



TOWN OF FAIRFAX

STAFF REPORT

January 15, 2020

TO: Mayor and Town Council

FROM: Ben Berto, Planning and Building Services Director *GB*

SUBJECT: Second reading by title only and adoption of 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

RECOMMENDATION

Read by title only and adopt 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."

DISCUSSION

The attached ordinance was introduced at a special meeting of the Town Council on December 18, 2019. Tonight is the second reading and adoption of the ordinance. If adopted, the ordinance would take effect in 30 days and replace the urgency ordinance currently in effect. The urgency ordinance was adopted at the December 18th meeting and is identical to the attached ordinance.

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 took effect on January 1, 2020.

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.

ATTACHMENT

Proposed Ordinance

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 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, 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, 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; and

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 ordinance are severable. The Town Council declares that it would have adopted this ordinance 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 special meeting of the Town Council of the Town of Fairfax, California, on the 18th day of December, 2019, and duly adopted at the next regular meeting of the Town Council on the 15th day of January, 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

RENEE GODDARD, Mayor

ATTEST:

Michele Gardner, Town Clerk

EXHIBIT A

Amendments to Municipal Code

(follows this page)

EXHIBIT A- AMENDMENTS TO MUNICIPAL 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 of 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.