

**TOWN OF FAIRFAX  
STAFF REPORT**

**To:** Planning Commission

**From:** Ben Berto, Director of Planning and Building Services  
Amanda Charne, Assistant Town Attorney

**Date:** May 17, 2018

**Subject:** Consideration of an Ordinance of the Town Council of the Town of Fairfax Amending Sections 17.048.050, 17.048.060, 17.048.070 and 17.052.040 of the Fairfax Municipal Code pertaining to Accessory Dwelling Units.

**BACKGROUND**

The California Legislature has long identified accessory dwelling units (ADUs), also known as second units, in-law apartments, or “granny flats,” as a valuable form of housing within existing neighborhoods for family members, students, the elderly, in-home health care providers, the disabled, and others. In 2016, the Legislature significantly revised state law to address barriers to the creation of ADUs (SB 1069, Wieckowski and SB 2299, Bloom).

In 2017, the Legislature adopted further changes to the state’s ADU law. Assembly Bill 494 (Bloom, Chapter 602, Stats. 2017) and Senate Bill 229 (Wieckowski, Chapter 594, Stats. 2017) imposed new restrictions on local authority to regulate accessory dwelling units.

This Ordinance would update Fairfax Municipal Code, Chapter 17.48 for consistency with the new state law changes.

*The New Laws*

Assembly Bill 494 and Senate Bill 229 took effect on January 1, 2018. These are double jointing bills, which both amended Section 65852.2 of the Government Code. The changes to the provisions of the ADU law include:

- Existing law requires local ADU ordinances to allow an ADU to be rented. AB 494 clarifies that this unit may be rented separately from the primary residence.
- Existing law prohibits local ADU ordinances from requiring a setback for an existing garage that is converted to an ADU. AB 494 prohibits setback requirements for a garage that is converted to a portion of an ADU.
- Previously, the law provided that the increased floorspace of an attached ADU could not exceed 50% of the primary dwelling unit’s living area, with a maximum increase of 1,200 square feet. AB 494 now provides that the total area of floorspace of

an attached ADU shall not exceed 50% of the proposed/existing primary dwelling unit's living area or 1,200 square feet.

- Previously, the law restricted parking requirements to no more than one space per unit or per bedroom. AB 494 now restricts parking requirements to the lesser of one space per unit or bedroom.

- Previously, the law required local ordinances to allow tandem parking for ADUs unless there are fire or life safety concerns, or if tandem parking is prohibited throughout the jurisdiction. AB 494 provides that tandem parking can only be disallowed if there are fire or life safety concerns.

- Existing law requires local agencies to ministerially approve an application to create an ADU that would be contained within the existing space of a single-family residence or accessory structure. AB 494 specifies that this includes, but is not limited to, a detached studio, pool house, or other similar structure, and provides that a city may require owner occupancy of either the primary or accessory dwelling unit created through this process.

Some of the other clarifying changes in AB 494 are already reflected in the Fairfax's ordinance, such as applying the ADU standards to lots with an existing or proposed single-family dwelling, and allowing ADUs in single-family and multi-family residential zones. Another key change, the limitations on water and sewer service connection fees and capacity charges, pertains to the requirements of those utilities, rather than the Town.

Finally, the ordinance would clarify that the ADU deed restriction must include the requirement for owner occupancy, as this is a limitation on the use of property of which prospective purchasers should be made aware.

Local agencies must submit a copy of the ordinance to the Department of Housing and Community Development (HCD) within 60 days after adoption. HCD may review and comment on this submitted ordinance.

### **RECOMMENDATION**

Staff recommends that the Planning Commission adopt a resolution recommending that the Town Council adopt Ordinance No. 18-XX, amending Chapter 17.048 of the Fairfax Municipal Code pertaining to Accessory Dwelling Units.

### **FISCAL IMPACTS**

None

### **ATTACHMENTS**

Attachment A – Resolution

Attachment B – Proposed Ordinance

**Attachment A**

**RESOLUTION NO. 2018-07**  
**A Resolution of the Fairfax Planning Commission Recommending**  
**Town Council Approval of an Ordinance Amending Chapter 17.048 of the**  
**Fairfax Municipal Code pertaining to Accessory Dwelling Units**

**WHEREAS**, California Legislature has identified accessory dwelling units (ADU's) as a valuable form of housing within existing neighborhoods for family members, students, the elderly, in-home health care providers, the disabled, and others; and

**WHEREAS**, the Legislature continues to revise state law to address barriers to the creation of ADUs, and in 2017, the Legislature adopted its latest changes to the state's ADU law that imposes new restrictions on local authority to regulate accessory dwelling units; and

**WHEREAS**, the Town of Fairfax desires to amend its local regulations pertaining to accessory dwelling units in order to meet new state law.

**NOW, THEREFORE BE IT RESOLVED**, the Planning Commission of the Town of Fairfax hereby recommends to the Town Council that it adopt the attached Ordinance, referred to as "Attachment B", amending Chapter 17.048 of the Fairfax Municipal Code pertaining to Accessory Dwelling Units.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 17<sup>th</sup> day of May, 2018, by the following vote:

AYES:  
NOES:

\_\_\_\_\_  
Chair, Mimi Newton

Attest:

\_\_\_\_\_  
Ben Berto, Director of Planning and Building Services



## ATTACHMENT B

ORDINANCE NO. \_\_\_\_

### AN ORDINANCE OF THE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING SECTIONS 17.048.050, 17.048.060, 17.048.070 AND 17.052.040 OF THE FAIRFAX MUNICIPAL CODE RELATING TO ACCESSORY DWELLING UNITS

WHEREAS, the Town regulates the creation of accessory dwelling units with the Town through Fairfax Municipal Code, Chapter 17.048, Article I; and

WHEREAS, Assembly Bill 494 (Bloom, Chapter 602, Stats. 2017) and Senate Bill 229 (Wieckowski, Chapter 594, Stats. 2017), which became effective January 1, 2018, amended Government Code Section 65852.2 and imposed new restrictions on local authority to regulate accessory dwelling units; and

WHEREAS, the Town desires to amend its local regulatory scheme for the construction of accessory dwelling units to meet new state law; and

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

**SECTION 1.** Subsection (E) of Section 17.048.050 (“Accessory Dwelling Unit Permit Application Processing And Review”) of the Fairfax Municipal Code is hereby amended and restated as follows:

“(E) *Exception.* An accessory dwelling unit is exempt from the requirement to obtain an accessory dwelling unit permit in subsection (A) of this section if the unit meets all of the requirements of subsection (E)(1) below.

(1) The accessory dwelling unit:

(a) Is one accessory dwelling unit per single-family lot located within a zone for single-family residential zone-use (the RD 5.5-7, RS-6, RS 7.5 and UR zoning districts);

(b) Is contained within the existing space of a legally established single-family residence or accessory structure, such as a studio, pool house, or other similar accessory structure;

(c) Has independent exterior access from the existing residence; and

(d) The side and rear setbacks are sufficient for fire safety.

(2) If the requirements of subparagraph (E)(1) are met, then the applicant;

(a) Is not required to install fire sprinklers in the accessory dwelling unit if the primary residence is not required to have fire sprinklers;

(b) Is not required to install a new or separate utility connection directly between the accessory dwelling unit and the utility, and shall not be charged a related connection fee or capacity charge.

(c) Shall record a deed restriction as provided in § 17.048.070 and obtain a building permit as required by the building code as adopted and amended by Chapters 8.04 and 15.04 of the Fairfax Municipal Code.”

Except as modified herein, all other provisions contained in Section 17.048.050 of the Fairfax Municipal Code shall remain in full force and effect.

**SECTION 2.** Section 17.048.060 (“Standards for Accessory Dwelling Units”) of the Fairfax Municipal Code is hereby amended and restated as follows:

“§ 17.048.060 STANDARDS FOR ACCESSORY DWELLING UNITS.

An accessory dwelling unit shall meet the following standards listed below.

(A) *Owner occupancy.* Either the primary residence or the accessory dwelling unit shall be owner-occupied.

(B) *Rental.* The unit shall not be sold separately from the primary residence. The unit may be rented separately from the primary residence and shall only be rented for terms of 30 days or more.

(C) *Development on lot.* A single-family dwelling or duplex must exist on the lot or will be constructed in conjunction with the accessory dwelling unit and be located within the RD 5.5-7, RS-6, RS 7.5, SF-RMP, UR or RM zoning districts. Accessory dwelling units are not allowed in conjunction with multiple residential development.

(D) *Maximum number.* A maximum of one accessory dwelling unit or junior accessory dwelling unit is allowed per lot.

(E) *Unit.* The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(F) *Maximum size.*

(1) The total area of floorspace shall not exceed 50 percent of the proposed or existing primary dwelling living increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(2) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(G) *Minimum size.* The accessory dwelling unit shall contain no less than the 150 square feet area minimum required for an efficiency dwelling unit as defined in Section 17958.1 of the Health & Safety Code.

(H) *Facilities.* An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. No passageway shall be required in conjunction with the construction of an accessory dwelling unit. “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(I) *Setback.* No setback shall be required for a legally created existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a legally created garage. All other accessory dwelling units shall comply with the front, rear and side yard setback requirements of the underlying zoning district.

(J) *Building and fire code compliance.* The accessory dwelling unit shall comply with the Fairfax building and fire code requirements that apply to detached dwellings, as appropriate, including any requirements to obtain a building permit. See Town Municipal

Code, Chapter 8.04 and Chapter 15.04. An accessory dwelling unit is not required to have fire sprinklers, if the primary residence is not required to have fire sprinklers.

(K) *Sanitary service requirements.* If an existing private septic system is to be utilized, the applicant must provide written confirmation from the Marin County Environmental Health Department that the existing sanitary system is adequate to handle the dwelling units it will serve.

(L) *Parking.*

(1) Except as provided in subparagraph (2):

(a) An accessory dwelling unit shall provide one parking space per unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(b) The required parking spaces may be located on setback areas approved by the Director or tandem parking on an existing driveway, unless specific findings are made by the Director that such parking arrangements are not feasible based upon specific site or regional topographical or fire or life safety conditions.

(c) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the replacement spaces for the primary dwelling may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, tandem spaces, or by the use of mechanical automobile parking lifts.

~~(a) Accessory dwelling units must meet the following parking standards:~~

~~1. For accessory dwelling units with no separate bedrooms, one off-street parking space shall be provided for the accessory dwelling unit.~~

~~2. For accessory dwelling units with at least one separate bedroom, one off-street parking space shall be provided per bedroom.~~

~~(b) If parking is required:~~

~~1. The required parking spaces may be located on setback areas approved by the Director or tandem parking on an existing driveway, unless specific findings are made under subparagraph (2).~~

~~2. Parking arrangements in subparagraph (1) may be prohibited if the Director makes specific findings that such parking arrangements are not feasible based upon specific site or regional topographical or fire or life safety conditions, or that such arrangements are not permitted anywhere in the jurisdiction.~~

~~3. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, the replacement parking spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, tandem spaces, or by the use of mechanical automobile parking lifts.~~

(2) Parking standards shall not be imposed on an accessory dwelling unit if any of the following circumstances exist on the property:

(a) The accessory dwelling unit is located within one-half mile of public transit. For purposes of this section, "public transit" shall mean a public transit stop or station.

(b) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(c) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.

(d) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(e) When there is a car share vehicle located within one block of the accessory dwelling unit.

(M) *Physical development standards.* Except as otherwise provided in this chapter, the accessory dwelling unit shall meet all physical property development standards of the zoning district in which it is located, including but not limited to, height, lot size, floor area ratio and lot coverage.

(N) *Architectural design standards.* Any modifications to the exterior of the building, or construction of new structures, shall be strictly in keeping with the architectural character of the principal residence. The design of the accessory dwelling unit shall relate to the design of the primary residence by use of the similar exterior wall materials, colors, window types, door and window trims, roofing materials and roof pitch.

(O) *Utilities.* Utility service for sewer, water, electricity and gas (if necessary) shall be provided to the accessory dwelling unit.”

**SECTION 3.** Section 17.048.070 (“Deed Restriction”) of the Fairfax Municipal Code is hereby amended and restated as follows:

§ 17.048.070 DEED RESTRICTION.

(A) Prior to issuance of a building permit for an accessory dwelling unit, a deed restriction shall be recorded against the title of the property in the Marin County Recorder's office and a copy filed with the Town Planning and Building Services. Said deed restriction shall run with the land, and shall bind all future owners, heirs, successors, or assigns. The form of the deed restriction shall be provided by the town and shall provide that:

(1) The accessory dwelling unit shall not be sold separately from the primary residence.

(2) Either the primary residence or the accessory dwelling unit shall be owner occupied.

(3) The unit is restricted to the approved size and attributes of this article.

(4) The deed restrictions run with the land and may be enforced against future purchasers.

(5) The deed restrictions may be removed if the owner eliminates the accessory dwelling unit.



The deed restrictions shall be enforced by the Director of Planning and Building Services or his or her designee for the benefit of the Town of Fairfax. Failure of the property owner to comply with the deed restrictions may result in legal action against the property owner and the town shall be authorized to obtain any remedy available to it at law or equity, including but not limited to obtaining an injunction enjoining use of the accessory dwelling unit in violation of the recorded restrictions or abatement of the illegal unit."

**SECTION 4.** Subdivision (E) of Section 17.052.040 ("Standards For Parking Spaces") of the Fairfax Municipal Code is hereby amended and restated as follows:

"(E) No tandem parking stall shall be allowed, except for a guest space in tandem with required parking for the principal residence. Tandem parking shall not be used in conjunction with a parking space required for ~~a residential second unit~~ an accessory dwelling unit, except as allowed by §17.048.060."

**SECTION 5.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 6.** The Town Council finds the adoption of this ordinance to be statutorily exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 21080.17 of the Public Resources Code because it is an ordinance regarding accessory dwelling units in single-family and multifamily residential zones to implement the provisions of Government Code Section 65852.2.

**SECTION 7.** This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

**SECTION 8.** Filing. The Town Clerk shall submit a copy of this ordinance to the Department of Housing and Community Development within 60 days after adoption.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the \_\_\_th day of \_\_\_\_\_, 2018, and duly adopted at the next regular meeting of the Town Council on the \_\_\_ day of \_\_\_\_\_, 2018, by the following vote, to wit:

AYES:  
NOES:

ABSENT:

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Peter Lacques, Mayor

Attest:

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Michele Gardner, Town Clerk

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Date