

ORDINANCE NO. 721

**AN ORDINANCE OF THE TOWN OF FAIRFAX
CREATING A SECOND UNIT AMNESTY PROGRAM
FOR A ONE-YEAR PERIOD AND AMENDING THE FOLLOWING SECTION
OF THE FAIRFAX CODE FOR A ONE-YEAR PERIOD:
CHAPTER 17.048 REGARDING EXISTING RESIDENTIAL SECOND UNITS;
AND AMENDING FAIRFAX RESOLUTION 2434 REGARDING
PLANNING/BUILDING-RELATED FEES**

WHEREAS, the Town of Fairfax, 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; and

WHEREAS, establishing a Second Unit Amnesty Program 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 reducing second unit permit fees for the duration of the Second Unit Amnesty Program; and

WHEREAS, second dwelling units have been permitted in the Town of Fairfax since 1985, when the Town Council adopted Ordinance 538, allowing accessory dwelling units as a Conditional Use in residential zoning districts; and

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; and

WHEREAS, The Second Unit Amnesty Program will ensure that existing residential second units are safe and habitable by requiring compliance with standards based on tenant health and safety and appropriate for existing structures; and

WHEREAS, the Planning Commission held a public hearing on December 21, 2006, a workshop on January 11, 2007 and public hearings on February 15, 2007, and April 19, 2007, to review the Second Dwelling Unit Amnesty Program; and

WHEREAS, the Town Council held a duly noticed public hearing on June 6, 2007 and July 11, 2007.

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, (The California Environmental Quality Act, CEQA); and

WHEREAS, State Government Code 65852.2 provides for the adoption of an ordinance which encourages the creation of residential second units in residentially zoned areas, and includes ordinance provisions for the adoption of specific standards for residential second units.

NOW THEREFORE, the Town Council of the Town of Fairfax hereby adopts the following ordinance:

SECTION 1: FINDINGS

A. Second dwelling units have been permitted in the Town of Fairfax since 1985, when the Town Council adopted Ordinance 538, allowing accessory dwelling units as a Conditional Use in residential zoning districts.

B. 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.

C. The purposes of the Residential Second Unit Amnesty Program are to:

1. Ensure that existing Residential Second Units are safe and habitable;
2. Implement the Fairfax Housing Element, including Policy H8.B;
3. Assist in meeting the Town's housing needs by increasing the stock of legal and affordable housing; and
4. Encourage the development and permitting of residential second units by reducing Residential Second Unit permit fees for the duration of the Residential Second Unit Amnesty Program.

D. The Residential Second Unit Amnesty Program will ensure that existing residential second units are safe and habitable by requiring compliance with standards based on tenant health and safety appropriate for existing structures. These standards include conformance with the Uniform Housing Code, compliance with fire safety standards, provision of adequate potable water and sanitary sewer or septic system capacity, and conformance with floodplain management standards.

E. Residential second units provide the most affordable private, unsubsidized market rentals, with approximately 80% affordable to low and moderate income households. Assurances of continued affordability are provided by restricting unit size and by limiting required improvements to health and safety standards to reduce costly repairs that may drive up rents. Based on the experience of other communities, requiring affordability,

covenants could discourage applications to legalize existing residential second units, and the units could be lost entirely at a later date through code enforcement actions. Consequently, the most effective means to ensure continuing affordability is to encourage legalization of existing residential second units in a cost-effective way.

F. The Residential Second Unit Amnesty Program will increase the Town's stock of legal and affordable housing by creating incentives to legalize the most affordable housing stock in the Town.

G. The Residential Second Unit Amnesty Program will encourage the creation of new residential second units and the legalization of unpermitted units in all neighborhoods by reducing fees for all residential second unit applications for the duration of the Residential Second Unit Amnesty Program. Completed applications for new residential second units and for those existing unpermitted residential second units received during the amnesty program period will be exempt from fines and assessed fees equal to one half of those for new Residential Second Unit applications, but development standards for new applications will not be altered from current standards found in the Town Building Code.

H. On April 19, 2007 the Fairfax Planning Commission held a duly noticed public hearing to consider this Ordinance and passed a resolution which recommends that Town Council adopt a Residential Second Unit Amnesty Program for a one-year period, to encourage the legalization of existing residential second units.

I. This ordinance provides for the permitting and development of residential second units and establishes specific standards and criteria to legalize existing unpermitted residential second units in the Town of Fairfax where zoning designations permit single family and multifamily residential units.

SECTION II. ACTION

A. For a period of one year from the effective date of this ordinance, owners of existing illegal residential second units which were constructed or otherwise in existence prior to December 31, 2006, may apply for a "Residential Second Unit Amnesty Permit" ("Permit") pursuant to Exhibit "A" of this ordinance. If approved the Permit shall convey legal nonconforming status on the residential second unit pursuant to Chapter 17.016 of the Fairfax Municipal Code.

B. Except as specifically provided in Exhibit "A" Residential Second Unit Amnesty Permits shall not be subject to the normal requirements for "residential second units" specified in Section 17.048 but instead shall be subject to the specific requirements contained in Exhibit "A" hereto.

C. During the amnesty period which shall become effective upon the effective date of the associated ordinance and for one year following that date, the fees specified in Resolution 2434 shall be reduced by 50 per cent for both Residential Second Unit Amnesty Permits specified in Exhibit "A", as well as Residential Second Unit Permits pursuant to Fairfax Town Code 17.048. All applicable planning and building fines related to the unpermitted residential second units shall be waived during this one year amnesty period.

SECTION III. EFFECTIVE DATE

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

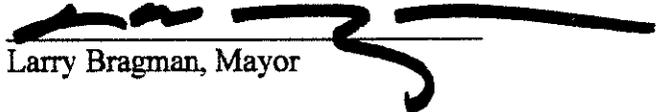
1. Bulletin Board, Town Hall offices;
2. Bulletin Board, Fairfax Post Office;
3. Bulletin Board, Fairfax Women's Club building;

which places are designated for that purpose. This ordinance shall be in full force and effect thirty days from and after its final passage and adoption and 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 IV: VOTE

The Foregoing Ordinance 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 June 6, 2007 and was duly passed and adopted at a regular meeting held on July 11, 2007 by the following vote to wit:

AYES: Bragman, Brandborg, Maggiore, Tremaine, Weinsoff
NOES: None
ABSENT: None


Larry Bragman, Mayor

Attest:


Town Clerk

EXHIBIT A

RESIDENTIAL SECOND UNIT AMNESTY PROGRAM

SUMMARY

The Town of Fairfax is instituting a Residential Second Unit Amnesty Program. This program will offer incentives for property owner/applicants to register existing unpermitted residential second units by demonstrating safe and habitable dwelling conditions. The program also offers incentives for the development of new residential second units through a comparable reduction in fees. In terms of geographic areas, the requirements of this Amnesty Program shall apply to all zoning districts in which residential dwellings are permitted.

PURPOSE.

The Residential Second Unit Amnesty Permit process is intended to encourage the legalization of existing residential second units that were not built or established with proper permits. The purpose of this effort is to:

1. Ensure that Residential Second Units are safe and habitable;
2. Implement the Fairfax Housing Element, including Housing Policy H8.B
3. Assist in meeting the Town's housing needs by increasing the stock of legal and affordable housing; and
4. Encourage the development and permitting of residential second units by reducing residential second unit permit fees for the duration of the Residential Second Unit Amnesty Program.

DEFINITIONS

For the purposes of this Exhibit A the following definitions apply.

1. **Residential Second Unit.** This term is defined in Section 17.048 .030 of the Town Code.
2. **Existing Residential Second Unit (ERSU).** Residential second units in existence prior to December 31, 2006.
3. **New Residential Second Unit (NRSU).** All residential second units constructed or established after December 31, 2006.
4. **Unpermitted Residential Second Unit (URSU).** An existing residential second dwelling unit 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.
5. **Amnesty Period.** The Amnesty period will constitute a one-year window, effective upon the effective date of the Residential Second Unit Amnesty Ordinance.

6. Amnesty Period Deadline. All Second Dwelling Unit Amnesty Program applications must be submitted and deemed complete by Town staff before the end of the one year amnesty period.

EXISTING RESIDENTIAL SECOND UNIT AMNESTY PERMIT

A. Eligibility. In order to grant an Existing Residential Second Unit (ERSU) Amnesty Permit, an unpermitted residential second unit shall comply with the standards of 17.048 with the following exceptions:

1. This Amnesty applies to existing un-permitted residential second units established or constructed prior to December 31, 2006 and not constructed or established in conformity with appropriate Town Codes at the time it was established.
2. Acceptable means of documenting compliance with this standard 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 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.
7. Metering Requirements – 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.

B. Review Procedure.

1. Residential Second Unit Amnesty Permits shall be approved ministerially by the Planning and Building Department Director as provided by Section 17.048.040 of the existing code requirements for residential second units provided

Code other than those exceptions described in Exhibit A or the existing code requirements as applicable.

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

C. Fees.

1. All required Planning and Building Department fees for Residential Second Unit 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. ERSU Amnesty Permit Applications must meet the amnesty period deadlines.

E. Recordation of ERSU Amnesty Permits. A Residential Second Unit Amnesty Permit granted in compliance with the above sections shall be recorded in the County Recorder's Office in reference to the subject property prior to final inspection by the building inspector and occupancy approval.

NEW RESIDENTIAL SECOND UNIT PERMIT APPLICATIONS

A. Applicability. All NRSU's may apply for a Residential Second Unit Permit and 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.