

**TOWN OF FAIRFAX
STAFF REPORT**

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: January 16, 2020
FROM: Ben Berto, Director of Planning and Building Services
SUBJECT: Accessory Dwelling Unit/Junior Accessory Dwelling Units
CEQA STATUS: Statutorily exempt pursuant to Public Resources Code §21080.17

BACKGROUND

In 2019, the State enacted into law a number of new Statutes governing ADU's and JADU's. As noted in the November 21, 2019 Planning Commission and December 19 Town Council meetings, these laws among other things relaxed regulations on developing ADUs/JADUs while further curbing the ability of local jurisdictions to regulate ADUs/JADUs. The Statutes also took the unprecedented step of including a 'poison pill' provision wherein if any aspect of the local ADU/JADU regulations is found to be inconsistent with any aspect of State law, the entire local ordinance is declared null and void. In that event, the only limits on ADU's/JADU's would be the few requirements in the State laws. The Statutes took effect on January 1.

Acting on an urgency basis, your Commission recommended and the Town Council subsequently adopted an urgency ADU ordinance that complies with the State's new ADU/JADU statutes and incorporates local regulations to the extent allowed by the statutes. The Town's new regulations include provisions governing structural height, property line and creek setbacks, landscape, and architectural review. The Council also adopted a first reading of the regular ADU ordinance matching the urgency ordinance, and will consider a second reading and adoption of the regular ordinance on January 15.

The Town Council reiterated many of the concerns with the new State laws that were raised by the Planning Commission, the public, and staff. The most significant of these pertain to fire hazard and emergency evacuation problems created by the State mandating higher density housing in high fire hazard areas while allowing onsite parking to be reduced or eliminated.

The Council directed the Planning Commission and staff to continue work on addressing increased fire hazards and other issues relating to the new State regulations. Finding solutions to these problems will be a complex undertaking, with many considerations including the overarching limits created by the State. Staff explores the issues and options in the following Discussion section.

DISCUSSION

The urgency ordinance passed by the Town Council on December 18th preserves the Town's ability to regulate certain aspects of ADUs and JADUs beyond the default standards contained in Government Code sections 65852.2 and 65852.22. The local ADU/JADU regulations comply with State statutes but also regulate height, creek and yard setbacks, landscape, and architectural review. These local provisions will to an extent help preserve the character of existing neighborhoods, property values, privacy, fire safety, flooding and earthquake safety, and soil stability in landslide prone areas.

Fairfax has been and continues to be very supportive of ADU's/JADU's overall. The Town has approved approximately 10 such units per year over the last two years.

As noted, the State ADU/JADU laws ignore a number of issues, as follows:

- Fire safety
- Emergency evacuation
- Parking
- Short-term rentals
- ADU size
- Illegal nonconforming structures
- Zoning districts where ADU/JADU's are allowed
- ADU/JADU Chapter organization

Fire Safety

Fire safety issues pertain to both additional hazards that may be created by ADU's/JADU's, and current circumstances. Nearly the entirety of Fairfax is in a State-designated high fire hazard area (see Attachment A). Fairfax has also been developed with extremely narrow, windy roads, and according to at least one source (see Attachment B), has the 13th highest evacuation problem in the State.

The Town has been extremely responsive in reducing to the extent possible some of the fire hazards. Fairfax has the most Firewise-certified neighborhoods in the County, and the County in turn is the most in the entire State.

Fairfax residents understand the seriousness of the fire risk. The State does not, at least to the extent it is locally. Its latest ADU/JADU statutes do not make any allowance for reducing the State's higher residential densities or retaining onsite parking requirements for properties in high fire hazard areas. California's recent experience with repeated catastrophic fires would seem to provide ample evidence against such mandates. However, such issues have not (yet?) been reflected in how ADU/JADU regulations apply to high fire hazard communities such as Fairfax.

Options:

- Pursue state legislation amendments to provide exceptions from at least some State ADU/JADU requirements for communities such as Fairfax in high fire

hazard zones. This option would require a concerted effort by many communities, not just Fairfax, in Marin as well as in the entire Bay Area. Given that the State's housing mandates continue to be in the opposite direction, it isn't going to be easy to effect this turnaround, nor will it take place in the near future.

- Focus on evacuation routes to attempt to provide some regulations to keep cars off the street (see evacuation discussion below).
- Create parking programs to control where vehicles may park (see parking discussion below). The last attempt by the Town to address the plethora of vehicles parking in the street didn't go very far, but it may be the primary tools available to the Town at this time.

Emergency evacuation

Closely intertwined with fire safety is how to evacuate people in the event of a fire or other major catastrophe necessitating such action. As noted above, by at least one index (percentage of people having one road as the evacuation route, and the Paradise-type risks that poses), Fairfax is the 13th most at-risk community in the entire State. Interestingly, several of the communities ranked worse in that index – Sleepy Hollow, Sausalito, Corte Madera, and Santa Venetia – are likely better off in the event of evacuations, some by the wider straighter roads leading from the community (versus Fairfax's windy narrow roads), and others by their close proximity to waterbodies..

As discussed in the parking discussion, increasing the vehicle load on Town streets, which will occur because there aren't yet viable transportation alternatives to autos for most residents, will create more demand for parking. The State exacerbates this by eliminating onsite parking for new ADU's/JADU/s and allowing property owners to convert any garage to an ADU without replacing parking. Some ADU/JADU applicants will undoubtedly take advantage of this and either remove or not provide parking. The net result will be more vehicles having to be parked somewhere on Town streets.

Most of the Town's streets on hillside areas are narrow and winding, and already significantly constrained in terms of locations to park vehicles. Adding appreciable numbers of vehicles will make emergency evacuation worse if steps are not taken.

Options:

- Some type of parking program to control the total number of vehicles and where they are parked on local streets (see parking discussion below).
- Legislative changes that recognizes areas in high fire hazard zones, particularly those with narrow windy streets and few evacuation routes, and avoids making a bad problem worse by exempting such areas from higher density requirements or eliminating onsite parking requirements.
- Continuing to improve safety on public evacuation routes through vegetation management and other fire safety improvements.

Parking

Parking is closely tied to the issues of fire and emergency evacuation. Putting more automobiles (parked and otherwise) on streets in high fire risk areas will adversely

impact fire safety and emergency evacuation. The State's regulations will make these problems worse with the latest ADU/JADU statutes. As stated previously, legislative amendments may ultimately be the only way to comprehensively address this issue. Given the State's ongoing housing crisis and the legislature's promotion of housing, such efforts will face fierce headwinds. It took the recent fire tolls for the State and the PUC begin to address the safety of its electric utility safety mess. It is unknown whether and when such issues as the potential impact of garage conversions, increased on-street parking, etc., would gain much traction with the State. At best, the Town is likely to be on its own for the foreseeable future.

There are some options available to the Town to address parking impacts.

Options:

- Parking permit program. The number of vehicles allowed to park on Town streets in the hilly high fire hazard areas can be limited by a parking permit program. Keep in mind that the latest State ADU/JADU regulations require issuance of parking permits to such units or the permit program will apply to vehicles associated with such units. Further, implementing and managing such a program will be very resource intensive and highly controversial.
- Designated parking. Similar in some ways to a parking permit program, the Town could designate areas where vehicles are and are not allowed to park. This could be achieved a variety of ways – for example white pavement markings or painted chevrons (e.g., parking boxes) to show the extent of the areas. Implementing and managing such a program would be very resource intensive and highly controversial.
- Uncovered parking. One of the ways that the Town could potentially limit the future conversion of parking to ADUs would be to switch required onsite parking from covered to uncovered. An applicant could potentially apply for a garage as well, but it would be in addition to the required, uncovered parking.

Short-term rentals

Short-term rentals (Airbnb etc.) have been mentioned as a factor that could exacerbate on-street parking issues. The Town's regulations are currently silent on short-term rentals. However, such rentals are considered dissimilar to allowed uses, and are therefore not permitted. However, in order to seriously enforce such uses, including any accompanying parking issues, the Town could specifically prohibit the short-term rentals of ADU/JADUs.

ADU size

Current State regulations (and therefore the Town's ADU/JADU ordinance) do not allow the Town to limit the size of an ADU conversion that is entirely within an existing residence.

Illegal nonconforming structures

Current State regulations do not appear to allow enforcement against a structure that was illegally constructed and is nonconforming, from being converted to an ADU. Staff

intends to monitor future court cases to determine whether this situation changes, and if so, to modify the Town's ADU regulations.

Zoning Districts where ADU's/JADU's are allowed

The question arose whether it makes sense to list all of the zoning districts ADU/JADUs are allowed. From staff's research, there are only two Fairfax zoning districts – PD Public Domain, and CS Commercial Service – that does not list some type of residential use, and therefore at least imply that ADU's/JADU's are permitted. Therefore it would be more efficient to list these two zones as not permitting ADU's/JADU's, than list all of the Town's other zoning districts as permitting these uses. Staff recommends leaving the ordinance as is on this issue.

Chapter organization

It was pointed out by the Planning Commission at their November meeting reviewing the proposed ADU/JADU ordinance that the organization of the chapter (subsections etc.) was challenging and made it difficult to compare the then current ADU/JADU ordinance. The Town Attorney pointed out that the new ordinance replaced the Town's ADU/JADU regulations, but that organization could be taken up at a future date. Staff recommends that once questions are resolved of what substantive changes should be made to the new ordinance, more detailed analysis of the layout and possible changes could be taken up.

Other Agency/Department Comments

Ross Valley Fire

Preliminary discussions with the Ross Valley Fire Department regarding ADU's and JADU's indicate that they are supportive of the Town's efforts to protect fire safety. For example, if the Town decides to pursue designating parking spaces in the hillside areas, RVFD would be part of the process of determining where those spaces should be in order to preserve adequate fire access.

CONCLUSION

As can be seen, there are more questions than answers at this point. The Town faces many severe obstacles in attempting to reconcile the State's mandates pertaining to ADU's and JADU's with safety concerns that may be raised by such development under the few restrictions that State statutes mandate. Any proposed future changes to the Town's ADU/JADU regulations will also need to be submitted to the State's Department of Housing and Community Development for their review.

RECOMMENDATION

1. Conduct the public hearing.
2. Provide staff with direction on ADU/JADU work options, and continue the discussion to the February 20 Planning Commission meeting.

ATTACHMENTS

Attachment A – State High Fire Hazard Area map

Attachment B – “Marin could face major traffic jams during disasters” IJ 8/23/19

Attachment C – Planning Commission meeting minutes 11/21/19

Attachment D - ADU Urgency Ordinance

State Fire Hazard Severity Zones – Fairfax 0120



Report: Marin areas could face major traffic jams during disasters

In Marin County, where many homes are tucked into hillsides along narrow, winding roads, residents could encounter some of the toughest traffic jams during an emergency evacuation, according to [a new report](#).

The study, done by StreetLight Data Inc., was inspired in part by the gridlock residents of Paradise faced during the Camp Fire last year. Researchers looked at communities of 40,000 residents or fewer across the country, showing how traffic would flow during an emergency and pointing out potential bottlenecks.

Santa Venetia, Sleepy Hollow, Marin City, Sausalito, Corte Madera, San Anselmo and Fairfax were among the most problematic in the Bay Area, according to the report.

"I would agree that we have major evacuation issues in this county," Marin County fire Chief Jason Weber said. "These seven communities are examples, but it goes beyond that. There is a lot more to be done."

Researchers gave scores to cities across the country based on the total population of the town, the number of roadway exits out of town, and the average number of cars each exit route carries on a typical day, assuming residents would chose familiar routes in an emergency.

Of the 30,000 communities analyzed, around 800 had scores that were three or more times the national average, including 107 in California, indicating that residents there have fewer options when it came to fleeing in a hurry. Twenty-two of the towns and cities are in the Bay Area, and one is in Santa Cruz County.

ATTACHMENT B

The data itself shouldn't necessarily be taken as a prescription for county planners on what to do when they're preparing for disasters, said Laura Schewel, CEO and co-founder of StreetLight Data. Rather, planners should think of the map as a tool to highlight areas where they might focus their efforts. But, she said, local officials will have to weigh many different factors in crafting an evacuation plan.

"Part of fire education might be reminding people they don't have to take the main exit during an emergency," Schewel said. "And default behavior is not necessarily the right thing to do if you're moving a whole city."

Approximately 69,000 Marin homes are within the highest risk zone called the wildland-urban interface, where residential properties abut open space, according to the county.

The good thing, Weber said, is that elected officials and fire officials across the county have united to address the problem. One solution is the proposal for a new property tax that would raise \$20 million annually to support wildfire prevention efforts.

There are evacuation maps posted to the Marin County Fire Department's website, but those could use updating. One of the focuses of the initiative is tackling the evacuation issue, Weber said.

"This is one of the key reasons we're pushing for the countywide initiative," he said. "We recognize that we cannot do all that we need to do to keep people safe right now."

With that said, Weber said, the key in an emergency is not to panic.

If residents are worried about getting trapped, there is nothing wrong with evacuating ahead of the crowd, as long as there is not a shelter-in-place alert, said Central Marin fire Chief Scott Shurtz.

"If it appears that there is an imminent threat, leave early," Shurtz said. "Getting out early can be one of the best strategies people can use before roadways get clogged up."

"The interesting challenge that we face is that many of the hillside roads were laid out more than 100 years ago," Shurtz said. "What we're left with is a network of roads that were designed for a horse-drawn wagon."

San Rafael fire Chief Chris Gray said that after a close look, it's apparent that some of these neighborhoods are choked by a lack of roads, with some paths marked as emergency-only access.

"Hopefully the wildfire planning efforts will lead to better vehicular access and evacuation capability countywide," he said.

Fire officials across the county are working with residents on disaster drills, fire prevention and preparedness and overall education. Fire officials are also aggressively clearing excess vegetation from open space and woody neighborhoods.

For example, approximately 55 evacuation routes around the slopes of Mount Tamalpais in Mill Valley, Larkspur and throughout the Ross Valley are benefiting from some vegetation management, thanks to \$1 million state grant, Weber said.

Fire officials recommend that residents educate themselves and get prepared. More information is at [FireSafeMarin.org](https://www.fire-safemarin.org) and [readymarin.org](https://www.readymarin.org).

They also recommend that residents sign up for emergency notifications at [AlertMarin.org](https://www.alertmarin.org) and [Nixle.com](https://www.nixle.com).

The report is available at bit.ly/2zm9RrS.

The Bay Area News Group contributed to this report.

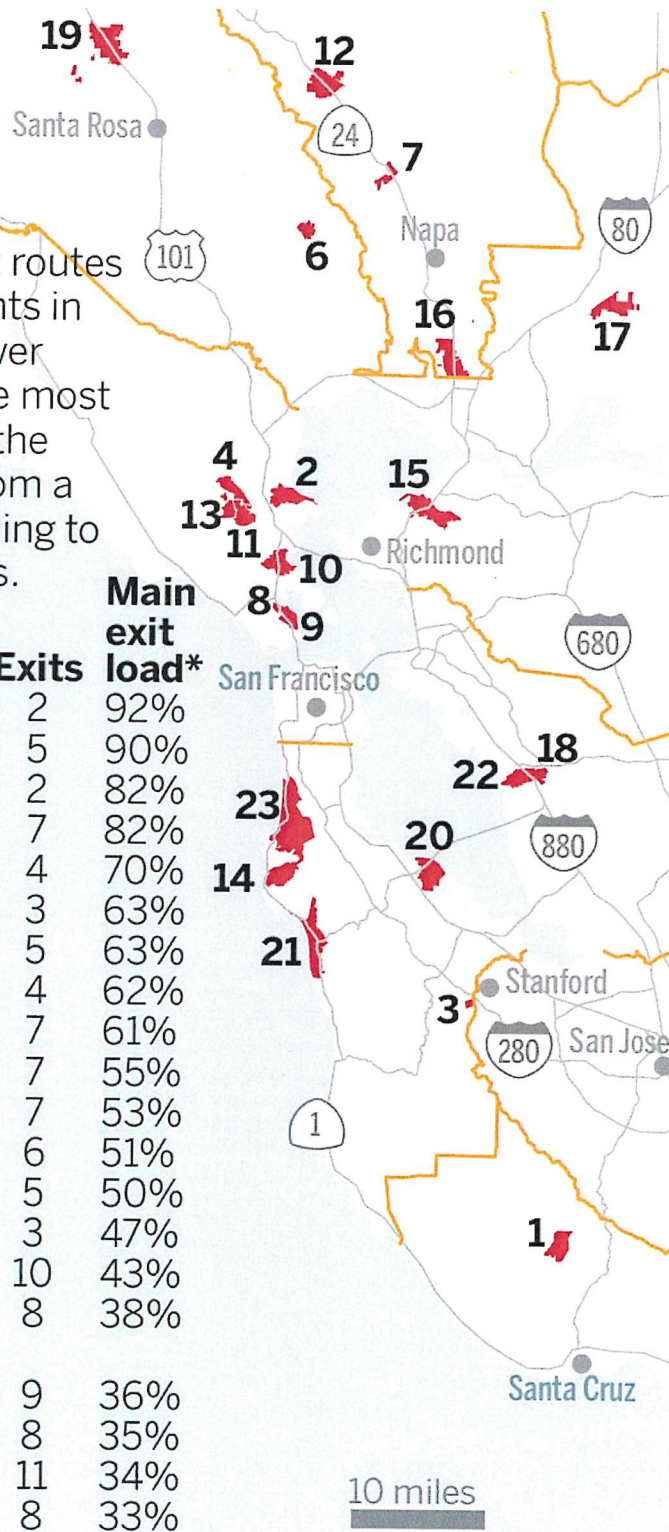
TOUGHER EVACUATIONS

Based on population, exit routes and other factors, residents in these communities of fewer than 40,000 would be the most prone to getting stuck in the event of an evacuation from a major emergency, according to a new nationwide analysis.

Place	Population	Exits	Main exit load*
1 Lompico	1,137	2	92%
2 Santa Venetia	4,132	5	90%
3 Ladera	1,426	2	82%
4 Sleepy Hollow	2,363	7	82%
5 Bodega Bay	1,077	4	70%
6 Agua Caliente	4,099	3	63%
7 Yountville	2,005	5	63%
8 Marin City	2,666	4	62%
9 Sausalito	7,061	7	61%
10 Corte Madera	9,378	7	55%
11 San Anselmo	12,615	7	53%
12 St. Helena	5,764	6	51%
13 Fairfax	7,539	5	50%
14 Montara	2,909	3	47%
15 Pinole	18,520	10	43%
16 American Canyon	19,441	8	38%
17 Suisun City	27,977	9	36%
18 Cherryland	15,166	8	35%
19 Windsor	26,809	11	34%
20 Foster City	30,463	8	33%
21 Half Moon Bay	11,322	6	30%
22 San Lorenzo	23,452	7	29%
23 Pacifica	31,713	8	23%

*The percentage of residents who typically use a "main" street as their primary exit in and out of town. So a main exit load of 33% would mean there is a 33 percent probability that residents will chose the most popular street as their main exit route

Source: StreetLight Data



FAIRFAX PLANNING COMMISSION MEETING MINUTES
FAIRFAX WOMEN'S CLUB
THURSDAY, NOVEMBER 21, 2019

Call to Order/Roll Call:

Chair Swift called the meeting to order at 7:00 p.m.

Commissioners Present: Norma Fragoso
Philip Green
Laura Kehrlein
Mimi Newton
Michele Rodriguez
Cindy Swift (Chair)

Commissioners Absent: Esther Gonzalez-Parber

Staff Present: Ben Berto, Planning Director
Linda Neal, Principal Planner
Janet Coleson, Town Attorney

APPROVAL OF AGENDA

M/s, Newton/Green, motion to approve the agenda.

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

ABSENT: Gonzalez-Parber

PUBLIC COMMENTS ON NON-AGENDA ITEMS

There were no comments.

CONSENT CALENDAR

There were no Consent Calendar items.

PUBLIC HEARING ITEMS

- 1. Discussion/consideration and possible recommendation to the Town Council for adoption of both a draft Urgency Ordinance and Draft Ordinance that would update the development standards for Accessory Dwelling Units as mandated by Assembly Bill 881, sections 1.5 and 2.5 (Bloom, Stats. 2019, ch. 659); Assembly Bill 68, section 2 (Ting, Stats. 2019, ch. 655); and Senate Bill 13 (Wieckowski, Stats. 2019, ch. 653). CEQA Statutorily Exempt per Section 21080.17 and Categorically Exempt per Section 15300.2.**

Town Attorney Coleson presented the staff report and gave a Powerpoint presentation that included the following: 1) Accessory Dwelling Units (ADU's)- Bills; 2) AB 881; 3) Other bills; 4) Recommendation. She stated that the State has taken ADU regulations a huge step further, and that her firm has a task force looking at ADU laws and local regulations. A local jurisdiction's ADU regulations have to be fully compliant with State laws by January 1, 2020, or ADU proposals in that jurisdiction would only be subject to State law. There are certain things local jurisdictions can still do, but these can only be through objective development standards. An important provision in the State laws is that if any portion of local ADU regulations is found to be invalid, the entire local ADU regulations are invalid – the typical severability clause does not work.

The proposed regulations replace the Town's ADU and JADU regulations. There is an urgency ADU ordinance and a regular ADU ordinance before the Commission. The ordinances are identical except for the findings. The intent behind having both ordinances being considered concurrently is to minimize the gap between adoption of the two.

In addition to the proposed ordinance, staff has provided optional objective development standards for the Commission to consider for inclusion in the Town's proposed ADU regulations.

Staff will look at ADU applications on a case-by-case basis to make sure they are compliant. She noted Impact Fees could be charged but not for an ADU of 750 square feet or less. Impact Fees assessed on units greater than 750 square feet have to be proportional to the size of the main house.

Planning Director Berto referred to the objective development standards options and stated staff looked at what the template version of the ADU regulations did not address and what had not been eliminated by the State.

Commissioner Fragoso asked if the list of ministerial standards that could be added were included in the ordinance. Town Attorney Coleson stated they were separate. Commissioner Fragoso asked for clarification on the map that was placed on the dais. Planning Director Berto stated SB330 has an opt-out provision for high fire risk areas as designated by the State. Based on the map, Fairfax is not in a high risk area. Commissioner Green noted the red high fire area does dig into Fairfax a bit. Chair Swift asked staff to get clarification on the map.

Commissioner Kehrlein had a question about the impact of recent legislation to local fire department regulations such as requiring fire sprinklers. Planning Director Berto stated the main thrust has to do with internal conversions of existing residences to provide an ADU or a JADU. Sprinklers are required when a certain threshold is met. New, detached ADU's would need to comply with current building and fire codes.

Commissioner Kehrlein had a question about utility connection fees. Planning Director Berto stated a JADU would not require a new meter or hookup fees.

Commissioner Kehrlein referred to Exhibit A, Amendments to Town Code, page 6, Section 17.048.010, Accessory Dwelling Units, (f)(2)(3) and stated the lot coverage and FAR requirements seemed different than the Residential Zoning Standards. Planning Director Berto stated there is a corrected version that speaks to a 0.40 FAR and 0.35 lot coverage. However, an 850 square-foot ADU is allowed on any residential parcel in Fairfax.

Commissioner Green asked staff about the recommended procedure given the urgency. Town Attorney Coleson stated the urgency ordinance did not need to come to the Planning Commission- it was brought as a courtesy. The two ordinances need to match when taken as a package- the urgency and regular ordinance need to be exactly the same. She noted the Commission could take another look at the regular ordinance after its adoption by the Council.

Commissioner Newton asked if there was a reason for the amendment only utilizing Section 17.048.010, Accessory Dwelling Units when the existing code goes from Section 17.048.010 to Section 17.048.250. It seems odd format-wise. Town Attorney Coleson stated the idea is to replace everything that exists for ADUs and JADUs with the new model. Planning Director Berto stated they are replacing Chapter 17.048 in its entirety.

Commissioner Newton referred to Attachment A, Urgency Ordinance, page 1, the sixth and seventh "Whereas," and stated flood safety, earthquake safety, and other safety issues should be added to

the list of the threats to public safety. She did not want to “hang her hat” on impacts to property values and personal privacy that are not as significant as the housing crisis. Town Attorney Coleson stated staff was trying to make defensible urgency findings but agreed that “more is better.”

Commissioner Green asked about the foreseeable impact of this ordinance on a small town such as Fairfax. Town Attorney Coleson stated it was designed to lessen the impact but this is an unknown. It depends on how many people want to avail themselves to the new law. Planning Director Berto stated staff has received about 10 applications per year over the last 2 years and they do not anticipate this rate declining.

Commissioner Newton asked if staff has an idea about the impacts to utility and service companies such as sewer, water, etc. Planning Director Berto stated staff has not had the time to talk to affected utility companies.

Commissioner Newton stated there does not seem to be an ability to impose rent control to require affordability. Planning Director Berto agreed and noted the size of the units will determine rents.

Chair Swift asked if JADU’s had to be in an owner occupied dwelling. Commissioner Newton referred to Section 17.048.010 (e)(6), which states that JADUs are subject to an owner-occupancy requirement. She had a question about open space area requirements. Planning Director Berto stated this was pertinent to multi-family development.

Chair Swift asked if the Commission could recommend approval of the urgency ordinance but review the non-urgency ordinance separately. Town Attorney Coleson stated “yes”- but it would increase the gap in time before the regular ordinance would be in effect. She thought the better course of action was to keep them together.

Chair Swift referred to the fire sprinkler requirement and asked if the primary residence did not require a sprinkler system then the ADU would not be required to have one. Town Attorney Coleson stated this applies to an attached unit. A detached unit would need to comply with current fire codes. Chair Swift asked if there were any fire regulation safety standards for setbacks. Planning Director Berto stated these were dependent on the type of construction, but that a minimum 4-foot setback would allow access for fire personnel and equipment.

Chair Swift asked if multiple residential development refers to areas in Town that have apartment buildings, duplexes, or triplexes. Principal Planner Neal stated the definition of a “multiple dwelling” is a building used by three or more families living independently of each other and doing their own cooking including apartments, group homes, and row houses. The definition for a “two-family dwelling” is a detached or semi-detached building containing two dwelling units and designed for occupancy by two families. Commissioner Kehrlein stated this corresponds with the Building Code.

Chair Swift asked if the definition for “public transit” could include a bus stop servicing a bus that stops once a week vs. a more frequent and regular schedule. Planning Director Berto stated that “public transit” as it is being applied under the new 2020 state laws applied to any bus route.

Chair Swift referred to the parking changes and stated they would be losing a lot of off-street parking. She asked if they could limit ADUs to a particular zones or portions of a zone. Planning Director Berto stated it would be difficult to say they are not allowed in a particular zone. Commissioner Newton asked if staff could identify the zones that allow residences. Planning Director Berto stated “yes.”

Chair Swift referred to Section 17.048.010(f)(1) and asked if this has changed from 1,200 to 1,000 square feet. Planning Director Berto stated “yes.” There is no effective maximum size for conversions (interior only).

Commissioner Newton had a question about the minimum size provisions. She referred to Section 17.048.060 which provides for a 150 square foot minimum. Town Attorney Coleson stated the unit also has to meet Building Code requirements.

Commissioner Newton referred to the current code with respect to a shed and the allowable height limit on a slope. Principal Planner Neal stated the code limits accessory structures to fifteen feet in height, measured from natural grade, and one story. However, State law allows a height of sixteen feet.

Commissioner Frago asked if an ADU, proposed as an additional story to a property with more than one story, would be governed by the overall height in the Zoning Ordinance. Commissioner Rodriguez stated the non-conformity would require a Conditional Use Permit. Planning Director Berto stated it would depend on the type of non-conformity. Chair Swift stated an attached ADU could not be higher than the existing primary dwelling. Town Attorney Coleson agreed it would have to be the same height.

Chair Swift asked why the ADU processing fees was included in the Ordinance and not the Fee Schedule Resolution. Planning Director Berto stated this is required under the State statute in order to charge a fee. The amount has been determined to cover processing costs.

Chair Swift asked if Impact Fees could not be charged for anything less than 750 square feet. Town Attorney Coleson stated "yes." Planning Director Berto discussed the rationale behind Impact Fees including Traffic Impact Fees. They are used to off-set development impacts, for example the cost of an intersection improvement.

Chair Swift opened the Public Hearing.

Mr. Mark Bell, Dominga Avenue, made the following comments:

- He asked about the rear setback. Town Attorney Coleson stated State law says that a jurisdiction cannot require a setback greater than four feet.
- He asked if an ADU could be up to 50% of the existing house square footage and if there was a size limit. Commissioner Newton stated "yes," and she explained them.
- He asked if a permit was no longer needed to cut down trees to accommodate an ADU. Planning Director Berto stated no permit will be required.

Mr. Rick Hamer, Fairfax, made the following comments:

- This is "one size fits all" legislation which would not work well on hilly areas.
- Natural hazards need to play a bigger role.
- Development and parking will go rampant with few restraints and no replacement or new parking required for properties within ¼ mile of any bus stop.

Chair Swift closed the Public Hearing.

The Commission took a 10-minute break at 9:00 p.m.

Commissioner Newton provided the following comments:

- She was taking a big-picture approach to her comments and recommendations.
- This is difficult to understand because there is no reference to the codes that they are relying on as the basis for the new ordinance. Staff will need to provide the Council with more information.

Commissioner Green provided the following comments:

- He could not believe that what he was reading was real.
- He shares Commissioner Newton's frustration.

Chair Swift provided the following comments:

- She understands the urgency but agrees with Commissioner Newton.
- She asked the Commission to comment on looking at the Urgency Ordinance now and reviewing the other ordinance at a later date.

Commissioner Rodriguez provided the following comments:

- The two ordinances are duplicative. She asked if there was an Urgency Ordinance that could be adopted that would stay the State ordinance to allow them time to comment. Town Attorney Coleson stated “no”. The Commission could take several meetings to review the regular ordinance. She recommended that they let both go ahead and amend the regular ordinance at some time in the near future. The regular ordinance is needed in the event that the Urgency Ordinance Findings are legally challenged and fail.

Commissioner Fragoso provided the following comment:

- Not adopting the regular ordinance along with the Urgency Ordinance would leave the Town open for three to four months with the possibility that they would have no ordinance.

Commissioner Green provided the following comments:

- He agreed with Commission Fragoso.
- He would like to include the standards contained in the November 21st memorandum.
- They can make amendments next year.

Commissioner Fragoso provided the following comment:

- She referred to the November 21st memorandum, page 2, (f)(8)(A), and asked if they could include a requirement for native trees or water conservation. Planning Director Berto stated it does state that the replacement trees shall be native.

Commissioner Newton provided the following comments:

- She would like to add historical protection of trees and structures over a certain age.
- She referred to the November 21st memorandum, page 1, (f)(7)(A), regarding materials and colors and asked if that was consistent with keeping Fairfax quirky. Chair Swift asked if there was delineation between attached and not attached ADUs. Planning Director Berto stated “no.”

Commissioner Kehrlein provided the following comments:

- It would be difficult to match roof slopes given the 16-foot height limit. A flat roof or mansard would be required in order to meet the requirement. The language could say “roofs should be compatible.”

Commissioner Newton provided the following comments:

- Staff was suggesting concrete, measurable standards that cannot be applied on a discretionary basis.
- She would prefer that the units do not match in style, etc.

Commissioner Fragoso provided the following comments:

- The General Plan has language about consistency with the architectural character and style. Principal Planner Neal stated that was too subjective.
- The word “preserve” could be used instead of “match.”

Commissioner Green provided the following comment:

- He suggested the following wording: “The roof slope must be compatible with that of the primary dwelling.”

Chair Swift provided the following comment:

- She suggested deleting (f)(7)(B) regarding roof slopes.

The Commission agreed to deleting (f)(7)(B) regarding roof slopes and leaving (f)(7)(A) and (C) as is.

Commissioner Rodriguez provided the following comment:

- She had a question about the November 21st memorandum, (f)(7)(D), and stated the reference to 30 feet or less should be changed to 4 feet or less.

Commissioner Kehrlein provided the following comment:

- She referred to (f)(7)(D) and stated there is an egress issue and noted egress window sill height cannot be higher than 42 inches off the ground.

Planning Director Berto stated the idea was to preserve privacy for neighbors of second-story ADU's, and an egress window would have to be further away from the property line. He asked for some sort of compromise- they need an affirmative vote from 5 Commissioners. He suggested changing it from 30 feet to 10 feet with a requirement for obscured glass. Chair Swift stated that was too complicated. She asked if it could remain 30 feet but remove the reference to the sill height.

Commissioner Newton provided the following comment:

- She suggested the following wording: "All second story windows....and located six feet or less from the property line shall *either* have ...finished floor, *or obscured glass, as long as such conforms with the Building Code.*"

Commissioner Kehrlein, Green provided the following comments:

- They supported this wording.

Commissioner Rodriguez provided the following comments:

- She was not sure they have required this on other applications that have been submitted, therefore, she did not support this wording.

Chair Swift provided the following comments:

- She did not like the six foot distance and would like something further away.
- This might be something they look at in the future.
- She wanted to move things along.
- She would like to address vegetation management plans in the future.

The Commission supported the wording suggested by Commission Newton with a change from six feet or less to ten feet or less.

Commissioner Rodriguez provided the following comments:

- The section regarding environmental issues should be beefed up. They should add the ridge, flooding, the creek, etc.
- She referred to the November 21st memorandum, (f)(8), and stated she would rather go from a 35-inch box trees down to 24-inch box until they can figure out what they are dealing with.

Commissioner Newton provided the following comments:

- She would like to prevent the removal of Heritage trees. Principal Planner Neal handed the Commission a table defining Heritage trees. Commissioner Newton stated this should be included in both sections- Section 17.048.010, (f)(9) and (10).
- Protected trees that are not Heritage trees could be addressed under the Historic Requirements Section (f)(10).

Chair Swift provided the following comments:

- Historical protections are talking about buildings.
- All of the tree regulations should be under the Landscape Requirements Section (f)(9). Commissioner Green agreed.

Commissioner Newton provided the following comment:

- She asked if AB881 had any reference to historic protection status. Chair Swift stated it talks about the Historic Registry of Buildings. It does not speak to landscaping at all.

Commissioner Newton provided the following comments:

- She referred to (f)(9)(A) and suggested requiring two replacement trees that are the same size as the one removed. Chair Swift asked if that could be considered putting up a “roadblock.” Town Attorney Coleson stated it must be something that is reasonably attainable.
- She would support a 36-inch box tree for protected trees.
- She suggested a 10:1 replacement ratio for Heritage trees.

Chair Swift provided the following comment:

- She would like to go with what is written and review this in the future to make it stronger.

Commissioner Green provided the following comments:

- A 36-inch box tree is significantly more expensive than a 24-inch and they are trying to foster ADUs.
- He supported a 24-inch replacement tree.

Planning Director Berto stated that the idea was to promote good design that minimized removal of protected or heritage trees. Discretionary review of such tree removals will not occur. In cases where trees were to be removed, large replacement trees would be required.

Commissioners Newton and Kehrlein provided the following comment:

- They are good with a 36-inch box tree.

Commissioner Newton provided the following comments:

- She referred to page 3 of the staff report under Environmental Review and asked if the findings listed should be placed in the Commission’s Resolution No. 2019-20. Planning Director Berto stated “yes.”
- She referred to Findings #1 and asked if this finding was saying that there are no existing primary dwellings that are not already built in sensitive environments.

Chair Swift provided the following comments:

- She asked how this applied to an unimproved lot. Principal Planner Neal suggested the following wording: “On a lot already developed with a primary dwelling or on a site located within an approved subdivision that is already served by a developed infrastructure”.

Commissioner Newton provided the following comment:

- She asked if State law says that these units are not subject to CEQA. Planning Director Berto stated “yes.” Town Attorney Coleson stated it was a ministerial approval. The intent of the legislation is to promote the construction of ADUs.

Chair Swift provided the following comments:

- She asked if they could adopt the Resolution without the CEQA Findings Section. The Town Council could adopt the Findings. Planning Director Berto stated a developer could attack the recommendation because the necessary CEQA Findings were not made and the local ordinance could be declared null and void.

Commissioner Green provided the following comment:

- He referred to Finding #2 and stated there will be cumulative impacts.

Commissioner Rodriguez provided the following comments:

- She asked if they could use another CEQA Section and use an exemption instead of an exception. Town Attorney Coleson stated when making CEQA Findings they should not limit it to one or two- they should include everything that is applicable. She understood the concerns of the Commission but reiterated the need for an ordinance that is legally defensible.

Commissioner Newton provided the following comments:

- Finding #1 should be revised.
- Finding #2 makes no sense.
- She referred to Finding #4 and stated the General Plan does make reference to scenic resources. Planning Director Berto stated staff would take a look at this.
- She referred to the Urgency Ordinance, page 1, first "Whereas" and stated "City" should be changed to "Town". The seventh "Whereas", and suggested the following language: "Whereas the approval...personal property, and *safety including emergency evacuation, fire safety, flood, landslides, earthquake, utility impacts.*" Commissioner Green suggested including the following language: "*including, but not limited to.*"

Commissioner Rodriguez provided the following comments:

- She referred to Section 17.048.010 (c) Definitions and stated this section should be expanded to include height measurements, multi-family, primary dwelling, trees, and efficiency unit. The areas listed in Sections (c)(4)(B) and (C) were too big. Commissioner Newton stated that was from the Health and Safety Code. Town Attorney Coleson stated that section should remain.
- She referred to Section 17.048.010 (g)(2)(B)(h) and stated the word "legal" should be added. Town Attorney Coleson stated it was not limited to legal nonconforming units.

Commissioner Newton provided the following comments:

- She asked if the document should state that these provisions supersede other code provisions that might say something different. Commissioner Green stated they could add the following language to the Purpose Section: "This is intended to replace all the old sections." Principal Planner Neal stated Section 3 of the Ordinance covers that. Commissioner Newton stated she was concerned about the cross reference to other sections. Town Attorney Coleson stated staff would add the language suggested by Commissioner Green.
- She referred to page 3, Section 17.048.010 (d)(A) and stated it should say: "Only one ADU *and* JADU...." Town Attorney Coleson stated this refers to a conversion but she will check this language.

Commissioner Rodriguez provided the following comments:

- She referred to Section 17.048.010 (d)(A) and (B) and asked why the references to setbacks were not consistent (maximum vs. at least vs. sufficient).
- She referred to Section 17.048.010 (d)(C) and asked how staff came up with the 25% figure. Town Attorney Coleson stated that was State law.

Commissioner Newton provided the following comments:

- She referred to Section 17.048.010 (e)(1) and asked staff to identify the specific zones in Town that this would apply to.
- She wanted to encourage consideration and criteria relating to water, sewer, traffic, public safety in any zone that allows a residence.

Chair Swift provided the following comment:

- She is not sure she wanted to see ADUs in business zones.

Commissioner Kehrlein provided the following comment:

- She referred to Section 17.048.010 (d)(2)(B), and asked if they had to specify the processing fee amount which could be subject to change. Town Attorney Coleson stated they want the fee to be effective on January 1st which does not give them enough time to amend the Fee Schedule. It can be pulled out and placed in the Fee Schedule at a later date.

Commissioner Rodriguez provided the following comments:

- She referred to Section 17.048.010 (d)(3)(B)(i) and asked that this be reworded.
- She referred to Section 17.048.010 (e)(3) and stated 30 days does not feel adequate. Town Attorney Coleson stated staff was looking at a month-to-month tenancy and not a lease.
- She would like to consider an inclusionary requirement that is linked to the County Housing Element low income rate. Commissioner Fragoso agreed.

Commissioner Newton provided the following comments:

- She referred to Section 17.048.010 (e)(4) and stated they should look at the possibility of conveyances in the future. Commissioner Rodriguez stated she would add “unless they met the subdivision requirements.”
- She referred to Section 17.048.010 (e)(5) and had a question about the septic system provision and asked if it included composting or incinerating toilets. Principal Planner Neal stated “no.” Commissioner Newton stated hooking up to sewer could be cost prohibitive and they should look at alternatives down the road.
- Her vision is to go with a big-picture strategy and how to address the cost issues related to creating affordable housing.
- She referred to Section 17.048.010 (e)(7) and made some minor edits.

Commissioner Green provided the following comment:

- He liked the existing language about prohibiting separate conveyances.

Commissioner Rodriguez provided the following comments:

- She referred to Section 17.048.010 (e)(6)(D) and stated the word “non-profits” should be added at the end.
- She referred to Section 17.048.010 (f)(7) and asked if they could add health and safety concerns related to streets not meeting standards. Town Attorney Coleson stated staff explored this.

Commissioner Green provided the following comment:

- He referred to Section 17.048.010 (f)(7)(B)(ii) and suggested using the word “or” instead of “and.”

Commissioner Newton provided the following comments:

- She referred to Section 17.048.010 (f)(7)(B)(iv)(v) and asked if Fairfax had on-street parking permits or established car share vehicle stops. Planning Director Berto stated “no.”
- She asked if this State legislation was exempt from the Federal Endangered Species Act.
- She would like to prohibit the taking of federally protected species or habitats. Planning Director Berto stated the CEQA thresholds were lower than the NEPA thresholds. Staff would look into citing the pertinent Federal laws.

Planning Director Berto stated there was a minor revision related to Section 5 of the Urgency Ordinance and the regular ordinance that had to do with the Town’s policy on publications.

Commissioner Newton read the revision.

M/s, Newton/Fragoso, motion to adopt Resolution No. 2019-20 as amended by the Commission and staff.

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

ABSENT: Gonzalez-Parber

The Commission took a 5-minute break at 11:45 p.m.

Commissioner Rodriguez left the meeting.

DISCUSSION ITEMS

2. Status update on HRD Permit zoning amendments and mapping

Planning Director Berto presented the staff report.

Chair Swift asked about the changes that were made to the attached ordinance. She referred to the first "Whereas" and stated the reference to watershed areas should be deleted.

MINUTES

3. Minutes from the October 17, 2019 Commission meeting

M/s, Kehrlein/Fragoso, motion to approve the minutes of October 17, 2019 as corrected.

AYES: Fragoso, Kehrlein, Newton, Chair Swift

ABSENT: Gonzalez-Parber, Rodriguez

ABSTAIN: Green

Commissioner Fragoso left the meeting.

Planning Director's Report

There was no report.

Commissioner Comments and Requests

Chair Swift reported the Sonoma State University Annual Planning Conference will be held on February 1, 2020.

Chair Swift noted the Commission had questions about The Lodge at the last meeting and she asked staff if they followed up. Planning Director Berto stated the areas in question fall within the jurisdiction of the Town of San Anselmo.

Chair Swift had a question about the presentation about recent housing legislation scheduled for the December Council meeting. She asked for a copy of the PowerPoint presentation.

Commissioner Newton stated there were numerous economic opportunities with respect to the housing crisis including the Bay Area Housing Finance Authority, the Enhanced Infrastructure Financing Districts, and community land trust tax exemptions. Financial incentives are the key to the Town's success in having impacts on the housing crisis.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 12:10 a.m.

Respectfully submitted,

Toni DeFrancis,
Recording Secretary

URGENCY ORDINANCE NO. 843

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF
THE TOWN OF FAIRFAX AMENDING 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

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, there is a current and immediate threat to the public health, safety, or welfare based on the passage the New ADU Laws because if the Town’s ordinance does not comply with Government Code sections 65852.2 and 65852.22 (as amended) as of January 1, 2020 and the Town’s ordinance regulating ADUs and JADUs becomes null and void, the Town would thereafter be limited to applying the few default standards that are 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, including but not limited to, 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. These threats to public safety, health, and welfare justify adoption of this ordinance as an urgency ordinance to be effective immediately upon adoption by a four-fifths vote of the Town Council; and

WHEREAS, to protect the public safety, health, and welfare, the Town Council may adopt this ordinance as an urgency measure in accordance with Government Code section 36937, subdivision (b), after consideration and recommendation by the Town’s Planning Commission.

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.

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 takes effect immediately upon 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. 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.

PASSED, APPROVED AND ADOPTED by the Town Council of the Town of Fairfax, California, at a special meeting of the Town Council held on the 18th day of December 2019 by the following vote:

AYES: ACKERMAN, COLER, GODDARD, HELLMAN, REED
NOES: None.
ABSENT: None.
ABSTAIN: None.

TOWN OF FAIRFAX



Mayor

ATTEST:



Hannah Politzer, Deputy Town Clerk

EXHIBIT A

Amendments to Town 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. Application processing fees and building permit fees for ADUs and JADUs, as applicable, will be reduced by 50 percent as part of an "Incentive Program" to encourage residents to legalize or create accessory dwelling units. This Incentive Program will expire on 11/01/27.

(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.