

Chapter 18.42

RESIDENTIAL SECOND UNITS

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18.42.010 Purpose. The purpose of this chapter is to establish a procedure for the development of new residential second units that will ensure safe and healthy living environments, and to encourage well-designed legal second units in all residential neighborhoods as an important way to provide workforce and special needs housing. One of the purposes of this chapter is to help achieve the goals and policies of the adopted Housing Element of the Town of Ross General Plan by encouraging a mix of housing types affordable to all economic segments of the community. It is the intent of this chapter to expand the availability of second units in the town. (Ord. 625 (part), 2011; Ord. 578 §8(part), 2003).

18.42.020 Definitions. For the purposes of this chapter the following words have the following definitions:

“Affordable rent level” means that the second unit household’s monthly cost of rent, plus the cost of electricity, gas, water and sewer service, and garbage collection (hereinafter “utilities”) is 30% or less than the upper limit of the annual gross household income, divided by 12, for a specified income category and household size as last published by the California Department of Housing and Community Development (hereinafter “HCD”). The Town shall determine maximum affordable rent levels for rent-restricted second units following the annual publication of the State Income Limits by HCD. In determining rent levels, the household size for rent-restricted second units shall be: studio, 1 person; one-bedroom, 2 persons; two-bedroom, 3 persons; and, three-bedroom, 4 persons. The cost of utilities for the second unit shall be included in the affordable rent level. For rent-restricted second units where utilities are separately metered and billed, and where the second unit household is responsible for the costs of that household’s use of utilities, the maximum rent shall be set at 90% of the affordable rent level.

“Gross household income” means the total monies earned or received by all members of a household age 18 and over, including: wages and all types of compensation, before any payroll deductions; spousal and child support; social security, retirement, disability, insurance, and other types of periodic payments; unemployment compensation and other payments in-lieu of earnings; welfare and other public assistance; interest, dividends and other payments generated from any real or personal property; net business income; and, any other type of payment determined to qualify as income by the U.S. Department of Housing and Urban Development (HUD) and as published in the HUD’s Housing Choice Voucher Program Guidebook. The

annual gross household income is calculated by multiplying the monthly amounts earned or received at the time of certification by 12 and adjusting for anticipated payments and changes in amounts over the next 12 months.

“Household” means those persons who collectively occupy a housing unit. A property owner’s household shall include any child or dependent, as defined in section 152 of the Internal Revenue Code, of the property owner who is under the age of 18 or is under the age of 24 and is a full-time student.

“Household size” means the number of persons in a household.

“Nonconforming residential second unit” means a residential unit approved as a second unit through the issuance of a conditional use permit or a second unit that meets the definition of a residential second unit and was occupied prior to the adoption of this ordinance without a conditional use permit. The planning director shall determine the status of such units in accordance with the provisions of this code.

“Primary residential unit” means the dwelling having the largest floor area located on any one lot or parcel within a single-family residential zoning district. Such primary residential unit is further defined as a building that provides complete, independent living facilities for one or more persons and permanent provisions for living, sleeping, eating, cooking, and sanitation.

“Rent-restricted second unit” means a residential second unit that is approved under a rent-restricted second unit permit. A rent-restricted second unit shall only be rented to a very low income household at an affordable rent level or occupied by an owner whose household qualifies as a very low income household.

“Rent” means to enter into an agreement whereby the occupant(s) of the residential second unit make any monetary payment or exchange of goods or services in consideration of occupancy of the second unit.

“Residential second unit affordable rent certification” means documentation and certification that a residential second unit is being rented to a very low income household at an affordable rent level or is exclusively being occupied by an owner whose household qualifies as a very low income household. Required information for documentation and certification shall include the rent charged, the utilities included in the monthly rent, the household size of the residential second unit, the names and ages of the residential second unit occupants, and the gross household income of the residential second unit household.

“Single family residential zoning district” means a district listed in this code that allows one single-family dwelling on a particular lot or parcel, otherwise known as an “R-1” zoning district.

“Very low income household” means a household with an annual gross household income of 50% or less than the Marin County median annual gross household income for that household size as last published by HCD. (Ord. 625 (part), 2011; Ord. 578 §8(part), 2003).

18.42.030 Applicability. The provisions of this chapter shall apply to all nonconforming residential second units and to all residential second units hereinafter approved or constructed. (Ord. 625 (part), 2011; Ord. 578 §8(part), 2003).

18.42.035 Residential Second Unit Permit Required. A residential second unit is allowed on any parcel in a single-family residential zoning district with a primary unit, subject to the issuance of a second unit permit. No more than one residential second unit per lot or parcel shall be permitted except as provided in Section 18.42.062(a). (Ord. 625 (part), 2011).

18.42.045 Permit Application and Procedures.

(a) Residential Second Unit Subject to Administrative Review.

(1) Application. An owner may apply for a residential second unit permit by submitting an application to the town planner on a form provided by the Town. The application form shall specify the information required from applicants. The town council may establish a fee for the application.

(2) Decision. The town planner shall consider the application without discretionary review, public notice, or a hearing. The town planner shall approve the application only if he or she determines that the application meets all of the development standards in Section 18.42.050 and all of the design review standards in Section 18.42.060. The town planner shall deny the application if he or she determines that it does not meet all of such standards. The town planner's decision shall be in writing and shall state the reasons for approval or denial.

(3) Appeal. A person may appeal the decision of the town planner in conformance with Chapter 18.60.

(b) Residential Second Unit Subject to Town Council Review.

(1) General. The town council may grant exceptions to the development standards regulating the number of residential second units permitted on a lot or parcel and residential second unit height, location, size and floor area as set forth in Sections 18.42.062 and 18.42.065.

(2) Application – residential second unit permit. Where an owner seeks an exception to the development standards pursuant to Sections 18.42.062, the owner may apply for a residential second unit permit by submitting an application to the town planner on a form provided by the Town. The application form shall specify the information required from applicants. The town council may establish a fee for the application.

(3) Application – rent-restricted residential second unit permit. Where an owner seeks an exception to the floor area requirement as set forth in Section 18.42.050(e), the owner may apply for a rent-restricted residential second unit permit by submitting an application to the town planner on a form provided by the Town. The application form shall specify the information required from applicants. The town council may establish a fee for the application.

(4) Hearing. The town council shall hold a public hearing on the application.

(5) Decision. The town council shall approve or deny the application in accordance with the provisions of Section 18.42.062 or Section 18.42.065. The town council shall make its determination on the individual merit of each application without following or establishing precedent. The town council shall not approve an application unless it makes specific findings of fact as provided in Section 18.42.062 or Section 18.42.065. (Ord. 625 (part), 2011).

18.42.050 Standards for residential second units. (a) Parking. One parking space shall be provided for each residential second unit. The required parking space may be in tandem and within the setback areas but shall be screened from public view.

(b) Height and Location. Residential second units may be within the primary living unit or within a separate building upon the same lot as the primary living unit.

(1) If within the primary living unit, the second unit may be located in any habitable area. If added to the existing primary living unit, the location of the second unit shall not create an additional story above the first floor.

(2) Residential second units newly constructed as such or added to an accessory building shall be limited to a single story with a maximum building height of eighteen feet at any point when measured from either existing or finished grade.

(c) Setbacks. The setback requirements enumerated under Chapters 18.16, 18.32 and 18.39 of this code shall apply to residential second units.

(d) Lot Coverage. The lot coverage requirements enumerated under Chapters 18.16 and 18.32 of this code shall apply to residential second units.

(e) Floor Area. The floor area ratio requirements enumerated under Chapters 18.16, 18.32 and 18.39 of this code shall apply to residential second units.

(f) Maximum Size. Residential second units shall not exceed seven hundred square feet in floor area, excluding covered parking area.

(g) Residence Requirements. Approval of a residential second unit is conditioned upon the owner of record maintaining their residence upon the same parcel as that of the residential second unit.

(h) Health and Safety.

(1) Residential second units must, at a minimum, adhere to the fire safety standards in the Building and Fire Code and use measures such as fire preventative site design, landscaping and building materials, and other fire suppression techniques and resources as determined by the director of public safety.

(2) Residential second units proposed to be developed in areas of geologic hazard must not be endangered by, nor contribute to, hazardous conditions on the site or on adjoining properties.

(3) If the residential second unit proposed to be developed is in a Special Flood Hazard Area identified on the town Flood Insurance Rate Map and/or in an area known for flooding, the finished floor level of the improvements shall be above the base flood elevation.

(i) Building Permits and Codes. In addition to the provisions herein, residential second unit construction shall be subject to all applicable provisions and requirements of Title 15 of this code. (Ord. 625 (part), 2011; Ord. 589 §6, 2005; Ord. 578 §8(part), 2003).

18.42.060 Design review of residential second units. (a) Preservation of Existing Site Conditions. All areas disturbed by construction of a residential second unit must be finished to a natural appearing configuration and planted or seeded to prevent erosion.

(b) Relationship Between Structure and Site. All new residential second units constructed on sloping land shall be designed to relate to the natural land forms and step with the slope in order to minimize building mass, bulk, and height and to better integrate the structure with the site.

(c) Materials and Colors. Residential second unit construction shall be of the same exterior materials, color, and style as that of the primary living unit including roof, eaves, windows, doors, and other detailing.

(d) Exterior Lighting. Any lighting installed as part of a second residential unit project shall be shielded and directed downward. Lighting shall be low wattage and incandescent.

(e) Natural Environment. All secondary unit construction shall be subject to the tree protection provisions and regulations included in Chapter 12.24 of this code.

(f) Landscaping. Landscaping shall include such plantings as necessary to screen the appearance of structures as seen from off-site locations and to screen architectural and mechanical elements such as foundations, retaining walls, condensers, and transformers.

(g) Visual Focus. Where visibility exists from adjacent roadways, no residential second unit shall be located between the adjacent roadway and the primary living unit. (Ord. 578 §8(part), 2003).

18.42.062 Exceptions to standards for residential second units. At its discretion, the town council may grant exceptions to the number of residential second units permitted on a lot or parcel as set forth in Section 18.42.035, the development standards regulating residential second unit height and location as set forth in Section 18.42.050(b), and residential second unit size as set forth in Section 18.42.050(f).

(a) Exception to Number of Residential Second Units. The town council may grant an exception to the number of second units permitted on a lot or parcel to permit two second units on a parcel or lot, provided the parcel or lot is at least one acre in size.

(b) Exception to Height. The town council may grant a residential second unit height increase to two stories with a maximum building height of thirty feet at any point when measured from either existing or finished grade, whichever is lower.

(c) Exception to Location. The town council may grant an exception to the location standard to create a newly constructed residential second unit above an existing first floor.

(d) Exception to Size. The town council may grant a residential second unit size increase to 1,200 square feet.

(e) The town council may grant an exception enumerated above if the exception complies with the design review criteria and standards of Section 18.41.100 and the town council makes the following findings:

(1) The exception will not create a significant adverse impact on any adjacent property, the surrounding neighborhood, or the general public good.

(2) The lot and the arrangement of existing and proposed physical improvements on the lot can accommodate the exception without adversely affecting the views, privacy, or access to light and air of neighboring properties.

(3) Any modifications to site drainage shall be designed by a licensed engineer and shall result in no net increase to the rate or volume of peak runoff from the site compared to pre-project conditions. Any new mechanical pumps or equipment shall not create noise that is audible off site.

(4) The fire chief has confirmed that there is adequate water supply for firefighting purposes for the site, or that the project includes measures to provide adequate water supply for firefighting purposes. (Ord. 625 (part), 2011).

18.42.065 Rent-restricted second units. At its discretion, the town council may grant an exception to the floor area requirement as set forth in Section 18.42.050(e) if the owner agrees to occupy or rent a newly constructed residential second unit as a rent-restricted second unit, if the residential second unit is not located on a hillside area as defined in Section 18.39.020(a), and if the town council makes specific findings of fact as set forth in this section.

(a) Exception to Floor Area. The town council may grant a floor area bonus of up to 500 square feet if the newly constructed residential second unit is to be rent-restricted for a very low income household. Any floor area exception shall only apply to the area of a new second unit and shall not be granted to allow an addition to the primary residence or traded off for an addition to the primary residence in the future.

(b) The town council may grant a floor area exception if the exception complies with the design review criteria and standards of Section 18.41.100 and the town council makes the following findings:

(1) The exception will not create a significant adverse impact on any adjacent property, the surrounding neighborhood, or the general public good.

(2) The lot and the arrangement of existing and proposed physical improvements on the lot can accommodate the exception without adversely affecting the views, privacy, or access to light and air of neighboring properties.

(3) Any modifications to site drainage shall be designed by a licensed engineer and shall result in no net increase to the rate or volume of peak runoff from the site compared to pre-project conditions. Any new mechanical pumps or equipment shall not create noise that is audible off site.

(4) The fire chief has confirmed that there is adequate water supply for firefighting purposes for the site, or that the project includes measures to provide adequate water

supply for firefighting purposes.

(c) Declaration of Rent Restrictions. The owner shall submit a signed Declaration of Rent Restrictions, to be recorded before or concurrently with, and as a condition of, issuance of the rent-restricted second unit permit, reflecting the rent restriction. The Town shall provide the form of such Declaration.

(d) Affordable Rent Certification. An owner who has executed a Declaration shall submit to the Town a Residential Second Unit Affordable Rent Certification on an annual basis, effective each December 31 and as part of the annual Town business license application and renewal, and upon any change in occupancy of the residential second unit, specifying whether or not the residential second unit is being occupied, the rent charged, the utilities included in the cost of rent, the household size of the residential second unit, the names and ages of the residential second unit occupants, the gross household income of the residential second unit household, and other information as determined appropriate by the Town. The Town shall provide the form of the Certification to be signed under penalty of perjury by both the owner and the tenant, if any.

(e) Termination of Rent-Restricted Second Unit Permit. At its discretion, the town council may grant an owner's request to terminate a rent-restricted second unit permit. The town council shall consider the length of time such permit has been in force, the conditions of approval, the exceptions granted for the permit, and the impact on the town's affordable housing supply. In no case shall such permit be terminated prior to 20 years from the date of town council approval under this section. As a condition of termination, the town council shall require the owner to make modifications to the property to comply with current building code requirements and to comply with the planning code requirements in effect at the time the exception(s) was granted or obtain a variance from such requirements. (Ord. 625 (part), 2011).

18.42.070 Administration and Enforcement. (a) Any exception request that does not comply with the prescribed limitations set forth in this chapter shall require a variance, pursuant to Chapter 18.48.

(b) Nonconforming residential second units.

(1) Nonconforming residential second units previously granted a conditional use permit may continue in use subject to the conditions of their original approval and the provisions of Chapter 18.44 of this code.

(2) On or before June 1, 2012, the owner of each non-conforming residential second unit not previously granted a conditional use permit shall make application to the town planner for establishment of a conforming residential second unit subject to all requirements of this chapter. During the amnesty period, planning and building applications for such residential second unit permits shall not be subject to penalties and inspection fees as provided in the Ross Municipal Code and by resolution of the town council for work without a permit, but instead shall be subject to only the standard application and permit fees.

(3) It is declared that any non-conforming residential second unit not previously granted a conditional use permit and not made conforming pursuant to subsection (b) (2) of this section shall constitute a public nuisance, and such nuisance may be abated as provided by law.

(c) Inactive applications. Consistent with state law, the town planner may administratively deny without prejudice any application which remains incomplete or inactive for a period of greater than ninety days, or is continued at the applicant's request for more than sixty days.

(d) Expiration. Failure to secure a building permit and/or commence construction will cause design review approval for development of a residential second unit to expire one year from the date of approval without further notice.

(e) Violation. An illegal residential second unit is a residential second unit which is not an approved residential second unit or is in violation of the Declaration of Deed Restrictions or the Declaration of Rent Restrictions. The Town Manager is authorized to pursue any remedies provided by law against the owner of an illegal residential second unit or a residential second unit not maintained in conformance with this Chapter, including:

(1) General. Those remedies set forth in Chapters 9.04 and 18.64 of this code;

(2) Costs. In any civil enforcement action, administrative or judicial, the Town is entitled to recover its attorneys' fees and costs from an owner who is determined to have an illegal residential second unit;

(3) Revocation of the Residential Second Unit Permit;

(4) Citations issued pursuant to the Administrative Citation Procedure authorized by California Government Code, Section 53069.4;

(5) Deed Restriction/Contract. Any liquidated damages or stipulated penalties authorized under any deed restriction or contract executed by the owner as a condition of the issuance of the residential second unit permit.

(f) Enforcement. Failure to comply in any way with the provisions of this chapter, approved plans, or conditions for application approval constitutes grounds for the town to immediately stop work related to the noncompliance until the matter is resolved. Such violation will be subject to the enforcement penalties and procedures of Chapters 9.04 and 18.64 of this code. (Ord. 625 (part), 2011; Ord. 578 §8(part), 2003).