

Fairfax Town Council Minutes  
Adjourned Regular Meeting  
Fairfax Women's Club  
**Wednesday, January 23, 2019**

The Adjourned Regular Meeting was preceded by a Closed Session from 5:45 p.m. to 7:00 p.m.

Conference with Legal Counsel- Anticipated Litigation  
Government Code Section 54956.9(d)(2) and (e)(1): two cases

Mayor Coler called the regular meeting to order at 7:00 p.m.

Call to Order/Roll Call:

**COUNCILMEMBERS PRESENT:** Bruce Ackerman  
Barbara Coler  
Renee Goddard  
John Reed

**COUNCILMEMBERS ABSENT:** Peter Lacques

**STAFF MEMBERS PRESENT:** Garrett Toy, Town Manager  
Michele Gardner, Town Clerk  
Ben Berto, Planning Director  
Michael Vivrette, Finance Director  
Janet Coleson, Town Attorney  
Gail Karish, Assistant Attorney

Approval of Meeting Agenda and Affidavit of Posting

M/S, Goddard/Ackerman, Motion to approve the agenda and affidavit of posting.  
AYES: Ackerman, Goddard, Reed, Mayor Coler  
ABSENT: Lacques

Announcement of Closed Session Action

Mayor Coler announced there was nothing to report.

Announcements

Mayor Coler made the announcements as they appeared on the agenda. She added the new Recreation Department catalogs were mailed to all Fairfax residents and are available at Town Hall. She announced there was a fundraiser for renovations to the Peri Park Playground tomorrow night from 5:00 p.m. to 9:00 p.m. Councilmember Goddard stated Sustainable Fairfax was hosting the film "Wasted" on Friday night at the Women's Club starting at 6:30 p.m.

Open Time

Mr. Tom O'Neal, Dominga Avenue, acknowledged that Rainbow Fabrics was closing after 40 years. He stated bicycles do not stop at stop signs.

Mr. Rick Hamer, Bolinas Road, acknowledged Rose Taber and the closing of Rainbow Fabrics after 40 years. He hoped there would be another similar store in Town.

Mr. Andy Peri requested the Council adopt a resolution in support of HR 530 and submitted a draft to the Clerk.

Mr. Mark Bell, Domina Avenue, expressed concern about noise from events held on Town property, including the Town Picnic. He opposed using the Reserve Fund to pay for improvements to the Parkade.

Ms. Valerie Hood, Dominga Avenue, opposed tasers being added to the Police Department arsenal. She supported community policing.

Wendy, Fairfax, asked the Council to consider a Just Cause Eviction law.

Ms. Sue Fox, Canon Village, was concerned that the extra land above the Victory Village would not be designated as open space. She supported dense housing for low income, not mansions.

### Consent Calendar

1. Accept Financial Statements and Disbursement Reports November 2018- Finance Director
2. Approve minutes for the October 10, and December 5 and 31, 2018 Town Council meetings- Town Clerk
3. Reappoint Esther Gonzalez-Parber to the Planning Commission- Town Manager
4. Reappoint Cindy Swift to the Planning Commission- Town Manager
5. Reappoint Jesse Hoffman to the Volunteer Board- Town Clerk
6. Approve sponsorship of the Little League Opening Day Parade on March 16, 2019- Town Manager
7. Adopt a Resolution Endorsing the Declaration of a Climate Emergency and Requesting Regional Collaboration on an Immediate Just Transition and Emergency Mobilization Effort to Restore a Safe Climate- Councilmembers Ackerman and Lacques

Mayor Coler stated she would like to pull item #7 from the Consent Calendar for discussion.

Mayor Coler opened the meeting up to public comments.

Dr. Jody Timms stated she supported the resolution.

Ms. Valerie Hood referred to item #6 and asked that the Town control the noise level of Little League games. She supported Item #7.

Mr. Andy Peri stated he supported Item #7.

Ms. Ling Shien Bell agreed with the previous speaker regarding Item #6

M/S, Reed/Goddard, Motion to approve the Consent Calendar, items #1, and #3 through #6, with the removal of item #7 for discussion.

AYES: Ackerman, Goddard, Reed, Mayor Coler

ABSENT: Lacques

M/S, Reed/Ackerman, Motion to approve Consent Calendar item #2  
AYES: Ackerman, Goddard, Reed, Mayor Coler (recused for the October 10, 2018 minutes)  
ABSENT: Lacques

### Regular Agenda

7. Adopt a Resolution Endorsing the Declaration of a Climate Emergency and Requesting Regional Collaboration on an Immediate Just Transition and Emergency Mobilization Effort to Restore a Safe Climate- *Councilmembers Ackerman and Lacques*

Councilmember Ackerman supported holding discussion of the resolution in light of correspondence the Council had received both in support of the resolution but with changes.

Vice Mayor Goddard supported bringing the resolution back for a discussion, although she supported specific numbers and goals.

Councilmember Reed stated that the 2045 deadline was too far in the future.

Mayor Coler had concerns regarding the impact of the declaration of emergency on civil liberties, raised by correspondence received. She had several suggested amendments to the wording of the resolution, and supported sending it back to the Climate Action Committee.

M/S, Goddard/Reed, Motion to continue this item to until after the Climate Action Committee reviewed the resolution.

AYES: Ackerman, Goddard, Reed, Mayor Coler

ABSENT: Lacques

8. Discuss/consider comments from the Planning Commission regarding an Ordinance to consolidate Titles 19 and 20 ("Telecommunications") of the Town Code which would establish uniform and comprehensive regulations for Telecommunications facilities (aka 5G or small cell)- Town Manager

Town Manager Toy presented a staff report, and indicated an ordinance could come back as soon as April.

Attorney Karish gave an update on the status of the FCC September 26 order and the litigation that the Town is participating in to challenge that order. She clarified the provisions of the order as well as the history of radio frequency (RF) health standards. She answered questions from the Council.

Mayor Coler opened the meeting to public comments.

Mr. Richard Applebaum, Woodland Avenue, stated the anti-5G activist community wished to work with the Town to protect its citizens.

Mr. Michael Mackintosh supported modifying the law for the local environment, perhaps by using inverse condemnation.

Mr. Andy Peri, representing 5G Free Fairfax, submitted documents to the Council. He noted that 3G, 4G, and 5G technology did not exist when the RF standards were written. He supported 24/7 monitoring, and limiting antennae placement to CS and CH Zones that are not in the buffer areas indicated on his submitted documents.

Jess Lerner, referred to the documents submitted by the previous speaker, and supported full fire hazard assessments, annual recertification process, and better privacy and security. She was concerned about combining the two Town Code chapters.

Ms. Roberta Anthes, Snowden Lane, submitted recommendations for the ordinance to the Council. She supported the recommendations of the 5G Free Fairfax group, including keeping Chapters 19 and 20 separate.

Ms. Valerie Hood displayed yard signs, and stated that radiation fields were invisible, and expressed concerns regarding increased fire danger and potential liability issues.

Dr. Jacqueline Chan stated she was speaking on behalf of several other physicians. She stated the International Society of Doctors for the Environment recently adopted a moratorium on the deployment of 5G, due to the negative health impacts, which she discussed.

Ms. Linda Hensell, San Anselmo, discussed permitting and the public process. Wireless facility applicants should be required to notice all residents within 1,500 feet of the proposed antennae location. Public Hearings should be required for all applications and appeals. The applicant should be required to install story poles and provide photoshop information.

Ms. Kathleen Boggs, San Anselmo, made suggestions about the notice and permitting process. She supported keeping the devices antennas away from homes and schools.

Ms. Sara Spector, Fairfax, supported a requirement to underground all wireless equipment.

Ms. Kia Bosey, Forest Knolls, stated trees should be protected from 5G devices.

Ms. Vicki Seavers, San Rafael, Marin County Coordinator for the EMF Safety Network, supported 750-foot buffers around schools, 1,500-foot notice requirement, and height requirement.

Mr. Robert Ernst, San Rafael, was opposed to 5G deployment and shared a poem.

Mr. Frank Egger, Fairfax, opposed consolidating Chapters 19 and 20. He supported fiberoptic.

Ms. Mallory Geidheim, Fairfax, agreed with the comments made by Mr. Egger.

Ms. Michelle Simonson, Fairfax, opposed having health jeopardized by 5G.

Ms. Ling Shien Bell supported fiberoptics.

Ms. Ruth Weisman, Kentfield, supported the previous speakers.

Mr. Mark Bell, Dominga Avenue, opposed consolidating Chapters 19 and 20.

Ms. Jane Richardson, Fairfax, opposed 5G deployment.

Ms. Janet Fitzgerald, Canyon Road, opposed 5G deployment.

Ms. Bonnie McMurray, San Anselmo, supported a 25 dB limit.

Ms. Sharka Victor, San Anselmo, opposed 5G deployment.

Mayor Coler closed the meeting to public comments.

The Council took a 15-minute break at 9:15 p.m.

Vice Mayor Goddard stated she would like to include a “Purpose and Intent” statement such as San Anselmo’s. She had questions about the definition of “aesthetic” and “feasible” in the ordinance. She supported limiting installations to CH and CS zones; 250-foot buffer for schools and daycares; exploration of only allowing in the undergrounding districts and prohibiting on the decorative poles downtown; 2A of Andy Peri’s handout; 1500-foot public notice requirement; looking at San Anselmo’s pre-application and notices; Technical Expert shall be certified and chosen by Town; 24/7 monitoring; adding Attachment D to ADA definitions; San Anselmo’s exceptions; informing the Tree Committee; preservation of landscaping around installation (see Burlington’s); San Anselmo’s checklist for permit application.

Councilmember Reed agreed with the Vice Mayor and added: note the impact to property value; public hearing for permitting; 500-foot public notice requirement is more realistic than 1500; undergrounding shouldn’t be limited to undergrounding districts; make telecom liable for damage to trees – including drying out; 40 dB noise limit for the devices is more realistic than 25 dB; security is responsibility of the telecom.

At 10:00 p.m. Mayor Coler reviewed the agenda.

M/S Ackerman/Goddard to continue Item #11 and the Council Reports to the February meeting.  
AYES: Ackerman, Goddard, Reed, Mayor Coler  
ABSENT: Lacques

Councilmember Ackerman agreed with the comments of Vice Mayor Goddard and Councilmember Reed, noting that San Anselmo’s purpose and exceptions were good. He discussed the need for the height of the antennas to be above living spaces (in commercial areas), and suggested the roof of a tall building if a light pole was too short. He supported a 40 dB noise limit for the devices. He noted that 5G would not add better coverage, only more speed for existing coverage.

Mayor Coler requested staff bring back the separate application when they brought back the ordinance. She supported 500-foot noticing; insurance requirements for applicants; a separate section on fees; annual certification process; exclude open space zones and ridgelines; in flood zone require certification of how equipment will withstand floods; adding a process for temporary installations; Councilmember Lacques’ suggestion (by email) to keep Town Code section 19.08.120 to mitigate visual impacts; adding environmental and cultural resources to the Purpose; keeping landscaping and vegetation language on page 13; on page 11 put the burden on applicant to demonstrate why these should be allowed; specify software changes and updates more accurately; send any tree information to Tree Committee at same time it is sent to agencies. She had concerns re safety. She did not support deleting the "Findings" from the CUP section.

Councilmember Ackerman, referring to the mayor’s suggestion regarding software upgrade language, suggested adding: “software upgrades that add new functionality.”

The Council reached consensus to keep chapters 19 and 20 as one chapter, and staff was directed to bring an ordinance to the Council in April.

### Public Hearing

9 . Introduce and read by title only an ordinance amending Town Code Chapter 17.112 PDD Planned Development District Zone, which amends Section 17.112.040(B) to establish a

maximum residential density based on an objective development standard of parcel slope: exempt under CEQA Guidelines Section 15060(c)(2), 15061(b)(3), and 15305

Planning Director Berto presented the staff report and gave a PowerPoint presentation.

Mayor Coler opened the Public Hearing.

Mr. Frank Egger, Meadow Way, representing the group Save Fairfax, submitted a letter to Town Clerk Gardner. He suggested Mayor Coler recuse herself given the location of her residence.

Mayor Coler conferred with the Town Attorney and recused herself from this hearing, stating that staff would look into the matter.

Mayor Coler left the Chambers.

Vice Mayor Goddard presided in Mayor Coler's absence.

Mr. Egger read from the letter he submitted into the record, outlining his concerns regarding the ordinance, and its effect on existing restrictions on development.

Mr. Victor Harris, Fairfax, stated the top priorities were emergency evacuation of the town and reducing traffic due to overdevelopment. He opposed the proposed ordinance.

Mr. Larry Bragman, Hickory Road, urged the Council not to adopt the ordinance without adding language to ensure the ordinance would not retroactively change decisions and entitlements previously granted and allow for a taking of open space for development.

Ms. Mallory Geithem, Willow Avenue, agreed with the comments made by Mr. Egger and Mr. Bragman. She read excerpts from the Town Code.

Ms. Miriam Weinstein, Oak Tree Lane, requested limiting the square footage of future homes.

Mr. Ralph Lewin, member of the Glenn Drive Board of Directors, stated he did not understand the meeting notice. He was concerned about losing open space as a result of the ordinance.

Mr. Mark Bell, Dominga Avenue, was concerned about losing open space as a result of the ordinance.

Mr. Richard Applebaum, Woodland Road, stated it was troubling that there was a disconnect.

Ms. Kirsten Asher, Rocca Drive, was concerned about losing open space as a result of the ordinance.

Ms. Ling Shien Bell, Dominga Avenue, was concerned the ordinance would result in building on ridgelines.

Michelle Simonsen, Park Road, was concerned about losing open space.

Mr. Jim Rice, Laurel Drive, was concerned the ordinance would result in building on ridgelines.

Mr. Tom Childers, Glenn Drive, stated he had worked on the General Plan updates and chaired the Open Space Element review. He supported the proposed ordinance as an effective means to prevent development and preserve open space in the PDD Zone.

Mr. Don O'Donnell, Deuce Court, supported most of the comments made by Mr. Egger. He disagreed that Mayor Coler should recuse herself.

Ms. Jessica Green, Ridgeway, was concerned about losing open space, and worsening traffic due to new development.

Ms. Valerie Hood stated it would be helpful to hear why a Council member recuses him/herself.

Wendy was concerned about losing open space, but supported development for lower income individuals.

Vice Mayor Goddard closed the Public Hearing.

Councilmember Ackerman agreed with the public comments regarding the importance keeping open space and our ridgelines, and protecting against overdevelopment. He noted that the purpose of the ordinance is to add another layer of protection. It does not remove any of the current protections, or any language, from the Town Code. He invited the public to share any documentation regarding the development restrictions referred to in the public comments.

Councilmember Reed agreed with Councilmember Ackerman's comments, and suggested an amendment to the ordinance stating that it did not overrule any prior agreements made regarding development restrictions or precise plans.

M/S, Ackerman/Reed, Motion to Introduce and read by title only an ordinance amending Town Code Chapter 17.112 PDD Planned Development District Zone, which amends Section 17.112.040(B) to establish a maximum residential density based on an objective development standard of parcel slope, with the amendment suggested by Councilmember Reed.

AYES: Ackerman, Goddard, Reed

RECUSED: Mayor Coler

ABSENT: Lacques

The Council took a 5-minute break at 11:56 p.m.

Mayor Coler returned to the dais.

M/S, Reed/Goddard, Motion to waive the 11:30 p.m. rule and hear the last item on the agenda.

AYES: Ackerman, Goddard, Reed, Mayor Coler

ABSENT: Lacques

### Regular Agenda

#### 10. Discuss/consider Council Board and Committee Assignments for 2019- Town Clerk

Mayor Coler surveyed the Council on whether they wished to make any changes to their current assignments. There were no changes.

The Council discussed the new assignment to be filled on the Ross Valley Yellow School Bus Joint Exercise of Powers Authority (JEPA).

Mayor Coler recommended eliminating the Coalition Connection as a Council assignment. Councilmember Goddard stated she would continue to attend the meetings.

M/S, Reed/Ackerman, motion to approve the Council assignments as indicated in the staff

report with the following changes: 1) Elimination of the Coalition Connection assignment; 2) Councilmember Goddard will serve as the representative to the Yellow Bus JEPA and Councilmember Reed will serve as the alternate.  
AYES: Ackerman, Goddard, Reed, Mayor Coler  
ABSENT: Lacques

#### Council Reports and Comments

Mayor Coler stated this item would be continued.

#### Town Manager's Report

Mayor Coler stated this item would be continued.

M/S, Goddard/Reed, Motion to adjourn the meeting at 12:05 a.m. in memory of Mr. William Sagar, Ms. Marguerite Marie Kelly, Mr. Errol Matthew Friedman, and Mr. Peter Arrigoni.  
AYES: Ackerman, Goddard, Reed, Mayor Coler  
ABSENT: Lacques

Respectfully submitted,

Toni DeFrancis  
Recording Secretary