

URGENCY ORDINANCE NO. 861

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF
THE TOWN OF FAIRFAX AMENDING SECTION 17.048.010
OF THE FAIRFAX MUNICIPAL CODE REGARDING
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 local agencies 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 (“2019 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 Town Council previously adopted Ordinance No. 844, which updated the Town’s ADU and JADU regulations (set forth in Fairfax Municipal Code section 17.048.010) to comply with the 2019 ADU Laws; and

WHEREAS, in September of 2020, the California Legislature approved, and the Governor signed into law, Assembly Bill 3182 (“AB 3182”); and

WHEREAS, AB 3182, among other things, amended Government Code section 65852.2 to expand the scenarios under which the Town must allow certain ADUs and JADUs with only a building permit; and

WHEREAS, in September 2021, the California Legislature approved, and the Governor signed into law, Assembly Bill 345 (“AB 345”); and

WHEREAS, AB 345 requires cities to allow the separate sale or conveyance of certain ADUs that satisfy the conditions set forth in Government Code section 65852.26. Such conditions include, among other things, that the ADU or the primary dwelling was constructed by a qualified nonprofit and the ADU is sold to a qualified low-income buyer; and

WHEREAS, the Town desires to amend its local regulatory scheme for the construction of ADUs and JADUs to comply with AB 345 and 3182 and make other staff-initiated revisions that are permitted under State law; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare based on the passage AB 345 and 3182 as the Town's failure to comply with the State's ADU standards (as amended) renders the Town's ordinance regulating ADUs and JADUs null and void. Thereafter, the Town would 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 governing height, setback, landscape, architectural review, among other things, would threaten the unique quality of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety. 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); and

WHEREAS, all legal prerequisites to the adoption of the ordinance have occurred.

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

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

SECTION 2. CEQA. 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 urgency ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's ADU law. 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 the adoption of this ordinance.

SECTION 3. General Plan. This urgency ordinance is, as a matter of law, consistent with the Town's General Plan pursuant to Government Code Section 65852.2(a)(1)(C).

SECTION 4. Code Update. Section 17.048.010 of the Fairfax Municipal Code is hereby amended and restated in its entirety as set forth in Exhibit “A,” attached hereto and incorporated herein by reference.

SECTION 5. Effective Date. This ordinance shall take effect immediately upon its adoption.

SECTION 6. Certification; Posting. The Town Clerk shall certify as to the adoption of this ordinance and within fifteen (15) days of its adoption shall post a certified copy of this ordinance in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women’s Club Building, located at 46 Park Road.

SECTION 7. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The Town Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION 8. Record of Proceedings. The Custodian of Records for this ordinance is Town Clerk and the records comprising the administrative record for this ordinance are located at 142 Bolinas Road, Fairfax, CA 94930.

SECTION 9. Submittal to HCD. The Town Clerk shall submit a copy of this Ordinance to the Department of Housing and Community Development within 60 days after adoption.

PASSED, APPROVED AND ADOPTED by the Town Council of the Town of Fairfax, California, at a regular meeting of the Town Council held on the 19th day of January 2022 by the following vote:

AYES: ACKERMAN, COLER, CUTRANO, GODDARD, HELLMAN
NOES: None
ABSENT: None
ABSTAIN: None

/s/
Stephanie Hellman, Mayor

Attest: _____
/s/
Michele Gardner, Town Clerk

EXHIBIT A

Amendments to Municipal Code

(follows this page)

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

Section 17.048.010 Accessory dwelling units

§ 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 Cal. Gov't Code §§ 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 division (c) below. This does not prevent the town from enforcing compliance with applicable building standards in accordance with Cal. Health and Safety Code § 17980.12.

(C) Definitions. As used in this section, terms are defined as follows:

ACCESSORY DWELLING UNIT or ADU. 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 Cal. Health and Safety Code § 17958.1; and

(b) A manufactured home, as defined by Cal. Health and Safety Code § 18007.

ACCESSORY STRUCTURE. A structure that is accessory and incidental to a dwelling located on the same lot.

COMPLETE INDEPENDENT LIVING FACILITIES. 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.

EFFICIENCY KITCHEN. 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.

JUNIOR ACCESSORY DWELLING UNIT or JADU. 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 above.

LIVING AREA. The interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

MULTI-FAMILY DWELLING . A structure with two or more attached dwellings on a single lot (e.g., apartments, attached townhomes, and row houses).

MULTI-FAMILY LOT. A property with one or more multi-family dwellings.

NATURAL PERSON. A living human being.

NONCONFORMING ZONING CONDITION. A physical improvement on a property that does not conform with current zoning standards.

PASSAGEWAY. A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

PRIMARY RESIDENCE. The largest original residential structure on a site.

PROPOSED DWELLING. A dwelling that is the subject of a permit application and that meets the requirements for permitting.

PUBLIC TRANSIT. A location, including, but not limited to, a bus stop or train station, where the public may access buses, trains or subways and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

TANDEM PARKING. Two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(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 division (E) below, it is allowed with only a building permit in the following scenarios:

(a) Converted on single-family lot. One ADU as described in this division (D)(1)(a) and one JADU on a lot with a proposed or existing single-family dwelling on it, where the ADU or JADU:

1. 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; and

2. Has exterior access that is independent of that for the single-family dwelling; and

3. 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 division (D)(1)(a) above), if the detached ADU satisfies each of the following limitations:

1. The side- and rear-yard setbacks are at least four feet.

2. The total floor area is 800 square feet or smaller.

3. The peak height above grade is 16 feet or less.

(c) Converted on multi-family lot. One or more ADUs within portions of existing multi-family 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. Under this

division (D)(1)(c), at least one converted ADU is allowed within an existing multifamily dwelling, up to a quantity equal to 25 percent of the existing multi-family dwelling units.

(d) Limited detached on multi-family 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:

1. The side- and rear-yard setbacks are at least four feet.
2. The peak height above grade is 16 feet or less.

(2) ADU permit.

(a) Except as allowed under division (D)(1) above, no ADU may be created without a building permit and an ADU permit in compliance with the standards set forth in divisions (E) and (F) below.

(b) The ADU-permit processing fee is \$500. Any building permit fees shall be in addition to the ADU-permit 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. In addition to the foregoing, while the Incentive Program remains in effect, any property with a non-permitted ADU or JADU that is legalized pursuant to this section will not be assessed a financial penalty for failing to obtain a permit required by this section. This Incentive Program expires on January 1, 2032.

(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. If the town does not act upon the completed application within 60 days, the application is deemed approved unless either:

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

2. When an application to create an ADU or JADU 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 ADU or JADU until the town acts on the permit application to create the new single-family dwelling, but the application to create the

ADU or 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 divisions (D)(1) or (D)(2) above:

(1) Zoning.

(a) An ADU or JADU subject only to a building permit under division (D)(1) above may be created on a lot in a residential or mixed-use zone.

(b) An ADU or JADU subject to an ADU permit under division (D)(2) above may be created on a lot that is zoned to allow single-family dwelling residential use or multi-family 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, except as otherwise provided in Government Code Section 65852.26, 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 multi-family 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 permitted 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 permitted after that date but before January 1, 2025, is not subject to any owner-occupancy requirement.

(c) All ADUs that are permitted 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 division (E)(6)(d) 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) Except as otherwise provided in Government Code Section 65852.26, 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. 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. The Director may then determine whether evidence supports the claim that the ADU or JADU has been eliminated. Appeal may be taken from the Director's determination consistent with other provisions of this Code. 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) 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) Submittal requirements. The Director of Planning and Building Services will establish submittal requirements consistent with departmental regulations.

(9) Building & safety. All ADUs and JADUs must comply with all local building and fire code requirements.

(F) Specific ADU requirements. The following requirements apply only to ADUs that require an ADU permit under division (D)(2) above.

(1) Maximum size.

(a) The maximum size of a detached or attached ADU subject to this division (F) is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two bedrooms.

(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 division (F), such as FAR or lot coverage, might further limit the size of the ADU, but no application of the percent-based limit in division (F)(1)(b) above or of an FAR or lot coverage limit or open-space requirement may require the ADU to be less than 800 square feet.

(2) Floor area ratio (FAR). No ADU subject to this division (F) may cause the total FAR of the lot to exceed 40 percent, subject to division (F)(1)(c) above.

(3) Lot coverage. No ADU subject to this division (F) may cause the total lot coverage of the lot to exceed 35 percent, subject to division (F)(1)(c) above.

(4) Minimum open space. Subject to division (F)(1)(c) above, no ADU on a lot subject to this division (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 ten feet or slope of greater than ten percent, subject to division (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 division (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 division (C) above.

(b) Exceptions. No parking under division (F)(7)(a) is required in the following situations:

1. The ADU is located within one-half mile walking distance of public transit, as defined in division (C) above.

2. The ADU is located within an architecturally and historically significant historic district.

3. The ADU is part of the proposed or existing primary residence or an accessory structure under division (D)(1)(a) above.

4. When on-street parking permits are required but not offered to the occupant of the ADU.

5. 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) Stream Buffer. No ADU 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.

(9) 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 two lumens at ground level, be night sky compliant, and shall be shielded from direct off-site 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 six feet above the finished floor.

(10) Landscape requirements. There shall be a 2:1 replacement planting with 36-inch box sized native trees for each tree removed with 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.

(11) Historical protections. An ADU that is within 600 feet of real property that is listed in the California Register of Historic Resources is subject to objective development requirements of the State Historical Building Code.

(12) Setbacks.

(a) Side and rear setbacks must be at least four feet.

(b) Front setbacks must be at least ten feet.

(c) No setback is required for an ADU that is subject to this subsection (F) if the ADU is constructed in the same location and to the same dimensions as an existing structure.

(G) Fees.

(1) Impact fees.

(a) No impact fee is required for an ADU or JADU that is less than 750 square feet in size. For purposes of this division (G)(1), "impact fee" means a "fee" under the Mitigation Fee Act (Gov. Code § 66000(b)) and a fee under the Quimby Act (Gov. Code § 66477). "Impact fee" here does not include any connection fee or capacity charge for water or sewer service.

(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 ADU, divided by the floor area of the primary dwelling, times the typical fee amount charged for a new dwelling).

(2) Utility fees.

(a) If an ADU or JADU is constructed with a new single-family home, a separate utility connection between the ADU or JADU and the utility and payment of the normal connection fee or capacity charge for a new dwelling are required.

(b) Except as described in division (G)(2)(a), converted ADUs and JADUs on a single-family lot that are created under division (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.

(c) Except as described in division (G)(2)(a), all ADUs and JADUs that are not covered by division (G)(2)(b) require a new, separate utility connection directly between the ADU or JADU and the utility.

(i) 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.

(ii) The portion of the fee or charge that is charged by the town 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 divisions (A) through (G)(2) of this section may be allowed by the town with a variance or conditional use permit, as applicable, in accordance with the other provisions of this title.

(Ord. 810, passed 11-1-2017; Am. Ord. 844, passed 1-15-2020)