

Chapter 18.42

ACCESSORY DWELLING UNITS

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Editor's Note: Chapter 18.42 formerly titled Residential Second Units

18.42.010 Purpose. The purpose of this chapter is to establish a procedure for the development of new accessory dwelling units that will comply with California Government Code Section 65852.2, ensure safe and healthy living environments, and encourage well-designed legal accessory dwelling 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 accessory dwelling units in the town. (Ord. 679 (part), 2017; Ord. 678 (part), 2016; 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:

“Accessory dwelling unit” (or “second unit”) means an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include a kitchen as defined herein, as well as permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel where the single-family dwelling is situated. An accessory dwelling unit also includes an efficiency unit as defined in Health and Safety Code Section 17958.1 and a manufactured home as defined in Health and Safety Code Section 18007.

“Affordable rent level” means that the accessory dwelling 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 accessory dwelling units following the annual publication of the State Income Limits by HCD. In determining rent levels, the household size for rent-restricted accessory dwelling 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 accessory dwelling unit shall be included in the affordable rent level. For rent-restricted accessory dwelling units where utilities are separately metered and billed, and where the accessory dwelling 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.

“Kitchen” shall mean a room or portion thereof containing permanent facilities designed and used for food preparation, cooking, eating and dish washing. A kitchen shall include all of the following: a sink with hot and cold running water; a range or stove and oven; at a minimum, an apartment-sized refrigerator; and built-in dish and utensil storage spaces. A kitchen may also include any of the following: microwave, convection oven, hot plate or automatic dish washer.

“Nonconforming accessory dwelling unit” means an accessory dwelling unit approved as an accessory dwelling unit or second unit through the issuance of a conditional use permit or an accessory dwelling unit that meets the definition of an accessory dwelling unit and was occupied prior to the adoption of accessory dwelling unit or second unit regulations 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” or “primary residence” 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 accessory dwelling unit” means an accessory dwelling unit that is approved under a rent-restricted accessory dwelling unit permit. A rent-restricted accessory dwelling 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 accessory dwelling unit makes a monetary payment or exchange of goods or services in consideration of occupancy of the accessory dwelling unit.

“Accessory dwelling unit affordable rent certification” means documentation and certification that an accessory dwelling 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 accessory dwelling unit, the names and ages of the accessory dwelling unit occupants, and the gross household income of the accessory dwelling 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. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011; Ord. 578 §8 (part), 2003).

18.42.030 Applicability. The provisions of this chapter shall apply to all nonconforming accessory dwelling units and to all accessory dwelling units hereinafter approved or constructed. (Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011; Ord. 578 §8(part), 2003).

18.42.035 Accessory Dwelling Permit Required. An accessory dwelling unit is allowed on any parcel in a single-family residential zoning district with a primary unit, subject to the issuance of an accessory dwelling unit permit. No more than one accessory dwelling unit per lot or parcel shall be permitted except as provided in Section 18.42.062(a). (Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011).

18.42.045 Permit Application and Procedures.

(a) Accessory Dwelling Unit Subject to Administrative Review.

(1) Application. An owner may apply for an accessory dwelling 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 if he or she determines that the application meets all of the requirements and standards in Section 18.42.050 and Section 18.42.060. The town planner shall deny the application if he or she determines that it does not meet all of such requirements. The town planner’s decision shall be in writing and shall state the reasons for approval or denial. The town planner’s decision shall be final.

(b) Accessory Dwelling Unit Subject to Town Council Review.

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

(2) Application – accessory dwelling unit permit. Where an owner seeks an exception to the development standards pursuant to Sections 18.42.062, the owner may apply for an accessory dwelling 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 accessory dwelling 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 accessory dwelling 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. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011).

18.42.050 Standards for accessory dwelling units. (a) Parking. One parking space shall be provided for each bedroom provided by the accessory dwelling unit in addition to those required for the primary unit.

(1) The location of the required parking space(s) shall not obstruct the parking of the primary unit. The required parking space(s) may be in tandem and within the setback areas but shall be screened from public view.

(2) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, the off-street parking spaces shall be replaced. The replacement parking spaces may be located in another configuration on the same lot as the accessory dwelling unit and may be covered, uncovered, or tandem spaces.

(b) Off-street parking is not required for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within a historic district.

(3) The accessory dwelling unit is part of the existing primary unit or an existing accessory structure; provided that where an existing garage is converted into an accessory dwelling unit, the conversion shall not eliminate any required off-street parking for the primary unit.

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

(5) When there is a dedicated parking space for a car share vehicle located within one block of the accessory dwelling unit.

(c) Height and Location. Accessory dwelling 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 accessory dwelling unit may be located in any habitable area. If added to the existing primary living unit, the location of the accessory dwelling unit shall not create an additional story above the first floor.

(2) Accessory dwelling 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; when an accessory dwelling unit is located above a garage, the structure shall not exceed 25 feet.

(d) Setbacks. The setback requirements enumerated under Chapters 18.16, 18.32 and 18.39 of this code shall apply to accessory dwelling units except in the following cases:

(1) No setback shall be required for an existing garage or accessory/detached building that is converted to an accessory dwelling unit provided it meets fire and building code requirements.

(2) An accessory dwelling unit constructed above a garage shall have a minimum setback of five feet.

(e) Lot Coverage. The lot coverage requirements enumerated under Chapters 18.16 and 18.32 of this code shall apply to accessory dwelling units. Accessory dwelling units shall only be permitted on lots exceeding 5,000 square feet.

(f) Floor Area. The floor area ratio requirements enumerated under Chapters 18.16, 18.32 and 18.39 of this code shall apply to accessory dwelling units, except that floor area shall not be a basis for denying an application to create an accessory dwelling unit within the primary unit or to convert an existing accessory structure into an accessory dwelling unit, provided that the accessory dwelling unit has independent exterior access. Once constructed, the accessory dwelling unit shall count as floor area pursuant to Chapter 18.12.

(g) Maximum Size. Accessory dwelling units shall not exceed one thousand square feet in floor area, excluding any covered parking area.

(h) Residence and Rental Requirements. A deed restriction shall be recorded prior to occupancy of the accessory dwelling unit that provides for the following:

(1) The property shall remain owner-occupied, with the owner occupying either the primary unit or the accessory dwelling unit.

(2) The accessory dwelling unit may be rented, but it may not be sold separately from the primary residence.

(3) The accessory dwelling unit shall not be rented for less than 30 consecutive days.

(i) Health and Safety.

(1) Accessory dwelling units must, at a minimum, adhere to the fire safety standards in the Building and Fire Code for residential structures and use measures such as fire preventative site design, landscaping and building materials, and other required fire suppression techniques as determined by the director of public safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) Accessory dwelling 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 accessory dwelling 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.

(j) Building Permits and Codes. In addition to the provisions herein, accessory dwelling unit construction shall be subject to all applicable provisions and requirements of Title 15 of this code. (Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011; Ord. 589 §6, 2005; Ord. 578 §8(part), 2003).

18.42.060 Design standards for accessory dwelling units. (a) Preservation of Existing Site Conditions. All areas disturbed by construction of an accessory dwelling unit must be finished to a natural appearing configuration and planted or seeded to prevent erosion.

(b) Relationship Between Structure and Site. All new accessory dwelling 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. Accessory dwelling unit construction shall be of the same exterior materials, color, and style as that of the primary living unit including roof, eaves, windows, and doors.

(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 accessory dwelling unit shall be located between the adjacent roadway and the primary living unit. (Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 578 §8(part), 2003).

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

(a) Exception to Number of Accessory Dwelling Units. The town council may grant an exception to the number of accessory dwelling units permitted on a lot or parcel to permit two accessory dwelling 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 an accessory dwelling 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 allow a newly constructed accessory dwelling unit above an existing first floor.

(d) Exception to Size. The town council may grant an accessory dwelling 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. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011).

18.42.065 Rent-restricted accessory dwelling units. At its discretion, the town council may grant an exception to the floor area requirement as set forth in Section 18.42.050(f) if the owner agrees to occupy or rent a newly constructed accessory dwelling unit as a rent-restricted accessory dwelling unit, if the accessory dwelling 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 accessory dwelling 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 accessory dwelling 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 accessory dwelling 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 an Accessory Dwelling 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 accessory dwelling unit, specifying whether or not the accessory dwelling unit is being occupied, the rent charged, the utilities included in the cost of rent, the household size of the accessory dwelling unit, the names and ages of the accessory dwelling unit occupants, the gross household income of the accessory dwelling 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 Accessory Dwelling Unit Permit. At its discretion, the town council may grant an owner's request to terminate a rent-restricted accessory dwelling 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. 679 (part), 2017; Ord. 678 (part), 2016; 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 accessory dwelling units.

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

(2) It is declared that any non-conforming accessory dwelling unit not previously granted a conditional use permit and not given conforming status prior to June 1, 2012 or issued a certificate of conformity, 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) Violation. An illegal accessory dwelling unit is an accessory dwelling unit which is not an approved accessory dwelling 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 accessory dwelling unit or an accessory dwelling 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 accessory dwelling unit;

(3) Revocation of the Accessory Dwelling 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 accessory dwelling unit permit.

(e) 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 or require that

the noncompliance be remediated. Such violation will be subject to the enforcement penalties and procedures of Chapters 9.04 and 18.64 of this code. (Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 641 (part), 2013; Ord. 625 (part), 2011; Ord. 578 §8(part), 2003).