion of existing space and/or existing structures with expansion up to 150 SF beyond original footprint to accommodate ingress/egress.
	New Detached ADUs. > 16' in height; 800 SF or less; 4' side and rear setbacks, 10' front setback, any area in excess of 800 SF complies with FAR and lot coverage.
<i>Planning Staff Ministerial ADU Permit Approval</i>	ADUs that do not qualify for Building Permit, such as: > Attached ADUs: Less than 1,000 SF that satisfy certain development standards (height, see below)
	> Detached ADUs: Less than 1,000 SF that are 16' or less in height.
<i>Planning: Design Review</i>	ADUs that do not qualify for Building Permit or Ministerial Approvals above.
Setback	ADU Conversion (of existing structures): Existing building setbacks, provided they meet Fire and Building Code requirements.
	New Addition (Attached ADU 800 SF or smaller): Side/rear 4 feet Front 10 feet
	New Structure (Detached ADU 800 SF or smaller): Side/rear 4 feet Front 10 feet
	New Addition (Attached larger than 800 SF) No setbacks if meets Fire and Building Code requirements
	New Structure (Detached ADU larger than 800 SF) No setbacks if meets Fire and Building Code requirements
Height	ADU Conversion: Height of existing structure.
	Attached ADU: 16 feet if one story. No higher than existing building if second story.
	Detached ADU: Not to exceed 16 feet unless converting an Existing Structure.

Size of ADUs	(Generally) Maximum ADU Sizes: 850 SF (1 bedroom) and 1,000 (2 bedroom)
	Conversion of existing structure: No size limit
	Attached ADU: cannot exceed 50% of the Floor Area of the existing primary residence.
	Detached ADU: cannot exceed 1,000 square feet of gross Floor Area
Floor Area & Lot Coverage	No lot coverage or floor area restriction for ADUs that are 800 sf and outside of 4-foot side and rear setbacks and 10 foot front setback (front setback an option).
Parking	One independent parking space for ADU, covered or uncovered, which can be located in the front setback
	ADU parking waived if ADU is: 1) Attached; 2) part of an existing structure; or 3) located 1/2 mile from transit
	When parking spaces are-eliminated due to conversion of garage or carport to an ADU, parking for the Single Family Residence does NOT have to be replaced, and ADU parking is not required. Should the applicant wish to establish parking on site, parking can be located in the front setback.
Deed Restriction <i>All ADUs (New or Legalized)</i>	Cannot sell separately from Single Family home. ADU must remain, unless terminated according to requirements. No Short Term rentals (less than 30 consecutive days).
<i>ADU Exceeding Floor Area or removing Parking</i>	ADU addition cannot be converted back to the Single Family Dwelling Unit unless development standards can be met, including parking and floor area.
	Separate Exterior Entry/Access Required
	Kitchen
	Architectural requirements: Similar in materials, color, style and form to Single Family Residence Windows to avoid line of sight of adjacent properties Lighting to be low intensity and shielded
	Sprinklers can only be required for the ADU if required for the primary residence
	Owner Occupancy not required unless a JADU

**BUILDING PERMIT APPLICATION REQUIRED SUBMITTALS FOR
ACCESSORY DWELLING UNIT (ADU) AND JUNIOR ACCESSORY DWELLING UNIT (JADU)**

STEP 1 – FILL OUT BUILDING PERMIT APPLICATION, SUBMIT PLANS AND GRANT DEED TO TOWN

(Hand drawn plans are acceptable if the plans are clear, to scale, and include dimensions.)

- Plans (drawn to scale): 5 ledger (11" by 17") – or larger sized copies and 1 reduced (8.5" by 11") set that include the following:**

1. Plot Plan

- Delineate the perimeter of the parcel where the accessory dwelling unit will be located.
- Include the location and use of **ALL existing and proposed structures** on the parcel.
- Identify setbacks for the proposed ADU or JADU.

2. Floor Plans for All Structures on the Project Site

- Indicating the dimensioned square footage and use of all areas of the structure(s) and showing window and door locations.
- Identify kitchen improvements (kitchen sink, cooking appliance(s), food preparation counter, and food storage cabinets); bathroom with fixture locations; and, sleeping area(s).
- Call out room dimensions.
- If a new structure or addition is proposed, call out the exterior dimensions.
- Include electrical and plumbing plans.

- Submit copy of property deed with Building Permit Application (Required by Town Code §17.048.270).**

STEP 2 – SUBMIT TWO COPIES OF DATE STAMPED PLANS TO THE ROSS VALLEY FIRE DISTRICT (RVFD)

- After the plans are submitted to the Town and date stamped at the front counter, the project applicant is required to submit two copies of date stamped plans to Ross Valley Fire District (RVFD) (777 San Anselmo Ave., San Anselmo, CA; Hrs: 8 a.m. – 5 p.m. M-Th; 415-258-4686) for its review and pay the associated RVFD review fee.**

STEP 3 – SUBMIT ONE SET OF PLANS REVIEWED BY RVFD TO TOWN HALL

- After the plans are reviewed by RVFD, the project applicant is required to bring one set to the Town Hall front counter to be recorded in the front counter log.**

STEP 4 – FILL OUT, NOTARIZE AND RECORD DEED RESTRICTION

If permit application is approved, planning staff fills out "Deed Restriction" form and provides applicant with completed document. The applicant is then required to perform the following steps:

1. Every owner on the deed and included on the "Deed Restriction" form must sign the "Deed Restriction".
2. Next the applicant must get the signed "Deed Restriction" notarized by a notary public.
3. After the "Deed Restriction" is notarized by a notary public, the applicant must take the "Deed Restriction" to the Marin County Recorder's Office (3501 Civic Center Drive, Suite 232, San Rafael, CA) to have the "Deed Restriction" officially recorded.
4. The applicant must bring a copy of the recorded "Deed Restriction" to the Town so the building permit can be issued for the ADU or JADU.

STEP 5 – PAY FINAL FEES AND PICK UP BUILDING PERMIT

When all actions are complete, the Building Permit will be issued. The Town will call the applicant to pick up the Building Permit. The applicant is required to pay final fees when the Building Permit is picked up.

Please note: Staff may require other informative materials for the project as deemed necessary.

2018 to 2019 ADU APPLICATIONS (as of 12/1/17)

No.	Address	Permit Fee 50%	Permit fee 100%	Date approved	L= legalize N=new
1	76 Spruce	949	1898	3/20/2018	L
2	93 Rocca	949	1898	3/26/2018	L
3	355 Cascade	125	250	4/20/2018	L (JADU)
4	6 Meadow Way	949	1898	7/3/2018	L
5	15 Scenic	125	250	7/27/2001	N (JADU)
6	74 Cypress	949	1898	7/27/2018	N
7	26 Archangel	660	1320	8/17/2018	N
8	340 Olema Road	949	1898	8/17/2018	L
9	107 Redwood Road	949	1898	8/24/2018	L
10	306 Scenic	949	1898	8/24/2018	N
11	71 Rocca	949	1898	8/31/2018	L
12	6 Fawn Ridge	1400	2800	10/24/2018	N
13	84 Hillside	1543	3086	3/20/2019	N
14	290 Cascade	949	1898	4/26/2019	N
15	103 Olema	949	1898	5/31/2019	L
16	25 Wreden	125	250	6/7/2019	N (JADU)
17	9 Iron Springs	596	1192	8/19/2019	N
18	18 Mountain View	949	1898	8/19/2019	N
19	30 Glen Drive	949	1898	8/26/2019	N
		\$ 15,962	\$ 31,924	2018-2019	8 legalized, 11 new
				Total	19 ADUs/JADUs

RESOLUTION NO. 2019-20

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX CALIFORNIA, RECOMMENDING THAT THE TOWN COUNCIL ADOPT BOTH (A) AN URGENCY ORDINANCE AND (B) A NON-URGENCY ORDINANCE AMENDING CHAPTER 17.048 OF THE FAIRFAX TOWN CODE RELATING TO RESIDENTIAL ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

WHEREAS, the Planning and Zoning Law authorizes cities and towns to act by ordinance to provide for the creation and regulation of accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”); and

WHEREAS, in 2019, the California Legislature approved, and the Governor signed into law a number of bills (“New ADU Laws”) that, among other things, amended Government Code section 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs; and

WHEREAS, the New ADU Laws take effect January 1, 2020, and if the Town’s ADU ordinance does not comply with the New ADU Laws, the Town’s ordinance becomes null and void on that date as a matter of law; and

WHEREAS, the Town desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with the amended provisions of Government Code sections 65852.2 and 65852.22; and

WHEREAS, failure to comply with Government Code sections 65852.2 and 65852.22 (as amended) as of January 1, 2020 renders the Town’s ordinance regulating ADUs and JADUs null and void, thereby limiting the Town to the application of the few default standards provided in Government Code sections 65852.2 and 65852.22 for the approval of ADUs and JADUs; and

WHEREAS, the approval of ADUs and JADUs based solely on the default statutory standards, without local regulations governing height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety.

WHEREAS, staff and the Town Attorney prepared the proposed ordinance, including the proposed language and terminology, and any additional information and documents deemed necessary for the Planning Commission to take action; and

WHEREAS, on November 9, 2019, the Town gave public notice of the public hearing for the proposed ordinance by publishing in a newspaper of general circulation of a Planning Commission public hearing at which the ordinance would be considered; and

WHEREAS, on November 21, 2019, the Planning Commission held a duly-noticed public hearing and considered the staff report, recommendations by staff, and public testimony concerning the proposed ordinance.

NOW THEREFORE, THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX DOES RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

Section 1. Under California Public Resources Code section 21080.17, the California Environmental Quality Act (“CEQA”) does not apply to the adoption of an ordinance by a city, town or county implementing the provisions of section 65852.2 of the Government Code, which is California’s ADU law and which also regulates JADUs, as defined by section 65852.22. Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State’s ADU law.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of appurtenant accessory structures and garages as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the conversion of existing structures into, and the new construction of, ADUs and JADUs, which are, by definition, structures that are accessory to a primary dwelling on the lot. Moreover, the City Council finds that none of the “exceptions” to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply here. Specifically, the Planning Commission finds that the ordinance will:

- (1) Not result in the construction of ADUs or JADUs within a particularly sensitive environment because these accessory structures will necessarily be built on a lot already developed with a primary dwelling;
- (2) Not result in a potentially significant cumulative impact because the units will be built within or attached to or on lots already developed with a primary dwelling.
- (3) Not result in a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances because they will be developed on properties with existing infrastructure.
- (4) Not result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway because no such designation exists for any roadways within the Town limits in the adopted 2010-2030 Fairfax General Plan.
- (5) Not be located on a hazardous waste site included on any list compiled pursuant to § 65962.5 of the Government Code because no residentially zoned property within the Town’s residential zones are located on any

known hazardous waste site. ; or

- (6) Not result in a substantial adverse change in the significance of a historical resource because development of an accessory dwelling unit or junior accessory dwelling unit on a site developed with a historic residential structure will be subject to review and development under State of California State Historic Building Code.
- (7) Comply with Goal H-6 of the 2015-2023 Fairfax Housing Element and create additional opportunities for the development of second units.

Section 2. Based on the entire record before the Planning Commission, and all written and oral evidence presented, the Planning Commission hereby finds that the proposed ordinance is consistent with the Town's adopted General Plan as the purpose of the proposed ordinance is to comply with the amended provisions of Government Code sections 65852.2 and 65852.22. The proposed ordinance does not otherwise conflict with any of the General Plan's goals or policies.

Section 3. The Planning Commission hereby recommends that the Town Council adopt the attached proposed urgency ordinance (Attachment A) entitled: AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING TOWN CODE CHAPTER 17.048 OF THE TOWN OF FAIRFAX TOWN CODE RELATING TO RESIDENTIAL ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

Section 4. The proposed ordinance entitled: AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING CHAPTER 17.048 OF THE TOWN OF FAIRFAX TOWN CODE RELATING TO RESIDENTIAL ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA is on file and has been available for public review for at least ten days prior to the date of this Resolution, in the Planning and Building Services Department, at Fairfax Town Hall, 142 Bolinas Road, Fairfax, CA.

Section 5. The Planning Commission hereby recommends that the Town Council adopt the attached proposed ordinance (Attachment B) entitled: A NON-URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING CHAPTER OF THE TOWN OF FAIRFAX TOWN CODE RELATING TO RESIDENTIAL ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

Section 6. The proposed ordinance entitled: A NON-URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING CHAPTER 17.048 OF THE TOWN OF FAIRFAX TOWN CODE RELATING TO RESIDENTIAL ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA is on file and has been available for public review for at least ten days prior to the date of this Resolution, in the Planning and Building Services Department, at Fairfax Town Hall, 142 Bolinas Road, Fairfax, CA. .

(Continued on next page)

APPROVED this 21st day of November, 2019, by the following vote, to wit:

AYES: Fragoso, Green, Kehrlein, Newton, Rodriguez, Swift

NOES: None

ABSENT: Green

Cindy Swift
CHAIR
FAIRFAX PLANNING COMMISSION

DATE

ATTEST:

Ben Berto
Director of Planning and Building Services

DATE