

ORDINANCE NO. 824

**AN URGENCY INTERIM ZONING ORDINANCE OF THE
TOWN COUNCIL OF THE TOWN OF FAIRFAX
ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858
EXTENDING FOR A PERIOD OF TEN (10) MONTHS AND FIFTEEN (15) DAYS
THE 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**

WHEREAS, the State of California recently enacted new laws for housing that mandate approval processes, timelines and review requirements, which will apply to the Town of Fairfax for the provision of housing and achieving the Town's share of the Regional Housing Needs Allocation (RHNA) provided by the California Department of Housing and Community Development (HCD); and

WHEREAS such State laws impose mandatory review timelines and severely restrict the Town's discretionary review authority, or, in some cases, impose a ministerial review process over housing development applications; and

WHEREAS, the Town has determined that the adoption of objective planning and development standards for such applications is necessary to protect the health, safety and general welfare of the community, particularly where limited or no discretionary Town land use or environmental review is authorized under such recently enacted State laws; and

WHEREAS, the Town's Planned Development District (PDD) zoning regulations, Fairfax Municipal Code Section 17.112, *et seq.*, currently lack sufficient objective planning and development standards adequately to protect the health, safety and general welfare of the community in light of recent State legislation; and

WHEREAS, the Town's General Plan goals, objectives, policies, and programs have not been synthesized and integrated into objective planning and development standards in the PDD zoning regulations, and, therefore, State law may effectively preclude the Town from successfully applying them in review of housing projects located in the PDD zone; and

WHEREAS, Town Staff, therefore, currently is considering, studying and analyzing various objective planning and development standards in light of, and consistent with, State law, including proposed amendments to the Town's existing zoning regulations to establish the same; and

WHEREAS, the approval of housing development or development projects with limited or no discretionary review poses a variety of potential known and unknown adverse impacts, such as traffic, air quality, water supply and quality, noise, geologic, fire, flooding and other hazard-related impacts that cannot be adequately addressed without the adoption and implementation of objective planning and development standards; and

WHEREAS, in light of the potential known and unknown adverse impacts of housing development applications approved with limited or no discretionary review and under abbreviated State-

mandated timelines, together with the Town Staff's ongoing study to establish objective planning and development standards, the Town Council finds that the development of new housing in the PDD zone under the Town's Zoning Code, would create a current and immediate threat to the health, safety, and welfare of the Town, its residents and businesses; and

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

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

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

WHEREAS, at their regular meeting on November 7, 2018, the Town Council adopted Urgency Ordinance No. 821 pursuant to Government Code Section 65858 establishing a forty-five (45) day moratorium on Housing Development Projects in the Planned Development District (PDD) Zone, Chapter 17.112 of the Fairfax Municipal Code, pending the completion of studies and the preparation of an update to the Town's municipal and zoning codes; and

WHEREAS, the consideration of development standards for the PDD zone was on the Planning Commission's October 25, 2018, agenda, but had to be continued to November 15, 2018 meeting, due to the lateness of the hour; and

WHEREAS, the PC began its discussion of development standards for the PDD zone at its November 15, 2018 meeting and continued the matter to its December 2018 meeting, due to the lateness of the hour; and

WHEREAS, Town staff and the Town Attorney's office are continuing to conduct research on the matter; and

WHEREAS, as a result, the Town Council desires to extend the moratorium for a period of ten (10) months and fifteen (15) days until November 7, 2019 to allow staff and the Town Council the opportunity to continue research and select the best course of action for the Town's citizens and the community at large; and

WHEREAS, the Town Council has determined that the circumstances and conditions that led to the adoption of Urgency Ordinance No. 821, which are set in the recitals and findings of Urgency Ordinance No. 821, have not been alleviated as of the date of this Ordinance and continue to create the concerns described in Urgency Ordinance No. 821; and

WHEREAS, it is the present intention of the Town Council to keep this Urgency Ordinance in effect only until the adoption of appropriate ordinance(s) establishing objective planning and development standards uses in the Town.

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

Section 1. Findings, Declaration of Urgency.

The Town Council of the Town of Fairfax hereby finds and declares that this ordinance (“Ordinance”) is an interim urgency ordinance as defined under California Government Code section 65858. The Town Council hereby incorporates the findings set forth in the recitals stated above and does hereby declare that this urgency interim Ordinance is necessary to protect the public health, safety, and welfare. In addition, the Town Council makes the following further findings in support of this action:

- (a) Pursuant to Article XI, section 7 of the California Constitution, the Town may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety and welfare of its citizens.
- (b) Pursuant to Government Code section 65858, to protect the public health, safety and welfare, the Town, as an urgency measure, may adopt an interim ordinance prohibiting land uses that may be in conflict with contemplated land use regulations that the Town is studying, considering, or intends to study within a reasonable time.
- (c) 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.
- (d) Without adoption of this urgency Ordinance, there is a current and immediate threat to the public health, safety and welfare from development that is subject to limited or no discretionary review for potential impacts, including impacts associated with traffic, air quality, noise, open space, fire, flooding and other human and environmental hazard.
- (e) There is a risk that housing developed without regard to the surrounding uses, or without proper review for environmental impacts, may result in a detrimental impact to the public health, safety and general welfare.
- (f) There is a risk that poorly designed development 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.
- (g) It is the intent of this interim Ordinance to enact a moratorium on housing development and housing development projects in the PDD zone to allow sufficient time to develop amendments to the Fairfax Municipal Code that would adopt such standards consistent with the Town General Plan and State law and to protect the community health, safety and general welfare.

- (h) There is a current and immediate threat to the public health, safety and welfare of the Town and its community, thereby necessitating the immediate enactment of this Ordinance in order to ensure that applications for housing development are established only under adequate regulations.

Section 2. Moratorium.

Except as provided in Section 4 of this Ordinance, the Town Council hereby declares and extends for ten (10) months and fifteen (15) days until November 7, 2019, the moratorium adopted by Ordinance No. 821 on new housing development and housing development projects proposed to be located in the PDD zoning district.

In furtherance of this moratorium, the Town shall not approve or issue land use approvals or permits, including but not limited to zoning amendments, conditional use permits, variances, tentative subdivision or parcel maps, site plan approvals, design review approvals, hill area residential development permits, and building permits or other applicable entitlements for the establishment, creation, or operation of a new housing development or housing development project, during this moratorium.

Section 3. Urgent Need.

This Ordinance is urgently needed for the immediate preservation of the public health, safety and general welfare. It shall take effect immediately upon adoption. This interim Ordinance may be extended for an additional period of time in compliance with Government Code section 65858.

Section 4. Exemption for Complete Applications.

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

Section 5. Definitions.

For purposes of this Ordinance, the definition of “housing development project” or housing “development” (each of which is intended to be subject to this moratorium and governed equally by this Ordinance) shall be as established in Government Code sections 65589.5 and 65913.4. All other definitions shall be as established in the foregoing Government Code sections or in Title 17 Zoning of the Fairfax Municipal Code, as applicable.

Section 6. CEQA Finding.

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

Section 7. Severability.

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

Section 8. Effective Date.

This interim urgency Ordinance shall become effective immediately.

PASSED AND ADOPTED THIS 5TH DAY OF DECEMBER 2018, BY THE FOLLOWING VOTE:

AYES: ACKERMAN, COLER, GODDARD, REED
NOES: LACQUES
ABSENT: None



BARBARA COLER, Mayor

ATTEST: 

Michele Gardner, Town Clerk