



Agenda Item No. 12.

Staff Report

Date: October 8, 2020

To: Mayor McMillan and Council Members

From: Patrick Streeter, Planning and Building Director

Subject: Introduction of Ordinance No. 708 for consideration of Town of Ross Municipal Code amendments to Chapters 18.12, 18.40, 18.41, 18.42, and 18.52.

Recommendation

Consider introduction and first reading of Ordinance No. 708, an Ordinance of the Town of Ross amending the following Ross Municipal Code (RMC) chapters:

- Chapter 18.12, Definitions. Revise for clarity the definitions of "Accessory Building", "Basement", "Creek", "Parking Space", and "Yards".
- Chapter 18.40, General Regulations. Revise to require any lighting not subject to design review to be downward facing and shielded and to allow the use of recreational vehicles as construction offices under certain circumstances.
- Chapter 18.41, Design Review. Require design review when the cumulative impact of ministerial projects over a three-year period surpasses design review thresholds.
- Chapter 18.42, Accessory Dwelling Units. Revise for clarity and consistency with State law.
- Chapter 18.52, Nonconforming Structures and Uses. Revise to temporarily allow minor nonconformity permits to be reviewed and approved at the staff level.

Staff's recommended changes follow each chapter's discussion in the next section.

Background and Discussion

The purpose of the proposed amendments is to provide consistency and clarity to the zoning regulations and to update standards and processes outlined therein. The Town's first set of comprehensive zoning regulations were adopted through Ordinance 220 in 1961. The zoning regulations established general development standards (e.g., setbacks, height, and lot coverage), in addition to identifying permitted and conditionally permitted uses for the various zoning districts. The zoning regulations also addressed land use entitlements like Use Permits and Variances. Since 1961, the zoning regulations have been amended many times to address items

that were not previously considered, such as establishing a standard and definition of Floor Area Ratio (1967, 1983, 1989, 2001, 2003, 2005, 2010, 2011), requiring a discretionary permit for Design Review (1993), establishing Hillside Lot standards and regulations (1981, 1982, 1983, 1989, 1993, 2010, 2012), establishing a Nonconformity Permit process (2014), establishing a Minor Exception permit process (2013), and bringing ADU regulations into compliance with State law (2017, 2020).

In December of 2018, staff presented a list of ten zoning amendments for the Town Council's consideration. They were briefly discussed with Council providing direction, but no action was taken. Additionally, at the same meeting, the Council expressed interest in a pilot process whereby some minor nonconformity permits could be approved at the staff level. The changes under consideration are discussed in greater detail in the following paragraphs.

Chapter 18.12, Definitions

Per Section 18.12.050, "Basement" means a space partly or wholly underground. A finished basement is defined as a space used in conjunction with daily household activities. It includes recreation rooms, wine cellars, laundry rooms and/or any space which is seven (7) feet or more in height or has sheet rock or paneled walls. However, Section 18.12.130, Floor Area Ratio, states that finished basements count as floor area when the ceiling height is five (5) feet or greater. There is a conflict between the two definitions because a finished basement per Section 18.12.050 has a ceiling height of seven feet or greater, whereas per Section 18.12.130, a finished basement counts toward floor area when the ceiling height is five feet tall or greater. Staff recommends amending Section 18.12.130 for consistency:

18.12.130 Floor area ratio. "Floor area ratio" means the floor area of the building or buildings on a lot, divided by the area of that lot. For the purpose of determining the allowable floor area of a lot, the floor area is the sum of the gross horizontal areas of the several floors of the building or buildings measured from the exterior faces of the exterior walls. Floor area also includes mezzanines, finished basements and attics, garages, carports, porches which are screened or otherwise enclosed, the entirety of porches which have a depth greater than ten feet, stairs and elevators on one floor, and other detached structures which are accessory to a dwelling. Floor area shall not include finished basement space used only for storage with less than ~~five~~ seven feet of ceiling height and finished attic space used only for storage that does not meet building code requirements for habitable space and is not accessible by permanent stairs.

Section 18.12.095 defines "Creek". The Zoning Code does not provide a reference for measuring the creek setback. Staff recommends amending Section 18.12.095 to address creek setbacks:

18.12.095 Creek. "Creek" means a watercourse (1) that carries water, either intermittently or continuously, in a defined channel, continuous swale or depression, or in a culvert that was placed in the general historic location thereof; and (2) the water either merges with a larger watercourse or body of water, or is diverted into an engineered structure that does not follow the general historic course of a creek. "Creek"

does not include any part of an engineered structure developed for collection of storm or flood waters (e.g. a storm drainpipe) that does not follow the general historic course of a creek. For the purposes of measuring creek setback, the measurement shall start at the top of bank on the nearest side of the creek, as determined by the Town Engineer.

Section 18.12.270 provides a definition for "Parking Space," but nowhere in the RMC are standard dimensions provided. Additionally, there is confusion in Section 18.16.080 of the RMC where parking standards in the Single Family Residential zoning district require "two spaces on the lot for the primary residential unit, one of which shall be enclosed in a permanent, roofed structure." The definition of "Parking Space" should clarify whether a carport satisfies this standard. Staff recommends amending Section 18.12.270 as follows:

18.12.270 Parking space. "Parking space" means land or space with a minimum standard dimension of nine (9) feet wide by 18 feet long, privately owned, covered or uncovered, laid out for, and used or designed to be used by a standing vehicle. An enclosed parking space includes a permanent, roofed structure that adequately screens the vehicle from public view, as determined by the Town Planner.

Sections 18.12.390, 18.12.400, 18.12.410, and 18.12.420 refer to building setbacks as "Yards". The terms "Setback" and "Yard" are used interchangeably throughout the RMC. Staff recommends adding the following language:

18.12.390 Yards. "Yards" also referred to as "Setbacks" means land unoccupied or unobstructed, except for such encroachments as may be permitted by this title, surrounding a building site. Roof eaves, overhangs and gutters may project into the first 24 inches of a required yard area.

18.12.400 Yard, rear. "Rear yard" also referred to as "rear setback" means a yard extending between the side lines of the lot and measured between the rear line of the lot and the nearest point of the main building or porch nearest the rear line of the lot.

18.12.410 Yard, front. "Front yard" also referred to as "front setback" means a yard extending across the full width of the lot measured between the street line (or the lot line connected to a street by legal access) and the nearest point of the main building or porch. The front yard of a corner lot is the yard adjacent to the shorter street frontage.

18.12.420 Yard, side. "Side yard" also referred to as "side setback" means a yard on either side of the lot extending from the front line to the rear lot line, the width of each yard being measured between the side line of the lot, and the nearest point of the main building or porch.

The December 2018 staff report also proposed amending the definition of "Accessory Building" impose a cap on the floor area of accessory buildings proportionate to the total development of the property. Staff finds that updates to the Accessory Dwelling Units chapter of the RMC, in addition to general lot coverage and setback requirements, render this zoning text amendment unnecessary and is not recommending changes to 18.12.020, "Accessory Building" at this time.

Chapter 18.40, General Regulations

Section 18.40.120 provides standards for allowing recreational vehicles on private property. Specifically, recreational vehicles are prohibited from being used as living quarters or used for conducting business while parked or stored. However, Town staff is frequently fielding inquiries regarding use of recreational vehicles for either living quarters or a job site construction office. Staff finds that there are sustainability benefits to allowing this type of use in that it could reduce vehicle trips to and from the job site. Additionally, there are resiliency benefits in that the tenants of a home that is damaged or destroyed by a disaster such as a flood or fire would be able to remain on their property while the home is rebuilt. Staff recommends amending Section 18.40.120 as follows:

18.40.120 Trailers and vehicles used for habitation or parked in private driveways.

(a) Recreational Vehicles, as defined in Section 10.28.080 must neither be used as living quarters nor used for conducting business while parked or stored **except as permitted in Section 18.40.120(c).**

(b) Recreational Vehicles, as defined in Section 10.28.080, are permitted to park or be stored on private property if the following conditions have been met:

- a. The RV must be parked on the driveway.
- b. The RV must be setback a minimum of 15 feet from the roadway's edge.
- c. The RV may not be parked for more than 3 days, unless the property owner has erected a fence or similar screening that substantially blocks the view of the vehicle from the public. Said fence or screening will be subject to the design review process in Section 18.41 and all other relevant zoning requirements of this code.
- d. The RV does not reduce the number of off street parking spaces to less than two (2) parking spaces.

(c) Recreational Vehicles, as defined in Section 10.28.080 may be used as living quarters or job site construction offices, with approval of a use permit pursuant to Chapter 18.44, for construction projects that involve new construction of a primary residence or substantial remodel of the existing residence as determined by the Planning and Building Director. The use permit shall automatically expire within two (2) years of issuance or 30 days after the building permit for the primary residence is closed, whichever comes first. The use permit shall confer no vested or perpetual rights in the underlying property or with the permittee.

The RMC establishes design review criteria and standards in Chapter 18.41, Design Review. One of the standards is that exterior lighting should be "shielded and directed downward." Because this standard is listed in Chapter 18.41, projects that are ministerial, including construction of Accessory Dwelling Units are not subject to it. Including this requirement in Chapter 18.40, General Regulations, would allow this standard to be applied consistently across all projects. Although one member of the Council expressed concern over this code amendment because it has the potential to create "legal nonconforming" lighting, staff finds that the benefit to design

consistency supersedes the potential of creating new nonconformities. Staff recommends the following amended language, which would also be consistent with Town's standard condition of approval for lighting:

18.40.190 Lighting. All exterior lighting shall be directed downward and shielded (no bare bulb light fixtures or down lights that may be visible from down-slope sites). Exterior lighting of landscaping by any means shall not be permitted if it creates glare or annoyance for adjacent property owners. Lighting expressly designed to light exterior walls or fences that is visible from adjacent properties or public ~~right-of-ways~~ rights-of-way is prohibited. Lighting generated by outdoor use of television, video or other electronic devices shall not be permitted if it creates glare or annoyance for adjacent property owners.

Chapter 18.41, Design Review

The December 2018 staff report proposed requiring design review before the Council for projects that cumulatively exceeded the design review thresholds over a three-year period, even if the individual projects were below that threshold. The concern was that subsequent projects could be approved ministerially even though taken together they would have required a public hearing. At the December 2018 meeting, more than one Council member did not support the amendment. Staff finds that the mandatory nine month moratorium on issuance of subsequent building permits as well as provisions preventing segmentation in the California Environmental Quality Act (CEQA) provide adequate protection from uncontrolled development and is not recommending a design review requirement for cumulative projects.

Chapter 18.42, Accessory Dwelling Units

Chapter 18.42 of the RMC was updated in 2020 for consistency with State law. Staff is recommending language cleanup as outlined in the attached draft ordinance. None of the changes alter the intent of the chapter or the permissiveness its provisions. The staff recommended changes to Chapter 18.42 include:

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

"Accessory dwelling unit" shall have the same meaning as defined in California Government Code Section 65852.2, as amended from time to time.

"Accessory dwelling unit₁ – attached" means an accessory dwelling unit that ~~is constructed as a physical expansion (i.e. addition) of the primary dwelling unit and~~ shares a common wall with the primary dwelling unit.

"Accessory dwelling unit₂ – detached" means an accessory dwelling unit that is constructed as a separate structure from the primary dwelling unit.

~~“Accessory dwelling unit — interior” means an accessory dwelling unit that is created within an existing structure as defined in this chapter.~~

18.42.055 Development Standards - ADUs.

Table 1.

ADU Type	Maximum ADU Floor Area
Attached	
One bedroom or less	50 percent of the existing primary dwelling or 850 sq. ft., whichever is greater <u>less</u>
More than one bedroom	50 percent of the existing primary dwelling or 1,000 sq. ft., whichever is greater <u>less</u>
Detached	
One bedroom or less	850 sq. ft.
More than one bedroom	1,000 sq. ft.
Internal Addition	150 square feet or 50 percent of the existing primary dwelling, whichever is greater.
Junior	500 sq. ft.

Chapter 18.52, Nonconforming Structures and Uses

At the December 13, 2018, meeting of the Town Council, it was proposed by a Council member and seconded to introduce a pilot program whereby minor nonconformity permits would be reviewed and approved at the staff level. The purpose of this program would be to allow property owners to improve their property without the cost and time commitment associated with a public hearing before the Council. Staff recommends amending Chapter 18.52 to include the following provisions:

18.52.045 Minor Nonconformity permit.

(a) Purpose and Intent. The purpose of this section is to allow minor modifications to nonconforming structures to take place without the cost or the time commitment of town council review. These provisions retain public notice of the pending action and adherence to town guidelines and standards.

(b) Applicability. The town planner may permit nonconforming structures in the Single Family Residence and Special Building Site B Districts to be enlarged, extended, reconstructed or structurally altered by approval of a minor nonconformity permit under the following conditions:

(1) No change to the floor area or the location of the structure is being proposed; and

(2) The structure is not readily visible from the public way or from immediately adjacent properties;

(c) Application. An application for a minor nonconformity permit shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(d) Review and Approval Authority. The town planner shall review and approve, conditionally approve, or deny an exception application administratively with no public meeting in accordance with this chapter, if no other entitlements are required. If other approvals are necessary, the minor nonconformity permit application shall be filed concurrently with the related applications and shall be acted upon by the town council. The town planner may refer an application directly to the town council for consideration.

(e) Notice. (1) The town planner shall mail notice of intent to take action on a minor exception at least 10 days prior to the decision to the owner of the property that is the subject of the application and all adjacent property owners as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(2) The notice shall provide that a decision will be made by the town planner to approve or disapprove the minor exception application on a date specified in the notice. The notice shall include the name of the applicant, the scheduled date for action, a general explanation of the matter to be considered, the location of the real property that is the subject of the application and that a public hearing will be held only if requested in writing by any interested person before the specified date for the decision. When a hearing is requested, notice of the hearing shall be provided pursuant to Government Code Section 65091.

(f) Mandatory findings for minor nonconformity permit. The town planner may approve or conditionally approve a minor nonconformity permit under this section if the town planner has facts to support all of the following findings:

(1) The nonconforming structure was in existence at the time the ordinance that now prohibits the structure was passed. The structure must have been lawful when constructed. The property owner has the burden to prove by substantial evidence the nonconforming and legal status of the structure.

(2) The town planner can make the findings required to approve any required demolition permit for the structure: The demolition will not remove from the neighborhood or town, nor adversely affect, a building of historical, architectural, cultural or aesthetic value. The demolition will not adversely affect nor diminish the character or qualities of the site, the neighborhood or the community.

(3) The project substantially conforms to relevant design review criteria and standards in Section 18.41.100, even if design review is not required.

(4) Total floor area does not exceed the greater of: a) the total floor area of the existing conforming and/or legal nonconforming structure(s); or b) the maximum floor area permitted for the lot under current zoning regulations. The town shall apply the definition of floor area in effect at the time of the application for a nonconformity permit.

(5) Granting the permit will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

(6) The project will comply with the Flood Damage Prevention regulations in Chapter 15.36.

(7) The fire chief has confirmed that the site has adequate access and water supply for firefighting purposes, or that the project includes alternate measures approved by the fire chief.

(8) The applicant has agreed in writing to the indemnification provision in Section 18.40.180.

(g) Terms and Conditions. Any minor nonconformity permit approval may include such terms and conditions as deemed necessary or appropriate by the town planner to effect the purposes of this ordinance.

(h) Expiration. The provisions of this section shall expire after one (1) year of the implementing ordinance going into effect unless extended by the Town Council.

Fiscal, resource and timeline impacts

Staff anticipates no fiscal impact with adoption of the ordinance other than the direct costs of ordinance preparation (staff time to draft the ordinance, town attorney time to review the ordinance, and publication of required legal notices in the *Marin Independent Journal*). The Town charges application fees to cover the cost of processing applications.

Alternative actions

None recommended.

Environmental review

The adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it has no potential for causing a significant effect on the environment *since* "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." The ordinance is also exempt from CEQA in that the Town Council would require environmental review based on the specific site circumstances for any project subject to discretionary review and certain projects would be exempt under exemptions for new small structures and existing facilities and minor alterations in land use (*14 Cal. Code Regs. §15301, 15303, 15305*). Lastly, the ordinance sets requirements for compliance with standard codes in effect pursuant to State law. The adoption of this ordinance does not entitle new development or any changes to the physical environment.

Attachments

1. Ordinance No. 708 & Exhibit A
2. Town Council Minutes, excerpt December 13, 2018

ATTACHMENT 1

TOWN OF ROSS

ORDINANCE NO. 708

AN ORDINANCE OF THE TOWN OF ROSS AMENDING MUNICIPAL CODE CHAPTER 18.12 (DEFINITIONS), CHAPTER 18.40 (GENERAL REGULATIONS), CHAPTER 18.42 (ACCESSORY DWELLING UNITS), AND CHAPTER 18.52 (NONCONFORMING STRUCTURES AND USES)

The Town Council of the Town of Ross does ordain as follows:

SECTION 1: Title 18 Zoning, Section 18.12.095, "Creek" as referenced in the proposed revisions, attached hereto and incorporated herein as Exhibit A, is amended to read:

18.12.095 Creek. "Creek" means a watercourse (1) that carries water, either intermittently or continuously, in a defined channel, continuous swale or depression, or in a culvert that was placed in the general historic location thereof; and (2) the water either merges with a larger watercourse or body of water, or is diverted into an engineered structure that does not follow the general historic course of a creek. "Creek" does not include any part of an engineered structure developed for collection of storm or flood waters (e.g. a storm drainpipe) that does not follow the general historic course of a creek. For the purposes of measuring creek setback, the measurement shall start at the top of bank on the nearest side of the creek, as determined by the Town Engineer.

SECTION 2: Title 18 Zoning, Section 18.12.130, "Floor area ratio" as referenced in the proposed revisions, attached hereto and incorporated herein as Exhibit A, is amended to read:

18.12.130 Floor area ratio. "Floor area ratio" means the floor area of the building or buildings on a lot, divided by the area of that lot. For the purpose of determining the allowable floor area of a lot, the floor area is the sum of the gross horizontal areas of the several floors of the building or buildings measured from the exterior faces of the exterior walls. Floor area also includes mezzanines, finished basements and attics, garages, carports, porches which are screened or otherwise enclosed, the entirety of porches which have a depth greater than ten feet, stairs and elevators on one floor, and other detached structures which are accessory to a dwelling. Floor area shall not include finished basement space used only for storage with less than seven feet of ceiling height and finished attic space used only for storage that does not meet building code requirements for habitable space and is not accessible by permanent stairs.

SECTION 3: Title 18 Zoning, Section 18.12.270, "Parking space" as referenced in the proposed revisions, attached hereto and incorporated herein as Exhibit A, is amended to read:

18.12.270 Parking space. "Parking space" means land or space with a minimum standard dimension of nine (9) feet wide by 18 feet long, privately owned, covered or uncovered, laid out

for, and used or designed to be used by a standing vehicle. An enclosed parking space includes a permanent, roofed structure that adequately screens the vehicle from public view, as determined by the Town Planner.

SECTION 4: Title 18 Zoning, Sections 18.12.390, 18.12.400, 18.12.410, and 18.12.420 as referenced in the proposed revisions, attached hereto and incorporated herein as Exhibit A, are amended to read:

18.12.390 Yards. “Yards” also referred to as “Setbacks” means land unoccupied or unobstructed, except for such encroachments as may be permitted by this title, surrounding a building site. Roof eaves, overhangs and gutters may project into the first 24 inches of a required yard area.

18.12.400 Yard, rear. “Rear yard” also referred to as “rear setback” means a yard extending between the side lines of the lot and measured between the rear line of the lot and the nearest point of the main building or porch nearest the rear line of the lot.

18.12.410 Yard, front. “Front yard” also referred to as “front setback” means a yard extending across the full width of the lot measured between the street line (or the lot line connected to a street by legal access) and the nearest point of the main building or porch. The front yard of a corner lot is the yard adjacent to the shorter street frontage.

18.12.420 Yard, side. “Side yard” also referred to as “side setback” means a yard on either side of the lot extending from the front line to the rear lot line, the width of each yard being measured between the side line of the lot, and the nearest point of the main building or porch.

SECTION 5: Title 18 Zoning, Section 18.40.120, “Trailers and vehicles used for habitation or parked in private driveways” as referenced in the proposed revisions, attached hereto and incorporated herein as Exhibit A, is amended to read:

18.40.120 Trailers and vehicles used for habitation or parked in private driveways.

(a) Recreational Vehicles, as defined in Section 10.28.080 must neither be used as living quarters nor used for conducting business while parked or stored except as permitted in Section 18.40.120(c).

(b) Recreational Vehicles, as defined in Section 10.28.080, are permitted to park or be stored on private property if the following conditions have been met:

a. The RV must be parked on the driveway.

b. The RV must be setback a minimum of 15 feet from the roadway’s edge.

c. The RV may not be parked for more than 3 days, unless the property owner has erected a fence or similar screening that substantially blocks the view of the vehicle from the

public. Said fence or screening will be subject to the design review process in Section 18.41 and all other relevant zoning requirements of this code.

d. The RV does not reduce the number of off street parking spaces to less than two (2) parking spaces.

(c) Recreational Vehicles, as defined in Section 10.28.080 may be used as living quarters or job site construction offices, with approval of a use permit pursuant to Chapter 18.44, for construction projects that involve new construction of a primary residence or substantial remodel of the existing residence as determined by the Planning and Building Director. The use permit shall automatically expire within two (2) years of issuance or 30 days after the building permit for the primary residence is closed, whichever comes first. The use permit shall confer no vested or perpetual rights in the underlying property or with the permittee.

SECTION 6: Title 18 Zoning, Section 18.40.120, "Lighting" as referenced in the proposed revisions, attached hereto and incorporated herein as Exhibit A, is amended to read:

18.40.190 Lighting. All exterior lighting shall be directed downward and shielded (no bare bulb light fixtures or down lights that may be visible from down-slope sites). Exterior lighting of landscaping by any means shall not be permitted if it creates glare or annoyance for adjacent property owners. Lighting expressly designed to light exterior walls or fences that is visible from adjacent properties or public rights-of-way is prohibited. Lighting generated by outdoor use of television, video or other electronic devices shall not be permitted if it creates glare or annoyance for adjacent property owners.

SECTION 7: Title 18 Zoning, Chapter 18.41, "Accessory dwelling units" as referenced in the proposed revisions, attached hereto and incorporated herein as Exhibit A, is amended to read:

Chapter 18.42

ACCESSORY DWELLING UNITS

Sections:

18.42.010	Purpose.
18.42.020	Definitions.
18.42.030	ADU Permit Required.
18.42.040	Permit Application and Procedures.
18.42.050	General Requirements – ADUs/JADUs.
18.42.055	Development Standards - ADUs.
18.42.060	Guaranteed Allowance.
18.42.065	Exceptions to Standards for ADUs.
18.42.070	Development Standards - JADUs.
18.42.075	Units Subject to Limited Standards.

- 18.42.080 Rent-Restricted ADUs.
- 18.42.085 Termination of Permit and Use.
- 18.42.090 Administration and Enforcement.

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

18.42.010 Purpose. The purpose of this chapter is to establish the procedures and development standards for the ministerial, non-discretionary processing of applications for new accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs") in compliance with California Government Code Section 65852.2 and Section 65852.22 and consistent with the policies, goals and programs of the Housing Element of the General Plan. ADUs and JADUs increase the overall supply of housing within established residential zoning districts or as part of new residential subdivisions, while maintaining the existing character of the neighborhood. Such units are intended to increase the supply of smaller, more affordable housing within existing residential neighborhoods and provide independent living units for prospective and current residents, including family members, students, local employees, the elderly, in-home health and childcare providers, and single adults, among others. The intent of the Town in adopting the code section is to ensure that the Town's ordinance has the effect of providing for the creation of ADUs and JADUs and that the provisions in this ordinance relating to matters including size, parking, and other development standards are not arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create ADUs or JADUs consistent with state law intended to promote their development. (Ord. 703 (part), 2020; 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" shall have the same meaning as defined in California Government Code Section 65852.2, as amended from time to time.

"Accessory dwelling unit, attached" means an accessory dwelling unit that shares a common wall with the primary dwelling unit.

"Accessory dwelling unit, detached" means an accessory dwelling unit that is constructed as a separate structure from the primary 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.

“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.

“Efficiency kitchen” shall have the same meaning as defined in California Government Code Section 65852.22, as amended from time to time.

“Existing structure” means an existing permitted or otherwise legal single-family residence, including all fully enclosed areas such as a partial basement, an attached garage, or an accessory structure that can be made safety habitable under building codes.

“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.

“Junior accessory dwelling unit” shall have the same meaning as defined in California Government Code Section 65852.22, as amended from time to time.

“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 effective date of this ordinance. The Planning Department shall determine the status of such units in accordance with the provisions of this code.

“Public transit” means a location, including but not limited to, a bus stop or train station, where the public may access buses, trains, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public. Public transit does not include school bus stops associated with bus routes operated seasonally or only during school hours for the intended purpose of serving students, even if the general public may access such bus service; or school bus routes provided by a school district for the exclusive use of students.

“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.

“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.

“Tandem parking” shall have the same meaning as defined in California Government Code Section 65852.2, as amended from time to time.

“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. 703 (part), 2020; Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011; Ord. 578 §8 (part), 2003).

18.42.030 ADU Permit Required. An ADU or JADU is allowed on any parcel in a single-family residential or multifamily residential zoning district with a primary unit, subject to the issuance of an ADU permit. (Ord. 703 (part), 2020; Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011).

18.42.040 Permit Application and Procedures.

(a) ADUs Subject to Administrative Review.

(1) Application. An owner may apply for an ADU permit by submitting an

application to the Planning Department 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 Planning Department shall consider the application without discretionary review, public notice, or a hearing. The Planning Department shall approve the application if the application meets all of the requirements and standards of this Chapter. The Planning Department shall deny the application if he or she determines that it does not meet all of such requirements. The Planning Department's decision shall be in writing and shall state the reasons for approval or denial. The Planning Department's decision shall be final.

(b) ADUs Subject to Town Council Review.

(1) General. The town council may grant discretionary exceptions to the development standards regulating the number of ADU permitted on a lot or parcel and ADU height, location, size and floor area as set forth in Sections 18.42.050 and 18.42.055.

(2) Application for Exception. Where an owner seeks an exception to the development standards of this Chapter, the owner may apply for an ADU permit by submitting an application to the Planning Department 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 for Exception to Floor Area and/or Building Coverage. Where an owner seeks an exception to the floor area and/or building coverage requirement as set forth in Section 18.42.065 of this Chapter, the owner may apply for an ADU permit by submitting an application to the Planning Department on a form provided by the Town consistent with the provisions of Section 18.42.080 of this Chapter. 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, conditionally, approve, or deny the ADU exception application in accordance with the provisions of Section 18.42.065 or Section 18.42.080. 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 18.42.065 or Section 18.42.080. (Ord. 703 (part), 2020; Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011).

18.42.050 General Requirements – ADUs and JADUs.

(a) ADUs and JADUs may be constructed on a residentially zoned parcel with a proposed or existing single-family or multifamily dwelling.

(b) An ADU may either be attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(c) Owner Occupancy. Owner occupancy is not required for either the primary residence or the ADU/JADU.

(d) Street addresses shall be assigned to all ADUs to assist in emergency response.

(e) The ADU/JADU may be rented but shall not be sold independently of the primary dwelling on the parcel.

(f) The ADU/JADU shall not be rented for less than 30 consecutive days.

(g) Permanent Foundation. A permanent foundation shall be required for all ADUs.

(Ord. 703 (part), 2020).

18.42.055 Development Standards - ADUs.

(a) Separate Kitchen and Bathroom. All ADUs shall contain a separate kitchen and bathroom independent of the primary residence.

(b) Location. Detached ADUs shall be separated from the primary dwelling and any accessory structures by a minimum of 3 feet.

(c) Height. An attached ADU or detached ADU shall not exceed 16 feet in height. The height may be increased following submittal of an application for and approval of a discretionary ADU Exception Permit application per Section 18.42.063

(d) Bedrooms. All ADUs are limited to a maximum of two bedrooms.

(e) Size. ADUs shall be subject to the size limitations set forth in Table 1.

Table 1.

ADU Type	Maximum ADU Floor Area
Attached	
One bedroom or less	50 percent of the existing primary dwelling or 850 sq. ft., whichever is less

More than one bedroom	50 percent of the existing primary dwelling or 1,000 sq. ft., whichever is less
Detached	
One bedroom or less	850 sq. ft.
More than one bedroom	1,000 sq. ft.
Junior	500 sq. ft.

(1) The Town Council may grant an ADU size increase to 1,200 square feet per Section 18.42.065 and Section 18.42.080 of this Chapter.

(f) Parking.

(1) One off-street parking space shall be provided for each ADU in addition to those required for the primary unit. The parking spaces may be provided as tandem parking on a driveway. Off-street parking is not required for an ADU in any of the following instances:

- i. The ADU is located within one-half mile of public transit.
- ii. The ADU is located within a historic district.
- iii. The ADU is part of the proposed or existing primary residence or an accessory structure.
- iv. When on-street parking permits are required but not offered to the occupant of the ADU.
- v. When there is a dedicated parking space for a car share vehicle located within one block of the ADU.

(2) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, those off-street parking spaces need not be replaced.

(g) Lighting. All exterior lighting, including landscape lighting, must be dark sky compliant. All new exterior lighting must be designed and installed so that the filaments, light sources or lenses are shielded and downward facing with opaque materials in such a way that they will not be visible at property lines. The exterior lights shall have a color temperature of 3500 Kelvin or lower (warm not cool).

(h) Landscaping. Any tree over 12 inches in circumference removed in conjunction with the construction of an ADU must be replaced by a 24-inch box tree on the project site, unless it is determined by the Fire Marshal that replacement planting is not feasible.

(i) Windows.

(1) All windows that face a side yard adjoining a side yard of an adjacent property and are located within 15 feet of the shared property line shall be clerestory (minimum of 6.5 feet above the finished floor height), except that this standard does not apply if a structure on the adjacent property does not have any non-clerestory windows on the building elevation that faces the ADU. Windows, other than clerestory, may be allowed on the building elevation that faces the side yard adjoining a side yard of an adjacent property located within 15 feet of that shared property line following submittal of an application for and approval of a discretionary ADU Exception Permit application per Section 18.42.065 or with written approval from the adjacent property owner that faces the window(s).

(2) All windows that face a rear yard adjoining a rear yard of an adjacent property that are located within 15 feet of the shared property line shall be clerestory (minimum of 6.5 feet above the finished floor height), except that this standard does not apply if a structure on the adjacent property does not have any non-clerestory windows on the building elevation that faces the ADU. Windows, other than clerestory, may be allowed on the building elevation that faces the rear yard adjoining a rear yard of an adjacent property following submittal of an application for and approval of a discretionary Design Review application by the Zoning Administrator or with written approval from the adjacent property owner that faces the window(s).

(j) Setbacks. ADUs shall be subject to the following requirements related to setbacks:

(1) No setback shall be required for an existing living area or accessory structure that is fully or partially converted to an ADU, or for a structure constructed in the same location and to the same or smaller dimensions as an existing living area or accessory structure that is fully or partially converted to an ADU.

(2) Setbacks of four feet from the side and rear lot lines are required for an ADU that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(k) Flood Plain. An attached or detached ADU located in the flood plain shall comply with Chapter 15.36 of the Municipal Code.

(l) Adequate Services. The proposed method of water supply and sewage disposal for the ADU/JADU must be provided, as well as service availability from any associated electric and gas provider for the lot. Letters of service availability must be provided by the appropriate utilities service provider(s) for the lot. The property owner must also demonstrate existing or future legal access.

(m) Prior Discretionary Approvals. The ADU shall not conflict with any other requirements associated with prior land use entitlements (e.g. Design Review, Nonconformity Permit) granted for the subject property, unless such requirements have been amended through required approval processes. (Ord. 703 (part), 2020).

18.42.060 Guaranteed Allowance.

All standards related to size, limits on lot coverage, floor area ratio, and/or minimum lot size that apply to an ADU shall not prohibit an ADU with up to 800 square feet of floor area, a height of up to 16 feet, and four-foot side and rear yard setbacks, provided the ADU complies with all other applicable standards. (Ord. 703 (part), 2020).

18.42.065 Exceptions to Standards for ADUs.

At its discretion, the town council may grant exceptions to the general requirements and development standards for an ADU as set forth in Section 18.42.050 and Section 18.42.055 of this code.

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

(b) Exceptions to Floor Area and/or Building Coverage. (1) The town council may grant an exception to allow the nonconforming floor area and/or building coverage of an ADU to exceed 800 square feet up to 1,200 square feet if the ADU is to be rent restricted for a very low-income household subject to the provision of Section 18.42.080 of the Ross Municipal Code. (2) The Town Council may grant an exception to allow any amount of existing floor area that is converted to new ADU space to be transferred as a floor area allowance for a new addition to the primary residence.

(c) Exception to Height. The town council may grant an ADU 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.

(d) Exception to Location. The town council may grant an exception to the location standard to allow a newly constructed ADU above an existing first floor.

(e) Exception to Size. The town council may grant an ADU size increase to 1,200 square feet.

(f) Exception to Windows. The town council may grant an exception to Section 18.42.055(j)(1).

(g) 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, the adopted Design Guidelines, and if 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. 703 (part), 2020; Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011).

18.42.070 Development Standards – JADUs.

JADUs are subject to the following objective development standards.

(a) Entryways. A JADU must include a separate entrance from the main entrance to the primary residence, with direct access to the main living area. A JADU may include a second interior doorway for sound attenuation.

(b) Location. The JADU must be created within the existing walls of an existing single-family residence and must include an existing bedroom.

(c) Kitchen. The JADU shall include an efficiency kitchen as defined in California Government Code Section 65852.22.

(d) Bathroom. A JADU may include separate sanitation facilities or may share sanitation facilities with the existing structure.

(e) Size. The size of a JADU shall not exceed 500 square feet of gross floor area. The gross floor area of a shared sanitation facility shall not be included in the maximum gross floor area of the unit. (Ord. 703 (part), 2020).

18.42.075 Units Subject to Limited Standards.

Notwithstanding sections 18.42.055, 18.42.060, 18.42.065 and 18.42.070 of this Chapter, accessory dwelling unit and junior accessory dwelling unit permits shall be issued based solely on the standards set forth in this section and all applicable Building Code standards, as follows:

(a) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(1) The ADU or JADU unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(2) The space has exterior access from the proposed or existing single-family dwelling.

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

(4) The JADU complies with the requirements of Section 65852.22.

(b) One detached, new construction, ADU that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The ADU may be combined with a JADU described in subsection (a)(1) of this section. A local agency may impose the following conditions on the accessory dwelling unit:

(1) A total floor area limitation of not more than 800 square feet.

(2) A height limitation of 16 feet.

(c) Multifamily Dwelling ADUs

(1) Multiple ADUs within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(2) A local agency shall allow at least one ADU within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(d) Not more than two ADUs that are located on a lot that has an existing multifamily dwelling detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(e) Rentals of ADU and JADU permitted pursuant to this section shall be for a term longer than 30 days.

(f) Installation of fire sprinklers are not required in an ADU or JADU if sprinklers are not required for the primary residence.

(g) ADUs and JADUs permitted under this section shall not be required to install a new or separate utility connection directly between the ADU and the utility nor shall a related

connection fee or capacity be charged unless the ADU or JADU is proposed to be constructed with a new single-family home. (Ord. 703 (part), 2020).

18.42.080 Rent-restricted ADUs.

At its discretion, the town council may grant an exception to the floor area requirement for ADUs if the owner agrees to occupy or rent a newly constructed ADU as a rent restricted ADU, if the ADU 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) Exceptions to Floor Area and/or Building Coverage. (1) The town council may grant an exception to allow the nonconforming floor area and/or building coverage of an ADU to exceed 800 square feet up to 1,200 square feet if the ADU is to be rent restricted for a very low-income household. (2) The Town Council may grant an exception to allow any amount of existing floor area that is converted to new ADU space to be transferred as a floor area allowance for a new addition to the primary residence.

(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 ADU 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 ADU Affordable Rent Certification on an annual basis, effective each December 31 and as part of the annual Town business license application and renewal, if the ADU is being rented. The ADU Affordable Rent Certification shall include the rent charged, the cost of the utilities, whether the utilities are included in the cost of rent, the household size of the ADU,

the names and ages of the ADU occupants, the gross household income of the ADU 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 ADU Permit. At its discretion, the town council may grant an owner's request to terminate a rent restricted ADU 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 year 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. 703 (part), 2020; Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011).

18.42.085 Termination of Permit and Use.

At his/her discretion, the Planning Director or his/her designee may grant an owner's request to terminate an ADU/JADU. As a condition of termination, the Planning Director or his/her designee shall require the owner to make modifications to the property to comply with current building code requirements and remove the kitchen. The property owner shall apply for a building permit to remove the kitchen as required by the Town's building and fire codes. (Ord. 703 (part), 2020).

18.42.090 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 ADU.

(1) Nonconforming ADU previously granted a 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 ADU 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 Planning Department 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 ADU is an ADU which is not an approved ADU, nonconforming ADU, 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 ADU or an ADU not maintained in conformance with this Chapter, including but not limited to:

- (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 ADU;
- (3) Revocation of the ADU 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 ADU 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. 703 (part), 2020; Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 641 (part), 2013; Ord. 625 (part), 2011; Ord. 578 §8(part), 2003).

SECTION 8: Title 18 Zoning, Chapter 18.52, "Nonconforming structures and uses" as referenced in the proposed revisions, attached hereto and incorporated herein as Exhibit A, is amended to read:

Chapter 18.52

NONCONFORMING STRUCTURES AND USES

Sections:

- | | |
|-----------|---|
| 18.52.010 | Requirements generally. |
| 18.52.020 | Use changed to another nonconforming use. |
| 18.52.030 | Alteration. |
| 18.52.040 | Nonconformity permit. |
| 18.52.045 | Minor nonconformity permit |
| 18.52.050 | Provision applicability--Suspension time limit. |

18.52.010 Requirements generally (a) Any nonconforming structure may be used and maintained except as otherwise provided in this chapter.

(b) A nonconforming use lawfully established prior to the adoption of this title may be continued, subject to the limitations hereinafter provided.

(c) If any nonconforming use is abandoned or discontinued for any reason, subsequent use of such land shall be in conformity with the provision of this title. The discontinuance of a nonconforming use for a period of six months or more is, in itself prima facie evidence of abandonment. (Ord. 653 (part), 2014; Ord. 434 §1, 1981; Ord. 416 §1, 1980; Ord. 377 §4, 1977; Ord. 270 §1, 1968: prior code §10 113 (part)).

18.52.020 Use changed to another nonconforming use. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or more restricted classification, but such use shall be subject to other provisions of this title. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

18.52.030 Alteration. No nonconforming use, no nonconforming structure and no structure devoted to a nonconforming use shall be enlarged, extended, reconstructed or structurally altered, unless such structure or use is changed to a structure or use permitted under the regulations specified by this title for the district in which the structure is located except as provided in Chapter 15.56 “Disaster Recovery and Reconstruction” or this section.

(a) A nonconforming structure may be altered so long as the exterior dimensions of the structure are not enlarged by the alteration and all other regulations are complied with.

(b) A nonconforming structure may be expanded so long as the expansion complies with all zoning regulations, including required parking.

(c) Nonconforming structures in a residential zoning district may be enlarged, extended reconstructed or structurally altered with a nonconformity permit approved under Section 18.52.040 or 18.52.045, except that a floor area ratio variance shall be required to increase the square feet of nonconforming floor area and a floor area ratio variance shall not be required for floor area associated with an Accessory Dwelling Unit when constructed in accordance with Chapter 18.42 of this Code or state legislation. (Ord. 704 (part), 2020; Ord. 653 (part), 2014; Ord. 641 (part), 2013; Prior code §10 113 (part)).

18.52.040 Nonconformity permit. (a) Purpose and Intent. Many residential structures in the town do not conform to the requirements of this Zoning Code because they were established before the adoption of zoning or before residential floor area limits were established in 1967. The purpose of this section is to allow for the continued existence, reconstruction and modification of nonconforming residential structures, subject to limitations set forth in this section. The intent of these regulations is to protect historic buildings and those that contribute to the Town’s small town character; to permit floor area nonconformities to be retained on site redevelopment where the design is appropriate; and to allow other nonconformities to be maintained when reasonable and where they create the same or fewer impacts than strict conformance with town regulations.

(b) Nonconformity Permit. The town council may permit nonconforming structures in the Single Family Residence and Special Building Site B Districts to be enlarged, extended, reconstructed or structurally altered by approval of a nonconformity permit under this section.

(c) Application. An application for a nonconformity permit shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(d) Review and Approval Authority. The town council shall review and approve, conditionally approve, or deny a nonconformity permit application at a public meeting. The Town Council shall consider the application concurrently with any related application for design review under Chapter 18.41 or demolition permit under Chapter 18.50.

(e) Notice. The town shall mail notice of the meeting at least 10 days prior to the meeting to the property owner and all owners within 300 feet of the property that is the subject of the meeting as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(f) Mandatory findings for nonconformity permit. The town council may approve or conditionally approve a nonconformity permit under this section if the council has facts to support all of the following findings:

(1) The nonconforming structure was in existence at the time the ordinance that now prohibits the structure was passed. The structure must have been lawful when constructed. The property owner has the burden to prove by substantial evidence the nonconforming and legal status of the structure.

(2) The town council can make the findings required to approve any required demolition permit for the structure: The demolition will not remove from the neighborhood or town, nor adversely affect, a building of historical, architectural, cultural or aesthetic value. The demolition will not adversely affect nor diminish the character or qualities of the site, the neighborhood or the community.

(3) The project substantially conforms to relevant design review criteria and standards in Section 18.41.100, even if design review is not required.

(4) Total floor area does not exceed the greater of: a) the total floor area of the existing conforming and/or legal nonconforming structure(s); or b) the maximum floor area permitted for the lot under current zoning regulations. The town shall apply the definition of floor area in effect at the time of the application for a nonconformity permit.

(5) Granting the permit will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

(6) The project will comply with the Flood Damage Prevention regulations in Chapter 15.36.

(7) The fire chief has confirmed that the site has adequate access and water supply for firefighting purposes, or that the project includes alternate measures approved by the fire chief.

(8) The applicant has agreed in writing to the indemnification provision in Section 18.40.180.

(9) The site has adequate parking. For purposes of this section, adequate parking shall mean that the site complies with at least the minimum number of parking spaces required for the zoning district (covered or not covered). If the site does not comply with the covered parking requirement, the Town Council may require covered parking to be provided. The Town Council may consider the size of the residence and number of bedrooms and may require additional parking up to the following:

<i>Total site floor area (excluding covered parking)</i>	<i>Required off street parking</i>
1,300 square feet to 3,300 square feet	3 spaces
Over 3,300 square feet	4 spaces

(g) Terms and Conditions. Any nonconformity permit approval may include such terms and conditions as deemed necessary or appropriate by the town council to effect the purposes of this ordinance.

(h) Any request that does not comply with the prescribed limitations set forth in this chapter shall require a variance, pursuant to Chapter 18.48. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

18.52.045 Minor nonconformity permit. (a) Purpose and Intent. The purpose of this section is to allow minor modifications to nonconforming structures to take place without the cost or the time commitment of town council review. These provisions retain public notice of the pending action and adherence to town guidelines and standards.

(b) Applicability. The town planner may permit nonconforming structures in the Single Family Residence and Special Building Site B Districts to be enlarged, extended, reconstructed or structurally altered by approval of a minor nonconformity permit under the following conditions:

(1) No change to the floor area or the location of the structure is being proposed;
and

(2) The structure is not readily visible from the public way or from immediately adjacent properties;

(c) Application. An application for a minor nonconformity permit shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(d) Review and Approval Authority. The town planner shall review and approve, conditionally approve, or deny an exception application administratively with no public meeting in accordance with this chapter, if no other entitlements are required. If other approvals are necessary, the minor nonconformity permit application shall be filed concurrently with the related applications and shall be acted upon by the town council. The town planner may refer an application directly to the town council for consideration.

(e) Notice. (1) The town planner shall mail notice of intent to take action on a minor exception at least 10 days prior to the decision to the owner of the property that is the subject of the application and all adjacent property owners as shown on the latest equalized

assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(2) The notice shall provide that a decision will be made by the town planner to approve or disapprove the minor exception application on a date specified in the notice. The notice shall include the name of the applicant, the scheduled date for action, a general explanation of the matter to be considered, the location of the real property that is the subject of the application and that a public hearing will be held only if requested in writing by any interested person before the specified date for the decision. When a hearing is requested, notice of the hearing shall be provided pursuant to Government Code Section 65091.

(f) Mandatory findings for minor nonconformity permit. The town planner may approve or conditionally approve a minor nonconformity permit under this section if the town planner has facts to support all of the following findings:

(1) The nonconforming structure was in existence at the time the ordinance that now prohibits the structure was passed. The structure must have been lawful when constructed. The property owner has the burden to prove by substantial evidence the nonconforming and legal status of the structure.

(2) The town planner can make the findings required to approve any required demolition permit for the structure: The demolition will not remove from the neighborhood or town, nor adversely affect, a building of historical, architectural, cultural or aesthetic value. The demolition will not adversely affect nor diminish the character or qualities of the site, the neighborhood or the community.

(3) The project substantially conforms to relevant design review criteria and standards in Section 18.41.100, even if design review is not required.

(4) Total floor area does not exceed the greater of: a) the total floor area of the existing conforming and/or legal nonconforming structure(s); or b) the maximum floor area permitted for the lot under current zoning regulations. The town shall apply the definition of floor area in effect at the time of the application for a nonconformity permit.

(5) Granting the permit will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

(6) The project will comply with the Flood Damage Prevention regulations in Chapter 15.36.

(7) The fire chief has confirmed that the site has adequate access and water supply for firefighting purposes, or that the project includes alternate measures approved by the fire chief.

(8) The applicant has agreed in writing to the indemnification provision in Section 18.40.180.

(g) Terms and Conditions. Any minor nonconformity permit approval may include such terms and conditions as deemed necessary or appropriate by the town planner to effect the purposes of this ordinance.

(h) Expiration. The provisions of this section shall expire after one (1) year of the implementing ordinance going into effect unless extended by the Town Council.

18.52.050 Provision applicability--Suspension time limit. The foregoing provisions shall also apply to nonconforming uses and structures created by future amendments to the provisions

of this title and any time limit for the suspension of a nonconforming structure or use shall date from the date of the enactment of this title or any amendment which first creates the nonconformity. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

SECTION 9: Inclusion in the Ross Municipal Code. It is the intention of the Ross Town Council that the additions, deletions and amendments in the sections above be made a part of the Ross Municipal Code and that the text may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section", "Chapter", or such other appropriate word or phrase to accomplish this intention.

SECTION 10: CEQA. The Town Council has determined that the ordinance is categorically exempt from the requirement for the preparation of environmental documents under the California Environmental Quality Act (CEQA) in that the Council finds there is no possibility that the adoption of this ordinance may have significant effects on the environment. The Town Council would require environmental review based on the specific site circumstances for any project subject to discretionary review and certain projects would be exempt under exemptions for new small structures and existing facilities (14 Cal. Code Regs. §15301 and 15303). The Town Council also considers the project exempt from review under the California Environmental Quality Act under the "common sense" exemption. (14 Cal. Code Regs. §15061(b)(3)) since "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

SECTION 11. SEVERABILITY. If any article, section, subsection, subdivision, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The Town Council of the Town of Ross hereby declares that it would have adopted each article, section, and sentence thereof, irrespective of the fact that any one or more of said provision be declared unconstitutional or invalid.

SECTION 12. PUBLICATION AND EFFECTIVE DATE. The Town Clerk is directed to certify adoption of this ordinance and cause it to be published and posted in the manner required by law. This ordinance shall go into effect thirty (30) days after the date of its adoption. The provisions of Section 18.52.045 "Minor nonconformity permit" shall expire after one (1) year of this ordinance going into effect unless extended by the Town Council.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Ross Town Council on the 8th day of October, 2020, and was adopted at a regular meeting of the Ross Town Council on the ____ day of _____ 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Julie McMillan, Mayor

ATTEST:

Linda Lopez, Town Clerk

Attachment:
Exhibit A – Proposed Zoning Code Text Amendments

Chapter 18.12

DEFINITIONS

18.12.095 Creek. "Creek" means a watercourse (1) that carries water, either intermittently or continuously, in a defined channel, continuous swale or depression, or in a culvert that was placed in the general historic location thereof; and (2) the water either merges with a larger watercourse or body of water, or is diverted into an engineered structure that does not follow the general historic course of a creek. "Creek" does not include any part of an engineered structure developed for collection of storm or flood waters (e.g. a storm drainpipe) that does not follow the general historic course of a creek. For the purposes of measuring creek setback, the measurement shall start at the top of bank on the nearest side of the creek, as determined by the Town Engineer.

18.12.130 Floor area ratio. "Floor area ratio" means the floor area of the building or buildings on a lot, divided by the area of that lot. For the purpose of determining the allowable floor area of a lot, the floor area is the sum of the gross horizontal areas of the several floors of the building or buildings measured from the exterior faces of the exterior walls. Floor area also includes mezzanines, finished basements and attics, garages, carports, porches which are screened or otherwise enclosed, the entirety of porches which have a depth greater than ten feet, stairs and elevators on one floor, and other detached structures which are accessory to a dwelling. Floor area shall not include finished basement space used only for storage with less than five-seven feet of ceiling height and finished attic space used only for storage that does not meet building code requirements for habitable space and is not accessible by permanent stairs.

18.12.270 Parking space. "Parking space" means land or space with a minimum standard dimension of nine (9) feet wide by 18 feet long, privately owned, covered or uncovered, laid out for, and used or designed to be used by a standing vehicle. An enclosed parking space includes a permanent, roofed structure that adequately screens the vehicle from public view, as determined by the Town Planner.

18.12.390 Yards. "Yards" also referred to as "Setbacks" means land unoccupied or unobstructed, except for such encroachments as may be permitted by this title, surrounding a building site. Roof eaves, overhangs and gutters may project into the first 24 inches of a required yard area.

18.12.400 Yard, rear. "Rear yard" also referred to as "rear setback" means a yard extending between the side lines of the lot and measured between the rear line of the lot and the nearest point of the main building or porch nearest the rear line of the lot.

18.12.410 Yard, front. "Front yard" also referred to as "front setback" means a yard extending across the full width of the lot measured between the street line (or the lot line connected to a street by legal access) and the nearest point of the main building or porch. The front yard of a corner lot is the yard adjacent to the shorter street frontage.

18.12.420 Yard, side. "Side yard" also referred to as "side setback" means a yard on either side of the lot extending from the front line to the rear lot line, the width of each yard being measured between the side line of the lot, and the nearest point of the main building or porch.

Chapter 18.40GENERAL REGULATIONS18.40.120 Trailers and vehicles used for habitation or parked in private driveways.

(a) Recreational Vehicles, as defined in Section 10.28.080 must neither be used as living quarters nor used for conducting business while parked or stored except as permitted in Section 18.40.120(c).

(b) Recreational Vehicles, as defined in Section 10.28.080, are permitted to park or be stored on private property if the following conditions have been met:

a. The RV must be parked on the driveway.

b. The RV must be setback a minimum of 15 feet from the roadway's edge.

c. The RV may not be parked for more than 3 days, unless the property owner has erected a fence or similar screening that substantially blocks the view of the vehicle from the public. Said fence or screening will be subject to the design review process in Section 18.41 and all other relevant zoning requirements of this code.

d. The RV does not reduce the number of off street parking spaces to less than two (2) parking spaces. (Ord. 687 (part), 2018; Ord. 578 §6, 2003; Ord. 305 §1, 1970).

(c) Recreational Vehicles, as defined in Section 10.28.080 may be used as living quarters or job site construction offices, with approval of a use permit pursuant to Chapter 18.44, for construction projects that involve new construction of a primary residence or substantial remodel of the existing residence as determined by the Planning and Building Director. The use permit shall automatically expire within two (2) years of issuance or 30 days after the building permit for the primary residence is closed, whichever comes first. The use permit shall confer no vested or perpetual rights in the underlying property or with the permittee.

18.40.190 Lighting. All exterior lighting shall be directed downward and shielded (no bare bulb light fixtures or down lights that may be visible from down-slope sites). Exterior lighting of landscaping by any means shall not be permitted if it creates glare or annoyance for adjacent property owners. Lighting expressly designed to light exterior walls or fences that is visible from adjacent properties or public ~~right-of-ways~~rights-of-way is prohibited. Lighting generated by outdoor use of television, video or other electronic devices shall not be permitted if it creates glare or annoyance for adjacent property owners. (Ord. 576-1, 2003).

Chapter 18.52NONCONFORMING STRUCTURES AND USESSections:

18.52.010	Requirements generally.
18.52.020	Use changed to another nonconforming use.
18.52.030	Alteration.
18.52.040	Nonconformity permit.
<u>18.52.045</u>	<u>Minor nonconformity permit</u>
18.52.050	Provision applicability--Suspension time limit.

18.52.010 Requirements generally. (a) Any nonconforming structure may be used and maintained except as otherwise provided in this chapter.

(b) A nonconforming use lawfully established prior to the adoption of this title may be continued, subject to the limitations hereinafter provided.

(c) If any nonconforming use is abandoned or discontinued for any reason, subsequent use of such land shall be in conformity with the provision of this title. The discontinuance of a nonconforming use for a period of six months or more is, in itself prima facie evidence of abandonment. (Ord. 653 (part), 2014; Ord. 434 §1, 1981; Ord. 416 §1, 1980; Ord. 377 §4, 1977; Ord. 270 §1, 1968; prior code §10 113 (part)).

18.52.020 Use changed to another nonconforming use. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or more restricted classification, but such use shall be subject to other provisions of this title. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

18.52.030 Alteration. No nonconforming use, no nonconforming structure and no structure devoted to a nonconforming use shall be enlarged, extended, reconstructed or structurally altered, unless such structure or use is changed to a structure or use permitted under the regulations specified by this title for the district in which the structure is located except as provided in Chapter 15.56 "Disaster Recovery and Reconstruction" or this section.

(a) A nonconforming structure may be altered so long as the exterior dimensions of the structure are not enlarged by the alteration and all other regulations are complied with.

(b) A nonconforming structure may be expanded so long as the expansion complies with all zoning regulations, including required parking.

(c) Nonconforming structures in a residential zoning district may be enlarged, extended reconstructed or structurally altered with a nonconformity permit approved under Section 18.52.040 or 18.52.045, except that a floor area ratio variance shall be required to increase the square feet of nonconforming floor area and a floor area ratio variance shall not be required for floor area associated with an Accessory Dwelling Unit when constructed in accordance with Chapter 18.42 of this Code or state legislation. (Ord. 704 (part), 2020; Ord. 653 (part), 2014; Ord. 641 (part), 2013; Prior code §10 113 (part)).

18.52.040 Nonconformity permit. (a) Purpose and Intent. Many residential structures in the town do not conform to the requirements of this Zoning Code because they were established before the adoption of zoning or before residential floor area limits were established in 1967. The purpose of this section is to allow for the continued existence, reconstruction and modification of nonconforming residential structures, subject to limitations set forth in this

section. The intent of these regulations is to protect historic buildings and those that contribute to the Town's small town character; to permit floor area nonconformities to be retained on site redevelopment where the design is appropriate; and to allow other nonconformities to be maintained when reasonable and where they create the same or fewer impacts than strict conformance with town regulations.

(b) Nonconformity Permit. The town council may permit nonconforming structures in the Single Family Residence and Special Building Site B Districts to be enlarged, extended, reconstructed or structurally altered by approval of a nonconformity permit under this section.

(c) Application. An application for a nonconformity permit shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(d) Review and Approval Authority. The town council shall review and approve, conditionally approve, or deny a nonconformity permit application at a public meeting. The Town Council shall consider the application concurrently with any related application for design review under Chapter 18.41 or demolition permit under Chapter 18.50.

(e) Notice. The town shall mail notice of the meeting at least 10 days prior to the meeting to the property owner and all owners within 300 feet of the property that is the subject of the meeting as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(f) Mandatory findings for nonconformity permit. The town council may approve or conditionally approve a nonconformity permit under this section if the council has facts to support all of the following findings:

(1) The nonconforming structure was in existence at the time the ordinance that now prohibits the structure was passed. The structure must have been lawful when constructed. The property owner has the burden to prove by substantial evidence the nonconforming and legal status of the structure.

(2) The town council can make the findings required to approve any required demolition permit for the structure: The demolition will not remove from the neighborhood or town, nor adversely affect, a building of historical, architectural, cultural or aesthetic value. The demolition will not adversely affect nor diminish the character or qualities of the site, the neighborhood or the community.

(3) The project substantially conforms to relevant design review criteria and standards in Section 18.41.100, even if design review is not required.

(4) Total floor area does not exceed the greater of: a) the total floor area of the existing conforming and/or legal nonconforming structure(s); or b) the maximum floor area permitted for the lot under current zoning regulations. The town shall apply the definition of floor area in effect at the time of the application for a nonconformity permit.

(5) Granting the permit will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

(6) The project will comply with the Flood Damage Prevention regulations in Chapter 15.36.

(7) The fire chief has confirmed that the site has adequate access and water supply for firefighting purposes, or that the project includes alternate measures approved by the fire chief.

(8) The applicant has agreed in writing to the indemnification provision in Section 18.40.180.

(9) The site has adequate parking. For purposes of this section, adequate parking shall mean that the site complies with at least the minimum number of parking spaces

required for the zoning district (covered or not covered). If the site does not comply with the covered parking requirement, the Town Council may require covered parking to be provided. The Town Council may consider the size of the residence and number of bedrooms and may require additional parking up to the following:

<i>Total site floor area (excluding covered parking)</i>	<i>Required off street parking</i>
1,300 square feet to 3,300 square feet	3 spaces
Over 3,300 square feet	4 spaces

(g) Terms and Conditions. Any nonconformity permit approval may include such terms and conditions as deemed necessary or appropriate by the town council to effect the purposes of this ordinance.

(h) Any request that does not comply with the prescribed limitations set forth in this chapter shall require a variance, pursuant to Chapter 18.48. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

18.52.045 Minor Nonconformity permit.

(a) Purpose and Intent. The purpose of this section is to allow minor modifications to nonconforming structures to take place without the cost or the time commitment of town council review. These provisions retain public notice of the pending action and adherence to town guidelines and standards.

(b) Applicability. The town planner may permit nonconforming structures in the Single Family Residence and Special Building Site B Districts to be enlarged, extended, reconstructed or structurally altered by approval of a minor nonconformity permit under the following conditions:

(1) No change to the floor area or the location of the structure is being proposed;
and

(2) The structure is not readily visible from the public way or from immediately adjacent properties;

(c) Application. An application for a minor nonconformity permit shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(d) Review and Approval Authority. The town planner shall review and approve, conditionally approve, or deny an exception application administratively with no public meeting in accordance with this chapter, if no other entitlements are required. If other approvals are necessary, the minor nonconformity permit application shall be filed concurrently with the related applications and shall be acted upon by the town council. The town planner may refer an application directly to the town council for consideration.

(e) Notice. (1) The town planner shall mail notice of intent to take action on a minor exception at least 10 days prior to the decision to the owner of the property that is the subject of the application and all adjacent property owners as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(2) The notice shall provide that a decision will be made by the town planner to approve or disapprove the minor exception application on a date specified in the notice. The notice shall include the name of the applicant, the scheduled date for action, a general explanation of the

matter to be considered, the location of the real property that is the subject of the application and that a public hearing will be held only if requested in writing by any interested person before the specified date for the decision. When a hearing is requested, notice of the hearing shall be provided pursuant to Government Code Section 65091.

(f) Mandatory findings for minor nonconformity permit. The town planner may approve or conditionally approve a minor nonconformity permit under this section if the town planner has facts to support all of the following findings:

(1) The nonconforming structure was in existence at the time the ordinance that now prohibits the structure was passed. The structure must have been lawful when constructed. The property owner has the burden to prove by substantial evidence the nonconforming and legal status of the structure.

(2) The town planner can make the findings required to approve any required demolition permit for the structure: The demolition will not remove from the neighborhood or town, nor adversely affect, a building of historical, architectural, cultural or aesthetic value. The demolition will not adversely affect nor diminish the character or qualities of the site, the neighborhood or the community.

(3) The project substantially conforms to relevant design review criteria and standards in Section 18.41.100, even if design review is not required.

(4) Total floor area does not exceed the greater of: a) the total floor area of the existing conforming and/or legal nonconforming structure(s); or b) the maximum floor area permitted for the lot under current zoning regulations. The town shall apply the definition of floor area in effect at the time of the application for a nonconformity permit.

(5) Granting the permit will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

(6) The project will comply with the Flood Damage Prevention regulations in Chapter 15.36.

(7) The fire chief has confirmed that the site has adequate access and water supply for firefighting purposes, or that the project includes alternate measures approved by the fire chief.

(8) The applicant has agreed in writing to the indemnification provision in Section 18.40.180.

(g) Terms and Conditions. Any minor nonconformity permit approval may include such terms and conditions as deemed necessary or appropriate by the town planner to effect the purposes of this ordinance.

(h) Expiration. The provisions of this section shall expire after one (1) year of the implementing ordinance going into effect unless extended by the Town Council.

18.52.050 Provision applicability--Suspension time limit. The foregoing provisions shall also apply to nonconforming uses and structures created by future amendments to the provisions of this title and any time limit for the suspension of a nonconforming structure or use shall date from the date of the enactment of this title or any amendment which first creates the nonconformity. (Ord. 653 (part), 2014; Prior code §10 113 (part)).

Chapter 18.42ACCESSORY DWELLING UNITSSections:

18.42.010	Purpose.
18.42.020	Definitions.
18.42.030	ADU Permit Required.
18.42.040	Permit Application and Procedures.
18.42.050	General Requirements – ADUs/JADUs.
18.42.055	Development Standards - ADUs.
18.42.060	Guaranteed Allowance.
18.42.065	Exceptions to Standards for ADUs.
18.42.070	Development Standards - JADUs.
18.42.075	Units Subject to Limited Standards.
18.42.080	Rent-Restricted ADUs.
18.42.085	Termination of Permit and Use.
18.42.090	Administration and Enforcement.

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

18.42.010 Purpose. The purpose of this chapter is to establish the procedures and development standards for the ministerial, non-discretionary processing of applications for new accessory dwelling units (“ADUs”) and junior accessory dwelling units (“JADUs”) in compliance with California Government Code Section 65852.2 and Section 65852.22 and consistent with the policies, goals and programs of the Housing Element of the General Plan. ADUs and JADUs increase the overall supply of housing within established residential zoning districts or as part of new residential subdivisions, while maintaining the existing character of the neighborhood. Such units are intended to increase the supply of smaller, more affordable housing within existing residential neighborhoods and provide independent living units for prospective and current residents, including family members, students, local employees, the elderly, in-home health and childcare providers, and single adults, among others. The intent of the Town in adopting the code section is to ensure that the Town’s ordinance has the effect of providing for the creation of ADUs and JADUs and that the provisions in this ordinance relating to matters including size, parking, and other development standards are not arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create ADUs or JADUs consistent with state law intended to promote their development. (Ord. 703 (part), 2020; 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" shall have the same meaning as defined in California Government Code Section 65852.2, as amended from time to time.

~~“Accessory dwelling unit— attached” means an accessory dwelling unit that is constructed as a physical expansion (i.e. addition) of the primary dwelling unit and shares a common wall with the primary dwelling unit.~~

~~“Accessory dwelling unit— detached” means an accessory dwelling unit that is constructed as a separate structure from the primary dwelling unit.~~

~~“Accessory dwelling unit— interior” means an accessory dwelling unit that is created within an existing structure as defined in this chapter.~~

“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.

“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.

“Efficiency kitchen” shall have the same meaning as defined in California Government Code Section 65852.22, as amended from time to time.

“Existing structure” means an existing permitted or otherwise legal single-family residence, including all fully enclosed areas such as a partial basement, an attached garage, or an accessory structure that can be made safety habitable under building codes.

“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.

“Junior accessory dwelling unit” shall have the same meaning as defined in California Government Code Section 65852.22, as amended from time to time.

“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 effective date of this ordinance. The Planning Department shall determine the status of such units in accordance with the provisions of this code.

“Public transit” means a location, including but not limited to, a bus stop or train station, where the public may access buses, trains, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public. Public transit does not include school bus stops associated with bus routes operated seasonally or only during school hours for the intended purpose of serving students, even if the general public may access such bus service; or school bus routes provided by a school district for the exclusive use of students.

“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.~~

~~“Public transit” means a location, including but not limited to, a bus stop or train station, where the public may access buses, trains, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public. Public transit does not include school bus stops associated with bus routes operated seasonally or only during school hours for the intended~~

~~purpose of serving students, even if the general public may access such bus service; or school bus routes provided by a school district for the exclusive use of students.~~

“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.

“Tandem parking” shall have the same meaning as defined in California Government Code Section 65852.2, as amended from time to time.

“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. 703 (part), 2020; Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011; Ord. 578 §8 (part), 2003).

18.42.030 ADU Permit Required. An ADU or JADU is allowed on any parcel in a single-family residential or multifamily residential zoning district with a primary unit, subject to the issuance of an ADU permit. (Ord. 703 (part), 2020; Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011).

18.42.040 Permit Application and Procedures.

(a) ADUs Subject to Administrative Review.

(1) Application. An owner may apply for an ADU permit by submitting an application to the Planning Department 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 Planning Department shall consider the application without discretionary review, public notice, or a hearing. The Planning Department shall approve the application if the application meets all of the requirements and standards of this Chapter. The Planning Department shall deny the application if he or she determines that it does not meet all of such requirements. The Planning Department’s decision shall be in writing and shall state the reasons for approval or denial. The Planning Department’s decision shall be final.

(b) ADUs Subject to Town Council Review.

(1) General. The town council may grant discretionary exceptions to the development standards regulating the number of ADU permitted on a lot or parcel and ADU height, location, size and floor area as set forth in Sections 18.42.050 and 18.42.055.

(2) Application for Exception. Where an owner seeks an exception to the development standards of this Chapter, the owner may apply for an ADU permit by submitting an application to the Planning Department 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 for Exception to Floor Area and/or Building Coverage. Where an owner seeks an exception to the floor area and/or building coverage requirement as set forth in Section 18.42.065 of this Chapter, the owner may apply for an ADU permit by submitting an

application to the Planning Department on a form provided by the Town consistent with the provisions of Section 18.42.080 of this Chapter. 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, conditionally, approve, or deny the ADU exception application in accordance with the provisions of Section 18.42.065 or Section 18.42.080. 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 18.42.065 or Section 18.42.080. (Ord. 703 (part), 2020; Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011).

18.42.050 General Requirements – ADUs and JADUs.

(a) ADUs and JADUs may be constructed on a residentially zoned parcel with a proposed or existing single-family or multifamily dwelling.

(b) An ADU may either be attached to, or located within, the -proposed or existing primary -dwelling, including attached garages, storage areas or similar uses, or an accessory structure or -detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(c) Owner Occupancy. Owner occupancy is not required for either the primary residence or the ADU/JADU.

(d) Street addresses shall be assigned to all ADUs to assist in emergency response.

(e) The ADU/JADU may be rented but shall not be sold independently of the primary dwelling on the parcel.

(f) The ADU/JADU shall not be rented for less than 30 consecutive days.

(g) Permanent Foundation. A permanent foundation shall be required for all ADUs.

(Ord. 703 (part), 2020).

18.42.055 Development Standards - ADUs.

(a) Separate Kitchen and Bathroom. All ADUs shall contain a separate kitchen and bathroom independent of the primary residence.

(b) Location. Detached ADUs shall be separated from the primary dwelling and any accessory structures by a minimum of 3 feet.

(c) Height. An attached ADU or detached ADU shall not exceed 16 feet in height. The height may be increased following submittal of an application for and approval of a discretionary ADU Exception Permit application per Section 18.42.063

(d) Bedrooms. All ADUs are limited to a maximum of two bedrooms.

(e) Size. ADUs shall be subject to the size limitations set forth in Table 1.

Table 1.

ADU Type	Maximum ADU Floor Area
Attached	
One bedroom or less	50 percent of the existing primary dwelling or 850 sq. ft., whichever is greater <u>less</u>
More than one bedroom	50 percent of the existing primary dwelling or 1,000 sq. ft., whichever is greater <u>less</u>
Detached	
One bedroom or less	850 sq. ft.
More than one bedroom	1,000 sq. ft.
Internal Addition	150 square feet or 50 percent of the existing primary dwelling, whichever is greater.
Junior	500 sq. ft.

(1) The Town Council may grant an ADU size increase to 1,200 square feet per Section 18.42.065 and Section 18.42.080 of this Chapter.

(f) Parking.

(1) One off-street parking space shall be provided for each ADU in addition to those required for the primary unit. The parking spaces may be provided as tandem parking on a driveway. Off-street parking is not required for an ADU in any of the following instances:

- i. The ADU is located within one-half mile of public transit.
- ii. The ADU is located within a historic district.
- iii. The ADU is part of the proposed or existing primary residence or an accessory structure.
- iv. When on-street parking permits are required but not offered to the occupant of the ADU.
- v. When there is a dedicated parking space for a car share vehicle located within one block of the ADU.

(2) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, those off-street parking spaces need not be replaced.

(g) Lighting. All exterior lighting, including landscape lighting, must be dark sky compliant. All new exterior lighting must be designed and installed so that the filaments, light sources or lenses are shielded and downward facing with opaque materials in such a way that they will not be visible at property lines. The exterior lights shall have a color temperature of 3500 Kelvin or lower (warm not cool).

(h) Landscaping. Any tree over 12 inches in circumference removed in conjunction with the construction of an ADU must be replaced by a 24-inch box tree on the project site, unless it is determined by the Fire Marshal that replacement planting is not feasible.

(i) Windows.

(1) All windows that face a side yard adjoining a side yard of an adjacent property and are located within 15 feet of the shared property line shall be clerestory (minimum of 6.5 feet above the finished floor height), except that this standard does not apply if a structure on the adjacent property does not have any non-clerestory windows on the building elevation that faces the ADU. Windows, other than clerestory, may be allowed on the building elevation that faces the side yard adjoining a side yard of an adjacent property located within 15 feet of that shared property line following submittal of an application for and approval of a discretionary ADU Exception Permit application per Section 18.42.065 or with written approval from the adjacent property owner that faces the window(s).

(2) All windows that face a rear yard adjoining a rear yard of an adjacent property that are located within 15 feet of the shared property line shall be clerestory (minimum of 6.5 feet above the finished floor height), except that this standard does not apply if a structure on the adjacent property does not have any non-clerestory windows on the building elevation that faces the ADU. Windows, other than clerestory, may be allowed on the building elevation that faces the rear yard adjoining a rear yard of an adjacent property following submittal of an application for and approval of a discretionary Design Review application by the Zoning Administrator or with written approval from the adjacent property owner that faces the window(s).

(j) Setbacks. ADUs shall be subject to the following requirements related to setbacks:

(1) No setback shall be required for an existing living area or accessory structure that is fully or partially converted to an ADU, or for a structure constructed in the same location and to the same or smaller dimensions as an existing living area or accessory structure that is fully or partially converted to an ADU.

(2) Setbacks of four feet from the side and rear lot lines are required for an ADU that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

~~(2) — Setbacks of four feet from the side and rear lot lines are required for an ADU that is not converted from an existing structure or a new structure constructed in the samea different location and/or to the samegreater dimensions as an existing structure.~~

(k) Flood Plain. An attached or detached ADU located in the flood plain shall comply with Chapter 15.36 of the Municipal Code.

(l) Adequate Services. The proposed method of water supply and sewage disposal for the ADU/JADU must be provided, as well as service availability from any associated electric and gas provider for the lot. Letters of service availability must be provided by the appropriate utilities service provider(s) for the lot. The property owner must also demonstrate existing or future legal access.

(m) Prior Discretionary Approvals. The ADU shall not conflict with any other requirements associated with prior land use entitlements (e.g. Design Review, Nonconformity Permit) granted for the subject property, unless such requirements have been amended through required approval processes. (Ord. 703 (part), 2020).

18.42.060 Guaranteed Allowance.

All standards related to size, limits on lot coverage, floor area ratio, and/or minimum lot size that apply to an ADU shall not prohibit an ADU with ~~at least an~~ up to 800 square ~~feet~~ feet of floor area, a height of ~~at least~~ up to 16 feet, and four-foot side and rear yard setbacks, provided the ADU complies with all other applicable standards. (Ord. 703 (part), 2020).

18.42.065 Exceptions to Standards for ADUs.

At its discretion, the town council may grant exceptions to the general requirements and development standards for an ADU as set forth in Section 18.42.050 and Section 18.42.055 of this code.

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

(b) Exceptions to Floor Area and/or Building Coverage. (1) The town council may grant an exception to allow the nonconforming floor area and/or building coverage of an ADU to exceed 800 square feet up to 1,200 square feet if the ADU is to be rent restricted for a very low-income household subject to the provision of Section 18.42.080 of the Ross Municipal Code. (2) The Town Council may grant an exception to allow any amount of existing floor area that is converted to new ADU space to be transferred as a floor area allowance for a new addition to the primary residence.

~~(b) — Exception to Floor Area and/or Building Coverage. (1) The town council may grant an exception to floor area bonus which would allow the nonconforming floor area and/or building coverage of an ADU to exceed 800 square feet up to a 1,200 square foot ADU if the newly constructed ADU is to be rent restricted for a very low income household subject to the provision of Section 18.42.080 of the Ross Municipal Code. (2) The Town Council may also grant an exception to allow ADU existing floor area to be traded off transferred as a new floor area allowance for an addition to the primary residence whether or not a floor area and/or building coverage bonus exception is being granted or not pursuant to subsection (1).~~

(c) Exception to Height. The town council may grant an ADU 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.

(d) Exception to Location. The town council may grant an exception to the location standard to allow a newly constructed ADU above an existing first floor.

(e) Exception to Size. The town council may grant an ADU size increase to 1,200 square feet.

(f) Exception to Windows. The town council may grant an exception to Section 18.42.055(j)(1).

(g) 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, the adopted Design Guidelines, and if 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. 703 (part), 2020; Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011).

18.42.070 Development Standards – JADUs.

JADUs are subject to the following objective development standards.

(a) Entryways. A JADU must include a separate entrance from the main entrance to the primary residence, with ~~an interior entry~~ direct access to the main living area. A JADU may include a second interior doorway for sound attenuation.

(b) Location. The JADU must be created within the existing walls of an existing single-family residence and must include an existing bedroom.

(c) Kitchen. The JADU shall include an efficiency kitchen as defined in California Government Code Section 65852.22.

(d) Bathroom. A JADU may include separate sanitation facilities or may share sanitation facilities with the existing structure.

(e) Size. The size of a JADU shall not exceed 500 square feet of gross floor area. The gross floor area of a shared sanitation facility shall not be included in the maximum gross floor area of the unit. (Ord. 703 (part), 2020).

18.42.075 Units Subject to Limited Standards.

Notwithstanding sections 18.42.055, 18.42.060, 18.42.065 and 18.42.070 of this Chapter, accessory dwelling unit and junior accessory dwelling unit permits shall be issued based solely on the standards set forth in this section and all applicable Building Code standards, as follows:

(a) ~~Internal ADUs.~~—One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(1) The ADU or JADU unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(2) The space has exterior access from the proposed or existing single-family dwelling.

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

(4) The JADU complies with the requirements of Section 65852.22.

(b) ~~Detached ADUs.~~—One detached, new construction, ADU that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The ADU may be combined with a JADU described in subsection (a)(1) of this section. A local agency may impose the following conditions on the accessory dwelling unit:

(1) A total floor area limitation of not more than 800 square feet.

(2) A height limitation of 16 feet.

(c) Multifamily Dwelling ADUs

(1) Multiple ADUs within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(2) A local agency shall allow at least one ADU within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(d) Not more than two ADUs that are located on a lot that has an existing multifamily dwelling detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(e) Rentals of ADU and JADU permitted pursuant to this section shall be for a term longer than 30 days.

(f) Installation of fire sprinklers are not required in an ADU or JADU if sprinklers are not required for the primary residence.

(g) ADUs and JADUs permitted under this section shall not be required to install a new or separate utility connection directly between the ADU and the utility nor shall a related connection fee or capacity be charged unless the ADU or JADU is proposed to be constructed with a new single-family home. (Ord. 703 (part), 2020).

18.42.080 Rent-restricted ADUs.

At its discretion, the town council may grant an exception to the floor area requirement for ADUs if the owner agrees to occupy or rent a newly constructed ADU as a rent restricted ADU, if the ADU 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) Exceptions to Floor Area and/or Building Coverage. (1) The town council may grant an exception to allow the nonconforming floor area and/or building coverage of an ADU to exceed 800 square feet up to 1,200 square feet if the ADU is to be rent restricted for a very low-income household. (2) The Town Council may grant an exception to allow any amount of existing floor area that is converted to new ADU space to be transferred as a floor area allowance for a new addition to the primary residence.

~~(a) — Exception to Floor Area and/or Building Coverage. (1) The town council may grant an exception to floor area bonus which would allow the nonconforming floor area and/or building coverage of an ADU to exceed 800 square feet up to a 1,200 square foot ADU if the newly constructed ADU is to be rent restricted for a very low income household. (2) The Town Council may also grant an exception to allow ADU existing floor area to be traded off/transferred as a new floor area allowance for an addition to the primary residence whether or not a floor area and/or building coverage exception is granted pursuant to subsection (1).~~

(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 ADU 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 ADU Affordable Rent Certification on an annual basis, effective each December 31 and as part of the annual Town business license application and renewal, if the ADU is being rented. The ADU Affordable Rent Certification shall include the rent charged, the cost of the utilities, whether the utilities are included in the cost of rent, the household size of the ADU, the names and ages of the ADU occupants, the gross household income of the ADU 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 ADU Permit.** At its discretion, the town council may grant an owner's request to terminate a rent restricted ADU 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 year 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. 703 (part), 2020; Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 625 (part), 2011).

18.42.085 Termination of Permit and Use.

At his/her discretion, the Planning Director or his/her designee may grant an owner's request to terminate an ADU/JADU. As a condition of termination, the Planning Director or his/her designee shall require the owner to make modifications to the property to comply with current building code requirements and remove the kitchen. The property owner shall apply for a building permit to remove the kitchen as required by the Town's building and fire codes. (Ord. 703 (part), 2020).

18.42.090 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 ADU.**

(1) Nonconforming ADU previously granted a 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 ADU 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 Planning Department 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 ADU is an ADU which is not an approved ADU, nonconforming ADU, 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 ADU or an ADU not maintained in conformance with this Chapter, including but not limited to:

- (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 ADU;
- (3) Revocation of the ADU 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 ADU 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. 703 (part), 2020; Ord. 679 (part), 2017; Ord. 678 (part), 2016; Ord. 641 (part), 2013; Ord. 625 (part), 2011; Ord. 578 §8(part), 2003).

ATTACHMENT 2

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will protect the Town collectively. He added that Corte Madera and Larkspur are incredible examples where they ran actual drills. Community residents practiced evacuating. They are extremely prepared. They must organize the community to rise up to get this done. He asked the Council along with the Town's professional staff to continue to work together.

Council Member Robbins thanked DISCO Coordinator Fleitas for taking this on because it is a huge job that is very important. DISCO Coordinator Fleitas stated it is a lot of work but he is very excited for 2019. He hopes in late January or February to have their first 10 to 15 block captains in place. They will maintain close communications with their local resources. Mayor Kuhl appreciated all his hard work and hoped he will continue to report and keep the Council informed.

Town Manager Joe Chinn on behalf of the Town thanked DISCO Coordinator Fletias for his hard work in assisting the residents and businesses in preparing for disasters.

Mayor Kuhl opened the public testimony on this item, and seeing no one wishing to speak, the Mayor closed the public portion and moved onto the next agenda item.

12. Overview of the planning process and Town Council discussion of potential revisions to Zoning Regulations.

Planning Manager Heidi Scoble summarized the staff report and recommended that the Council accept the report and provide direction to staff regarding possible amendments to the zoning regulations.

Council Member Russell discussed digitalization and asked staff if they are creating backups or sending information to the cloud. Planning Manager Scoble noted they are set to go live at the end of January, but they will have both a paper and digital tracking system for a few months and input permits that have been applied for in 2018, so past data will be repopulated. They will have duplicate paper and digital tracking component until the staff is comfortable the digital tracking system is functioning properly. The permit tracking system will be stored on the cloud.

Council Member Russell asked staff if properties could have multiple accessory dwelling units. (ADU). Planning Manager Scoble responded that the accessory dwelling regulations allows a discretionary exception process to allow more than one ADU on a property and that it would be up to the Council to approve the request.

Council Member McMillan asked staff if it is possible to have advisory design review for such projects. Planning Manager Scoble responded that the State legislation limits the Town's ability to require design review for projects that meet certain objective standards, such as size and location, however, design review can be required if the ADU is requesting an exception to the objective standards.

Planning Manager Scoble discussed the objective development standards:

- One on-site parking space or within ½ mile from a public transit stop. 
- If located in a detached accessory structure, than no taller than 18-feet. 
- If located above a garage, then no taller than 20-feet. 

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- No setback required if an existing garage or detached accessory structure is being converted into an ADU.
- An ADU constructed above a garage shall have a minimum setback of 5-feet from the property lines.
- No greater than 1,000 square feet, excluding covered parking.
- Complies with the building coverage and floor area requirements of the zoning district.

Mayor Pro Tempore Brekhus suggested considering not allowing garages in front yards in regard to ADU's. Planning Manager Scoble explained through the discretionary review process they have control over the placement of a garage. Mayor Pro Tempore Brekhus stated if height is limited to 20 feet, applicants could come to the Council requesting an exception to the height limit to allow the ADU to exceed the 20-foot height limit. Planning Manager Scoble added that having the ability to regulate design, use and function of a house helps staff guide applicants to a higher quality design. Planning Manager Scoble stated that with minor adjustments to the existing regulations, the Town could require a discretionary permit process that would facilitate more control over good design in order to maintain the look and feel of the Town.

Council Member Robbins wanted to address window placement with ADU's on top of garages. Planning Manager Scoble explained the Town has control through the discretionary process.

Council Member McMillan stated with a property on a hillside lot, on top of a ridgeline and adding bulk and mass they need to have a new category that requires Council approval. They need to build in additional requirements. Planning Manager Scoble agreed.

Council Member Russell asked if conditions could be required in regard to ministerial review. Planning Manager Scoble explained that staff has limited control over ministerial projects. In order to have more control, the municipal code regulations would need to be modified, and otherwise staff would be exercising judgment, which is not allowed. Town Attorney Benjamin Stock explained that the point for a ministerial permit is to not exercise any discretion. Council Member Russell thought ministerial permits could be given, but standards could be created that must be met. Town Attorney Stock stated that is true once ministerial regime is created. Council Member Russell wanted to create a set of standards. Planning Manager Scoble added that staff could create objective standards, but they must be very specific in regard to the ministerial process. When the design guidelines are reviewed there could be some that they incorporate into standards, but for now, staff is working with what they have.

Planning Manager Scoble then discussed examples of suggested zoning amendments:

- Modify Objective Development Standards for Accessory Dwelling Units related to the maximum height of an ADU above a garage. The Town Council could grant an exception to the height.
- Cumulative work over a three-year period. Require Town Council review of projects that exceed any discretionary land use permit trigger if the cumulative of project modifications exceed the triggers over a three-year period.
- Clean up of existing Definitions to provide greater clarity related to "Accessory Building," "Basement," "Creek," "Parking Space," and "Yards."
- Waive the Exceptions to Basements and Attics permit for floor area exceptions associated with basements where no exterior modifications would be required. Consider allowing

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staff to approve Floor Area exceptions through a Minor Exception process if the project would not result in any exterior modifications.

- Design Review for Height Increases. Require Design Review for any roof pitch change or height increase.
- Waive Design Review for creek stabilization projects. Consider allowing staff to either approve a creek stabilization project ministerially or through a staff level discretionary Minor Exception permit process.
- Exterior Lighting. Modify the current regulations to require all lighting be shielded and downward facing, unless the Town Council approves alternative lighting through Design Review.
- Guest Houses. Consider placing a cap on the maximum size of a guest house, in addition to considering eliminating the Use Permit process to allow for new guest houses in light of the Accessory Dwelling Unit regulations.
- Home Occupation Permits. Allow for an administrative process in lieu of the Use Permit process currently required.
- Trailers and Vehicles used for habitation or parking in private driveways. Subject to Town Council approval of a Use Permit and conformance with screening and privacy measures, consider amending the regulations to allow a recreational vehicle to be used on a temporary basis associated with issuance of a building permit for a job site office during a construction project that entails the substantial remodel or new construction of a residence.

Council Member Robbins discussed the suggested lighting provisions relative to up lighting. Planning Manager Scoble explained that if the regulations were changed to require shielded downward facing lighting, then any property that would have existing up lighting would be considered legal non-conforming because they were installed prior to these regulations. Through time, if lighting were changed, then they would need to adhere to the new regulations. Council Member Robbins did not want to be too restrictive on up lighting.

Council Member McMillan discussed the hillside lot ordinance (*HLO*) applications in 2012 and then 2017, if they had a detailed application would it have been caught. Planning Manager Scoble responded in the affirmative. They had many great employees that created these systems and kept a lot of property related information inside their heads and not in any paper form. When new employees started working in Ross they were not made aware of the past actions, so it is difficult to know what the past construction history is related to a property. Council Member McMillan felt there must be an opportunity to provide neighbors notice and it must be spelled out what occurred in the past. She felt having both redundancies would be helpful.

Mayor Kuhl opened the public hearing on this item, and seeing no one wishing to speak, the Mayor closed the public portion and brought the matter back to the Council for discussion.

Council Member McMillan pointed out that the HLO requires if exceeding 200 square feet staged, phased or cumulative improvements there is only one freebie and then design review is required.

Mayor Kuhl pointed out that the Council has been asked to accept the report and provide direction and asked the Council if specific direction is going to be provided tonight for each proposal. He wanted to know how the Council wants to proceed tonight. Council Member

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Robbins felt going through every single proposal will be a long night. She suggested making general comments and provide input on the top four and then next month provide comments on the next top four and so on.

Mayor Pro Tempore Brekhus wanted to test the waters somewhat to see if there is agreement to proceed on these suggestions. She felt it would be important to voice their concerns or objections in order to discuss at a later date.

Council Member Russell felt Planning Manager Scoble did a great job highlighting the issues and wanted to address his standards for ministerial review. They must have consistency. The current rules do not make any sense.

Mayor Pro Tempore Brekhus did not support #2 or #7 and is not a big fan of making those changes. She did not understand #3. She thought a nonconforming permit always came before the Council.

Council Member McMillan wanted to require the applicant to fill out a form and state under penalty of perjury prior work that has been done. Also, add notification to neighbors.

Council Member Robbins wanted to further discuss #6. She felt #2 is a little gray and is not sure it is quite right at the moment.

Planning Manager Scoble agreed to come back at a later date with conceptual language in order to have a conversation and at a future meeting bring forward an ordinance.

Mayor Kuhl wanted to leave this to staff's discretion in what form staff will bring these items back because it will vary from one item to another. The Council agreed. Planning Manager Scoble asked for the Council's opinion on #8 – guest houses. This addresses the evolution of time. The laws have changed and the ADU addresses the same concept of guest houses. It is important to consider whether they should address standards for guest houses. Staff received a lot of feedback from the community in regard to guest houses. The Council agreed to discuss #8 in more detail.

Council Member Russell suggested that Mayor Kuhl announce in his next Mayor's report such changes to the zoning ordinance. Mayor Kuhl agreed.

End of Administrative Agenda.

13. No Action Items:

a. Council correspondence

- Nancy Hall Bennett email

b. Future Council items

- Real estate tax report – discuss budgeting/financial strategies to understand their tax base (*bring to next Council retreat*)

14. Adjournment.

Mayor Kuhl moved to adjourn the meeting at 8:47 p.m.