TOWN OF FAIRFAX
STAFF REPORT

TO: Mayor, Members of the Town Council

FROM: Michael Rock, Town Manager MKR
Jim Moore, Planning and Building Services Director

DATE: January 13, 2010

SUBJECT: Second Reading and Adoption of Ordinance No. 748, extending the Second Unit Amnesty Program for a One-Year Period by Amending Chapter 17.048 of the Fairfax Town Code Regarding Certain Existing Residential Second Units

RECOMMENDATION

Motion to waive further reading of Ordinance No. 748 and a separate motion for a Second Reading and Adoption of Ordinance No. 748 extending the Second Unit Amnesty Program for a One-Year Period by Amending Chapter 17.048 of the Fairfax Town Code Regarding Certain Existing Residential Second Units.

ATTACHMENTS

December 2, 2009 Staff Report on Introduction and First Reading

Proposed Ordinance No. 748

AGENDA ITEM #10

TOWN OF FAIRFAX
STAFF REPORT

TO: **Mayor, Members of the Town Council**

FROM: **Michael Rock, Town Manager**
Jim Moore, Planning and Building Services Director
Linda Neal, Senior Planner

DATE: **December 2, 2009**

SUBJECT: **Introduction and First Reading of Ordinance No. 748, extending the Second Unit Amnesty Program for a One-Year Period by Amending Chapter 17.048 of the Fairfax Town Code Regarding Certain Existing Residential Second Units**

RECOMMENDATION

Motion to waive further reading of Ordinance No 748 and a separate motion to introduce Ordinance No. 748 of the Town of Fairfax Extending a Second Unit Amnesty Program for a One Year Period by Amending Chapter 17.048 of the Fairfax Town Code Regarding Certain Existing Residential Second Units.

DISCUSSION

In June of 2006, the Town of Fairfax adopted the Fairfax Housing Element, including the goal to encourage residential second units in all residential neighborhoods as a way to meet the Town's required affordable housing needs.

In July of 2007 the Town adopted Ordinance 721 creating a second unit amnesty program for one year to encourage the creation of new second units and the legalization of existing second units. The ordinance decreased the fees for second units, eliminated the requirement for separate utility meters, and allowed the use of tandem parking to meet the parking requirements. The Ordinance expired on August 11, 2008.

In March 2009, the Town Council adopted Ordinance 737 re-establishing the amnesty program at the request of the Fairfax Planning Commission. The Planning Commission requested the program be re-established due to the lack of applications. Ordinance 737 is due to expire on March 4th of 2010.

The Town has only received four second unit applications since the introduction of the amnesty program. Staff is currently investigating possible ways to modify the program to encourage additional applications in the future, such as relaxing certain sprinkler requirements. Any further amendments to the Ordinance can be added at the January 13, 2010 Town Council meeting when the second reading and adoption of the Ordinance will take place.

ATTACHMENTS

Proposed Ordinance 748

ORDINANCE NO. 748

AN ORDINANCE OF THE TOWN OF FAIRFAX EXTENDING A SECOND UNIT AMNESTY PROGRAM FOR A ONE-YEAR PERIOD BY AMENDING CHAPTER 17.048 OF THE FAIRFAX CODE REGARDING CERTAIN EXISTING RESIDENTIAL SECOND UNITS

The Town Council of the Town of Fairfax does hereby ordain as follows:

SECTION 1. FINDINGS.

WHEREAS, second dwelling units have been permitted in the Town of Fairfax since 1985 pursuant to the provisions of Chapter 17.048 of the Town Code (the "Second Unit Ordinance").

WHEREAS, the Fairfax Housing Element, adopted June 7, 2006, includes as a goal encouraging residential second units in all residential neighborhoods as a way to meet the Town's required housing needs. General Plan Housing Policy H8.B, "Establish an Amnesty Program for Un-Permitted Accessory Dwelling Units" calls for establishment of an amnesty program for illegal residential second units and providing a period of time for owners of unpermitted units to register and legalize their accessory dwellings.

WHEREAS, the Town of Fairfax previously adopted Ordinance 721 to create a one year Second Unit Amnesty Program, which expired on August 11, 2008. As a result of that program, only one unit was permitted and one additional application was deemed complete during the amnesty period.

WHEREAS, The Town of Fairfax re-established the amnesty program by adopting Ordinance 737 on February 4, 2009 which expires on March 4, 2010

WHEREAS, re-establishing the Second Unit Amnesty Program for one year is intended to; (a) ensure that existing residential second units are safe and habitable; (b) implement the Fairfax Housing Element; (c) assist in meeting the Town's housing needs by increasing the stock of legal and affordable housing; and (d) encourage the development and permitting of residential second units by modifying certain requirements of the Second Unit Ordinance and reducing second unit permit fees.

WHEREAS, the State CEQA Guidelines Section 15282.h statutorily exempts from environmental review the adoption of an ordinance regarding residential second units in single family and multifamily residential zones by a municipality to implement the provisions of State Government Code 65852.2 as set forth in Section 21080.17 of the Public Resources Code.

SECTION 2: MUNICIPAL CODE AMENDED

The following is added as a new section 17.048.180 of the Town Code for a one-year period:

§ 17.048.180 RESIDENTIAL SECOND UNIT AMNESTY PROGRAM

Definitions

For the purposes of this Section 17.048.180, the following definitions apply.

1. **Existing Residential Second Unit (ERSU).** A Residential Second Unit in existence prior to December 31, 2006 that was not constructed in accordance with the Town ordinances in effect at the time of construction or for which evidence of the unit's legal construction has not been provided.

2. **New Residential Second Unit (NRSU).** A Residential Second Unit constructed or established after December 31, 2006.

3. **Amnesty Period**. The Amnesty Period shall be one year beginning on the effective date of the ordinance establishing the ERSU Amnesty Program.

5. **Amnesty Period Deadline.** All ERSU Amnesty program applications must be submitted and deemed complete by Town staff before the end of the Amnesty Period.

6. **Amnesty Permit**. The permit conferred on an ERSU hereunder.

Existing Residential Second Unit Amnesty Permit

A. Eligibility. In order to be eligible for an Amnesty Permit, an ERSU shall comply with the standards of Chapter 17.048 with the following exceptions:

1. This amnesty applies to only to ERSUs established or constructed prior to December 31, 2006 and not constructed or established in conformity with appropriate Town Codes at the time the units were constructed or established.

2. Acceptable means of documenting compliance with the standard in Section A. 1. above include, but are not limited to, the following:

a. County Assessor's records;
b. Rental contracts and/or receipts;
c. Income tax records;
d. Utility bills; and/or
e. Written affidavits from former owners, tenants, or neighbors, signed and notarized under penalty of perjury.

3. No more than one residential second unit per lot shall be permitted under the provisions of this program.

4. The ERSU shall provide a minimum of 320 square feet of floor area and shall not exceed a maximum of 700 square feet of floor area.

5. The ERSU shall be subject to the requirements of Ross Valley Fire Department fire safety standards and shall be inspected and approved by the Ross Valley Fire Department.

6. One parking space shall exist in addition to the required or existing parking for the primary residence. Tandem parking may be used to comply with the requirements of this section.

7. No separate metering requirements shall be enforced except as required by servicing utility companies. The applicant shall be subject to the approval of utility agencies having jurisdiction over the property.

8. Any surveys provided to the Town in connection with an application for an Amnesty Permit need not be recorded.

B. Review Procedure.

1. Amnesty Permits shall be approved ministerially by the Planning and Building Department Director as provided by Section 17.048.040 of the Town Code provided the project does not involve a variance, use permit or exceptions to the Municipal Code.

2. Applications for Residential Second Unit Permits that do not comply with the applicable requirements for an Amnesty Permit shall be reviewed and acted upon by the Fairfax Planning Commission in accordance with section 17.048.100 of the Municipal Code.

C. Fees.

1. All required Planning and Building Department fees for Amnesty Permit applications excluding Town consultant fees shall be assessed at 50% of the applicable fees.

2. The ERSU related fines for unpermitted second dwelling units shall be waived.

D. Amnesty Permit Applications must meet the meet the Amnesty Period Deadline.

E. Recordation of Amnesty Permits. An Amnesty Permit granted in compliance with this Section 17.048.180 shall be recorded in the County Recorder's Office in reference to the subject property after final inspection by the building inspector and occupancy approval.

F. Effect of Permit. An approved Amnesty Permit shall convey legal nonconforming status on the residential second unit pursuant to Chapter 17.016 of the Fairfax Municipal Code.

New Residential Second Unit Permit Applications

A. Applicability. All NRSU's may apply for a Residential Second Unit Permit but shall be required to comply with all development standards included in Chapter 17.048 of the Fairfax Municipal Code.

B. Fees.

1. All required Planning and Building Department fees for NRSU Permit applications, excluding Town consultant fees, shall be assessed at 50% of the applicable fees.

2. NRSU permit applications must meet the Amnesty Permit Deadline for all fee reductions to apply.

SECTION III. AMENDMENT OF RESOLUTION 2434

During the Amnesty Period, the fees specified in Resolution 2434 shall be reduced by 50 per cent for both ERSU Amnesty Permits as well as NRSU permits. This exception shall not apply to Town consultant fees. All applicable planning and building fines related to ERSUs shall be waived during the Amnesty Period.

SECTION IV. EFFECTIVE DATE

Copies of the foregoing ordinance shall within fifteen (15) days after its final passage and adoption be posted in three public places in the Town of Fairfax, to wit:

a. Bulletin Board, Fairfax Town Offices, Town Hall;
b. Bulletin Board, Fairfax Post Office; and
c. Bulletin Board, Fairfax Women's Club Building, which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days from after its final passage and adoption.

This ordinance shall remain in effect for one year after the effective date of the ordinance and any applications deemed complete within the one year amnesty period shall be eligible for the exceptions granted by this ordinance.

SECTION V: VOTE

The Foregoing Ordinance No. amending the Fairfax Town Code was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held in said Town on December 2, 2009 and was duly passed and adopted at a regular meeting held on January 4, 2010 by the following vote to wit:

AYES:

NOES:

ABSENT:

_____
MAYOR

ATTEST:

_____
Town Clerk