



TOWN OF FAIRFAX

STAFF REPORT

November 7, 2018

TO: Mayor and Town Council

FROM: Ben Berto, Director of Planning and Building Services ^{GB}

SUBJECT: Adoption of an Urgency Interim Zoning Ordinance establishing a temporary moratorium on housing developments in Zoning Ordinance Chapter 17.112, the Planned Development District (PDD) Zone, pending preparation of an update to the Town's Municipal Code and Zoning Ordinance; exempt under CEQA pursuant to Sections 15060(c)(2), 15061(b)(3) and 15308

RECOMMENDATION

Adopt an Urgency Interim Zoning Ordinance of the Town Council of the Town of Fairfax Adopted Pursuant to Government Code Section 65858 Establishing a Temporary Moratorium on housing development projects in the Planned Development District (PDD) Zone, Chapter 17.112 of the Fairfax municipal code, pending preparation of an update to the Town's municipal and zoning codes.

A 4/5 vote is required by the Town Council in order to adopt the ordinance. If adopted, the ordinance will take effect immediately.

BACKGROUND

At the June 6th Town Council meeting, Heather Lee of the Town Attorney's office presented a comprehensive overview of the State's extensive housing legislation (SB 35 and the Housing Affordability Act), and its potential effects on Fairfax.

As noted in the presentation, one of the State's stated housing goals is "effectively curbing the capability of local governments to deny, reduce the density of, or render infeasible housing development projects" [Housing Accountability Act]. The new legislation attempts to inject predictability into the process of reviewing housing applications and encourage approvals, at the expense of local discretion.

At the meeting, staff indicated there is an urgent need to begin to consider options for continuing to provide some local guidance on housing development, given the current pro-housing State legislation. On August 1, 2018, the Town Council approved the work program for the Planning Commission in which the top priority is to develop objective development and design standards for housing in response to state legislation.

The Planning Commission was scheduled to begin discussions on objective development standards for the Planned Development District (PDD) at its October 25th meeting. However,

the Commission was not able to review this topic owing to the lateness of the hour. They are scheduled to take this matter up at their November 15 meeting.

DISCUSSION

With few exceptions (for example the Town-wide height limitation), the Town's Planned Development District (PDD) zoning district currently lacks objective development standards and density limits. As a result, SB 35 and the HAA have the potential to severely constrain the Town in reviewing and regulating housing projects that might be proposed in the PDD zoning district.

Substantial development potential exists in PDD zoned areas. PDD zoning standards currently specify a phased submittal process. The criteria used to review each stage of submittal contain what could be considered subjective discretionary development standards.

The PDD Chapter historically relied on subjective development standards in order to provide flexibility in the Town's evaluation of projects in these special areas of potential development. Current PDD provisions contain almost no explicit dimensional standards.

The remaining large, undeveloped PDD-zoned areas are largely steeply sloped. Development raises a variety of potential impacts, which the Town has heretofore been able to address with its current regulations.

With regard to density, there are no limits to PDD-area density. The current zoning regulations task the Planning Commission with determining appropriate densities based on discretionary determinations such as site topographic and geological conditions.

In order to retain the Town's ability to comprehensively plan PDD sites consistent with the character of the community, objective development standards and density limits will need to be established to prevent development that has limited or no discretionary review for potential impacts. These include impacts associated with traffic, air quality, noise, open space, fire, flooding and other human and environmental hazard. There is also a risk that housing developed without regard to the surrounding uses, or without proper review for environmental impacts, may result in a poorly designed development that will be inconsistent with the Town's General Plan and Zoning regulations, which protect the unique aesthetics and characteristics of the Town and ensure the health, safety and welfare of all residents.

Adoption of this interim urgency Ordinance will allow the Town to re-evaluate the standards and conditions for housing development and prepare permanent regulations establishing objective standards for development consistent with State law and the Town's General Plan. Given the recent inquiry regarding a vacant PDD zoned site, there is a current and immediate threat to the public health, safety and welfare of the Town and its community, which necessitates the immediate enactment of this Ordinance in order to ensure that applications for housing development are established only under adequate regulations.

Purpose & Length of Moratorium

The adoption of this Urgency Ordinance imposes a temporary 45-day moratorium on all new housing development and housing development projects, as defined by State law, in the PDD zone. Existing projects in the PDD zone would not be affected by the moratorium. While the Planning Commission is slated to discuss the issue at its November 15th meeting, most likely staff will return to the Town Council in December with a request to extend the temporary moratorium for up to an additional 10 months and fifteen days.

As stated above, a 4/5 vote is required by the Town Council in order to adopt the ordinance. If adopted, the ordinance will take effect immediately.

ATTACHMENT

Ordinance

41 under the Town's Zoning Code, would create a current and immediate threat to the health, safety, and
42 welfare of the Town, its residents and businesses; and

43 **WHEREAS**, the Town Council further finds that the development of such housing in the PDD
44 zone, without appropriate objective standards and regulation, might conflict or be inconsistent with
45 surrounding uses and intended General Plan policies and programs and zoning requirements, and if
46 allowed to proceed under current zoning, new housing could conflict with, and defeat the purpose of, the
47 Town's efforts to study and adopt new regulations consistent with State law; and

48 **WHEREAS**, Town Council, therefore, desires temporarily to prohibit all new housing
49 development in the PDD zone to provide adequate time to continue studying zoning proposals consistent
50 with State law; and:

51 **WHEREAS**, California Government Code Section 65858 expressly authorizes the Town
52 Council to adopt by four-fifths (4/5) vote, without following the procedures otherwise required for the
53 adoption of a zoning ordinance, an urgency interim ordinance to take effect immediately, which urgency
54 ordinance is necessary for the immediate protection of the public health, safety and welfare.

55 **NOW, THEREFORE**, the Town Council of the Town of Fairfax does hereby ordain as follows:

56 **Section 1. Findings, Declaration of Urgency.**
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58 The Town Council of the Town of Fairfax hereby finds and declares that this ordinance
59 ("Ordinance") is an interim urgency ordinance as defined under California Government Code section
60 65858. The Town Council hereby incorporates the findings set forth in the recitals stated above and
61 does hereby declare that this urgency interim Ordinance is necessary to protect the public health, safety,
62 and welfare. In addition, the Town Council makes the following further findings in support of this
63 action:

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- 65 (a) Pursuant to Article XI, section 7 of the California Constitution, the Town may adopt and enforce
66 ordinances and regulations not in conflict with general laws to protect and promote the public
67 health, safety and welfare of its citizens.
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 - 69 (b) Pursuant to Government Code section 65858, to protect the public health, safety and welfare, the
70 Town, as an urgency measure, may adopt an interim ordinance prohibiting land uses that may be
71 in conflict with contemplated land use regulations that the Town is studying, considering, or
72 intends to study within a reasonable time.
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 - 74 (c) Adoption of this interim urgency Ordinance will allow the Town to re-evaluate the standards and
75 conditions for housing development and prepare permanent regulations establishing objective
76 standards for development consistent with State law.
 - 77
 - 78 (d) Without adoption of this urgency Ordinance, there is a current and immediate threat to the public
79 health, safety and welfare from development that is subject to limited or no discretionary review
80 for potential impacts, including impacts associated with traffic, air quality, noise, open space,
81 fire, flooding and other human and environmental hazard.
 - 82

- 83 (e) There is a risk that housing developed without regard to the surrounding uses, or without proper
84 review for environmental impacts, may result in a detrimental impact to the public health, safety
85 and general welfare.
86
- 87 (f) There is a risk that poorly designed development will be inconsistent with the Town’s General
88 Plan and Zoning regulations, which protect the unique aesthetics and characteristics of the Town
89 and ensure the health, safety and welfare of all residents.
90
- 91 (g) It is the intent of this interim Ordinance to enact a moratorium on housing development and
92 housing development projects in the PDD zone to allow sufficient time to develop amendments
93 to the Fairfax Municipal Code that would adopt such standards consistent with the Town General
94 Plan and State law and to protect the community health, safety and general welfare.
95
- 96 (h) There is a current and immediate threat to the public health, safety and welfare of the Town and
97 its community, thereby necessitating the immediate enactment of this Ordinance in order to
98 ensure that applications for housing development are established only under adequate
99 regulations.

100
101 **Section 2. Moratorium.**
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103 Except as provided in Section 4 of this Ordinance, the Town Council hereby declares and adopts
104 a moratorium on new housing development and housing development projects proposed to be located in
105 the PDD zoning district.
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107 In furtherance of this moratorium, the Town shall not approve or issue land use approvals or
108 permits, including but not limited to zoning amendments, conditional use permits, variances, tentative
109 subdivision or parcel maps, site plan approvals, design review approvals, hill area residential
110 development permits, and building permits or other applicable entitlements for the establishment,
111 creation, or operation of a new housing development or housing development project, during this
112 moratorium.
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114 **Section 3. Urgent Need and Effective Period.**
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116 This Ordinance is urgently needed for the immediate preservation of the public health, safety and
117 general welfare. It shall take effect immediately upon adoption and shall be of no further force and
118 effect forty-five (45) days following the date of its adoption. This interim Ordinance may be extended
119 for an additional period of time in compliance with Government Code section 65858.
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121 **Section 4. Exemption for Complete Applications.**

122 This moratorium shall not apply to those applications for which a complete application already
123 has been accepted by the Town as of the effective date of this Ordinance.

124 **Section 5. Definitions.**

125 For purposes of this Ordinance, the definition of “housing development project” or housing
126 “development” (each of which is intended to be subject to this moratorium and governed equally by this

127 Ordinance) shall be as established in Government Code sections 65589.5 and 65913.4. All other
128 definitions shall be as established in the foregoing Government Code sections or in Title 17 Zoning of
129 the Fairfax Municipal Code, as applicable.

130 **Section 6. CEQA Finding.**

131 The Town Council hereby finds that it can be seen with certainty that there is no possibility that
132 the adoption of this Ordinance, and the moratorium established hereby, will have a significant effect on
133 the environment because the Ordinance will maintain current levels of development and will authorize
134 no activity that may adversely impact the physical environment. It, therefore, is exempt from California
135 Environmental Quality Act (CEQA) review pursuant to Sections 15060(c)(2), 15061(b)(3) and 15308 of
136 Title 14 of the California Code of Regulations.

137 **Section 7. Severability.**

138 If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application
139 thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any
140 court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this
141 Ordinance or application thereof which can be implemented without the invalid provisions, clause, or
142 application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

143 **Section 8. Effective Date.**

144 This interim urgency Ordinance shall become effective immediately.

145 **PASSED AND ADOPTED THIS 7TH DAY OF NOVEMBER 2018, BY THE**
146 **FOLLOWING VOTE:**

147
148 AYES:

149 NOES:

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155 ATTEST:

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159 Michele Gardner, Town Clerk

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PETER LACQUES, Mayor