



# TOWN OF FAIRFAX

## STAFF REPORT

### December 7, 2022

**TO:** Mayor and Town Council

**FROM:** Heather Abrams, Town Manager  
David Woltering, Interim Planning & Building Services Director

**SUBJECT:** Adopt Urgency Ordinance Amending Chapter 17.048 of the Fairfax Municipal Code Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units and Determining the Ordinance to be Statutorily Exempt from CEQA

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#### **RECOMMENDATION**

Waive reading, introduce and adopt by title only the attached “Urgency Ordinance: Amending Chapter 17.048 of the Fairfax Municipal Code Relating to Accessory Dwelling Units and Junior Accessory Dwelling Units and Determining the Ordinance to be Statutorily Exempt from CEQA.

#### **BACKGROUND**

In late 2022, the California Legislature approved, and the Governor signed into law, a new bill (SB 897) that further amended the Accessory Dwelling Unit and Junior Accessory Dwelling Unit statutes (Government Code sections 65852.2 and 65852.22). The changes were as follows:

- require the Town to allow certain ADUs to have increased height — up to 18 or 25 feet, depending upon the situation,
- require the Town’s front setback requirements to accommodate locating certain ADUs,
- require the Town to justify a denial with a full set of detailed comments describing the deficiencies in the application and explaining how to remedy them, and
- remove the automatic repeal in 2025 (now the ADU statute is permanent).

SB 897 takes effect January 1, 2023. If the Town’s ADU ordinance does not comply with requirements of SB 897 by that date, the Town’s entire existing ADU ordinance becomes null and void as a matter of law, and the Town will have to allow ADUs with no local regulation except for the few requirements in the State ADU law.

#### **DISCUSSION**

The proposed ordinance amends the Town’s local regulatory scheme for the construction of ADUs and JADUs to comply with recently amended provisions of Government Code sections 65852.2 and 65852.22.

Failure to comply with Government Code sections 65852.2 and 65852.22 (as amended) by January 1, 2023, renders the Town's ADU ordinance null and void, thereby limiting the Town to the application of the few default State standards provided in Government Code sections 65852.2 and 65852.22. The approval of ADUs and JADUs based solely on these default statutory standards, without local regulations governing height, setback, landscape, and architectural review, among other things, would threaten the aesthetic of existing neighborhoods, and negatively impact property values, personal privacy, and fire safety.

The attached proposed Urgency Ordinance includes changes to Chapter 17.048 of the Fairfax Town Code.

The ADU code amendments are proposed for adoption by urgency ordinance, in accordance with Government Code section 36937, subdivision (b), and may be followed at the earliest possible time by a non-urgency ordinance that will be considered for approval by the Planning Commission before returning to the Town Council for ultimate adoption.

Adoption of the urgency ordinance will require an affirmative four-fifths vote of the Town Council. Upon adoption, the urgency ordinance takes effect immediately.

**FISCAL IMPACT**

This Ordinance is a Town initiative, and all associated staff and processing costs will be covered under the General Fund.

**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 proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements the State's ADU law.

**ATTACHMENT**

Proposed Urgency Ordinance, including Exhibit A with code amendments

ORDINANCE NO. \_\_\_\_

**AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX  
AMENDING CHAPTER 17.048 OF THE FAIRFAX MUNICIPAL CODE RELATING TO  
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**, State law authorizes cities 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 recent years, the California Legislature has approved, and the Governor has signed into law, a number of bills that, among other things, amended Government Code sections 65852.2 and 65852.22 to impose new limits on local authority to regulate ADUs and JADUs; and

**WHEREAS**, in 2022, the California Legislature approved, and the Governor signed into law, a new bill (SB 897) that further amends Government Code sections 65852.2 and 65852.22; and

**WHEREAS**, SB 897 takes effect January 1, 2023, and if the Town’s ADU ordinance does not comply with the requirements imposed by SB 897 by that date, the Town’s entire existing ADU ordinance becomes null and void 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 of SB 897 because if the Town’s ordinance does not comply with the amended laws as of January 1, 2023, and the Town’s ADU ordinance 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 governing height, setback, landscape, and architectural review, among other things, would threaten the aesthetic 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).

**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 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.

**SECTION 3.** Chapter 17.048 of the Fairfax Municipal Code is hereby amended and restated to read in its entirety as provided in Exhibit A, attached hereto and incorporated herein by reference (deletions shown in ~~strikethrough~~ and additions shown in underline).

**SECTION 4.** This ordinance takes effect immediately upon its adoption.

**SECTION 5.** 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 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 section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The Town Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

The foregoing ordinance was passed, approved, and adopted at a meeting of the Town Council on the 7th day of December 2022, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Michele Gardner, Town Clerk

# **EXHIBIT A**

**Amended ADU Regulations**

## 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:
- (1) **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.
  - (2) **ACCESSORY STRUCTURE.** A structure that is accessory and incidental to a dwelling located on the same lot.

- (3) **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.
- (4) **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.
- (5) **JUNIOR ACCESSORY DWELLING UNIT or JADU.** A residential unit that satisfies all of the following:
  - (a) Is no more than 500 square feet in size,
  - (b) Is contained entirely within an existing or proposed single-family structure (an enclosed use within the residence, such as an attached garage, is considered to be a part of and contained within the single-family structure).
  - (c) Includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure, and
  - (d) If the unit does not include its own separate bathroom, then it contains an interior entrance to the main living area of the existing or proposed single-family structure in addition to an exterior entrance that is separate from the main entrance to the primary dwelling, and
  - (e) Includes an efficiency kitchen, as defined above.
- (6) **LIVING AREA.** The interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
- (7) **MULTI-FAMILY DWELLING.** A structure with two or more attached dwellings on a single lot (e.g., apartments, attached townhomes, and row houses).
- (8) **MULTI-FAMILY LOT.** A property with one or more multi-family dwellings.
- (9) **NATURAL PERSON.** A living human being.
- (10) **NONCONFORMING ZONING CONDITION.** A physical improvement on a property that does not conform with current zoning standards.
- (11) **PASSAGEWAY.** A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

- (12) **PRIMARY RESIDENCE.** The largest original residential structure on a site.
  - (13) **PROPOSED DWELLING.** A dwelling that is the subject of a permit application and that meets the requirements for permitting.
  - (14) **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.
  - (15) **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:
      - (i) Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or (in the case of an ADU only) 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
      - (ii) Has exterior access that is independent of that for the single-family dwelling; and
      - (iii) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes; and
      - (iv) The JADU complies with the requirements of Government Code Section 65852.22.
    - (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 the following limitations:
      - (i) The side- and rear-yard setbacks are at least four feet.
      - (ii) The total floor area is 800 square feet or smaller.



- (iii) The peak height above grade is ~~16 feet or less~~ does not exceed the applicable height limit in division (E)(2) below.
  - (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 or proposed multifamily dwelling, further provided that each detached ADU satisfies the following limitations:
    - (i) The side- and rear-yard setbacks are at least four feet. If the existing multifamily dwelling has a rear or side yard setback of less than four feet, the town will not require any modification to the multifamily dwelling as a condition of approving the ADU.
    - (ii) The peak height above grade is ~~16 feet or less~~ does not exceed the applicable height limit in division (E)(2) below.
- (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 currently \$500 and subject to adjustment in the Town fee schedule. 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~~ approve or deny 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~~ has not approved or denied the completed application within 60 days, the application is deemed approved 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) When an application to create an ADU or JADU is submitted with a permit application to create a new single-family or multifamily 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 or multifamily dwelling, but the application to create the ADU or JADU will still be considered ministerially without discretionary review or a hearing.
  - (c) If the town denies an application to create an ADU or JADU, the town must provide the applicant with comments that include, among other things, a list of all the defective or deficient items and a description of how the application may be remedied by the applicant. Notice of the denial and corresponding comments must be provided to the applicant within the 60-day time period established by division (D)(3)(b) above.
  - (d) A demolition permit for a detached garage that is to be replaced with an ADU is reviewed with the application for the ADU and issued at the same time.
- (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) *Height.*
    - (a) Except as otherwise provided by divisions (E)(2)(b) and (E)(2)(c) below, a detached ADU created on a lot with an existing or proposed single-family or multifamily dwelling unit may not exceed 16 feet in height.

- (b) A detached ADU may be up to 18 feet in height if it is created on a lot with an existing or proposed single-family or multifamily dwelling unit that is located within one-half mile walking distance of a major transit stop of a high quality transit corridor, as those terms are defined in Section 21155 of the Public Resources Code, and the ADU may be up to two additional feet in height (for a maximum of 20 feet) if necessary to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.
  - (c) A detached ADU created on a lot with an existing or proposed multifamily dwelling unit that has more than one story above grade may not exceed 18 feet in height.
  - (d) An ADU that is attached to the primary dwelling unit may not exceed 25 feet in height or the height limitation imposed by the underlying zone that applies to the primary dwelling unit, whichever is lower. Notwithstanding the foregoing, ADUs subject to this division (E)(2)(d) may not exceed two stories.
  - (e) For purposes of this division (E)(2), height is measured above existing legal grade to the peak of the structure.
- (3) *Fire sprinklers.*
- (a) Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.
  - (b) The construction of an ADU does not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.
- (4) *Rental term.* No ADU or JADU may be rented for a term that is shorter than 30 days.
- (5) *No separate conveyance.* An ADU or JADU may be rented, but, except as otherwise provided in Cal. Gov't Code § 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).
- (6) *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.
- (7) *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.~~

- (a) An ADU that is permitted after ~~that date~~ January 1, 2020 but before January 1, 2025, is not subject to any owner-occupancy requirement.
  - (b) ~~All~~ Unless applicable law requires otherwise, 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.
  - (c) ~~All~~ As required by state law, 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)(7)(c)~~ does not apply if the property is entirely owned by another governmental agency, land trust, or housing organization.
- (8) *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 Cal. Gov't Code § 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.
- (9) *Submittal requirements.* The Director of Planning and Building Services will establish submittal requirements consistent with departmental regulations.
- (10) *Building and safety.*
  - (a) All Compliance with building code. Subject to division (E)(10)(b) below, all ADUs and JADUs must comply with all local building and fire code requirements.
  - (b) No change of occupancy. Construction of an ADU does not constitute a Group R occupancy change under the local building code, as described in Section 310 of the California Building Code, unless the building official or a code enforcement officer makes a written finding based on substantial evidence in the record that the construction of the ADU could have a specific, adverse impact on public health and safety. Nothing in this division (E)(10)(b) prevents the town from changing the occupancy code of a space that was uninhabitable space or that was only permitted for nonresidential use and was subsequently converted for residential use in accordance with this division.
- (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.~~
- (5) *Passageway*. No passageway, as defined by division (C) above, is required for an ADU.
- (6) *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)(76)(a) is required in the following situations:
    - (i) The ADU is located within one-half mile walking distance of public transit, as defined in division (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 division (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.
  - (vi) When the permit application to create an ADU is submitted with an application to create a new single-family or new multifamily dwelling unit on the same lot, provided that the ADU or the lot satisfies any other criteria listed in divisions (F)(6)(b)(i) through (v) above.
- (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.
- (7) *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.
- (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 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.
- (9) *Landscape requirements.* There shall be a 2:1 replacement planting with a minimum 15-gallon sized native trees for each tree removed with 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. Trees selected must not include trees listed in the Town of Fairfax Municipal Code, Chapter 8.36 Trees that are “Undesirable Trees Species”.
- (10) *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.
- (11) *Setbacks.*
  - (a) Side and rear setbacks must be at least four feet.
  - (b) Front setback must be at least ten feet.

- (c) No setback is required for an ADU that is subject to this division (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 (Cal. Gov't. Code § 66000(b)) and a fee under the Quimby Act (Cal. Gov't. 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 Zoning Code Conditions, Building Code Violations, and Unpermitted Structures.*



- (1) Generally. The town will not deny an ADU or JADU application due to a nonconforming zoning condition, building code violation, or unpermitted structure on the lot that does not present a threat to the public health and safety and that is not affected by the construction of the ADU or JADU.
- (2) Unpermitted ADUs constructed before 2018.
  - (a) Permit to legalize. As required by state law, the town may not deny a permit to legalize an existing, but unpermitted ADU that was constructed before January 1, 2018, due to either of the following:
    - (i) The ADU violates applicable building standards, or
    - (ii) The ADU does not comply with the state ADU law (Government Code Section 65852.2) or this ADU ordinance.
  - (b) Exceptions.
    - (i) Notwithstanding division (H)(2)(a) above, the town may deny a permit to legalize an existing, but unpermitted ADU that was constructed before January 1, 2018, if the town makes a finding that correcting a violation is necessary to protect the health and safety of the public or of occupants of the structure.
    - (ii) Division (H)(2)(a) above does not apply to a building that is deemed to be substandard in accordance with California Health and Safety Code Section 17920.3.
- (l) *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.