



TOWN OF FAIRFAX

STAFF REPORT

January 16, 2019

TO: Mayor and Town Council

FROM: Ben Berto, Director of Planning and Building Services *GB*

SUBJECT: 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.

RECOMMENDATION

1. Conduct public hearing
2. Introduce and read by title only an "Ordinance of the Town Council of the Town of Fairfax Amending Chapter 17.112 PDD Planned Development District Zone."

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). Staff reported, at the meeting, that there is an urgent need to develop objective development and design standards for housing in response to state legislation.

The Planning Commission (PC) 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.

As a result, 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. The Town Council subsequently extended this moratorium for an additional 10 ½ months (to November 7, 2019) at their December 5 meeting. During the moratorium, the Town will 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.

DISCUSSION

The Planning Commission began its discussion of objective development standards at its November 15th meeting, and continued that discussion, focusing on possible changes to PDD Chapter 17.112, at their December 20, 2018 meeting. The Commission unanimously voted to

approve a resolution recommending an amendment to Section 17.112.040(B) of the PDD Chapter which focused on establishing a maximum density based on an objective development standard of parcel slope.

The PC did have a broader discussion of more global changes to the PDD Chapter regarding objective development standards. However, the PC agreed with staff that such revisions are a much longer-term undertaking and it would be prudent to first establish maximum residential densities in PDD zones based on parcel slope.

The PDD Chapter currently relies on subjective development standards in order to provide flexibility in the Town’s evaluation of potential projects in the PDD zones. As a result, the Town’s Planned Development District (PDD) zoning district currently lacks objective development standards and density limits. The current zoning regulations task the Planning Commission with determining appropriate densities based on subjective and general discretionary determinations, such as site topographic and geological conditions. 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.

In order to retain the Town’s ability to comprehensively plan PDD sites consistent with the character of the community, density limits should be established to prevent development that has limited or no discretionary review for potential impacts. The Planning Commission recognized that remaining large, undeveloped PDD-zoned areas are largely steeply sloped. As a result, the Commission is recommending establishing density based on the slope. This would be consistent with other residential zones (e.g., UR10, RS 7.5) which establish zoning requirements such as minimum lot size, and setbacks based on parcel slope. For example, the UR-10 (Upland Residential) zoning designation has a 10-acre minimum lot size, and increases front & rear yard setback requirements if a parcel exceeds a 10% slope.

The proposed ordinance is limited to amending Zoning Chapter 17.112, Section 17.112.040(B) to create slope-based development density standards for PDD-zoned properties. As proposed, the steeper the slope, the lower the allowable development density. For example, on parcels averaging 30% slope or more, the proposed maximum residential density would be 1 residential unit per 10 acres, roughly equivalent to the UR-10 zoning district.

The following is the proposed amendment language with strike-outs:

§17.112.040 (B) Residential Density limitations. A Maximum residential density shall be a function of average slope, as set forth in the following table: ~~which is consistent with limitations imposed by site conditions including natural resources, topographic and geological conditions and by the level of public services and road conditions that can reasonably be provided.~~

Average Slope	Maximum Residential Density
30% and greater	1 dwelling unit / 10 acres
20 to 29.9%	1 dwelling unit / 5 acres
10 to 19.9%	1 dwelling unit / 2 acres

The moratorium would expire with the effective date of this ordinance, which is 30 days after the second reading. The PC would continue with its discussions regarding objective development standards, with recommendations to be forwarded to the Council at a future meeting

CEQA

Adoption of the proposed Ordinance is exempt from the California Environmental Quality Act ("CEQA") insofar as adoption of this Ordinance will enact only minor changes in land use regulations, will not authorize any new development, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for housing development at densities that exceed what was previously allowed in the PDD regulations, and the proposed Ordinance does not constitute a "project" within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) and 15061(b)(3) because there is no potential that the regulations result in a direct or reasonably foreseeable indirect physical change in the environment, and CEQA Guidelines Section 15378 because they have no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, the regulations are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations; and

FISCAL IMPACT

None at this time

ATTACHMENTS

- A. Zoning Ordinance
- B. PC Resolution

ORDINANCE NO. ____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING CHAPTER 17.112 PDD PLANNED DEVELOPMENT DISTRICT ZONE
OF THE FAIRFAX MUNICIPAL CODE**

WHEREAS, this Ordinance is adopted as follows:

- 1) The State of California has recently passed legislation (collectively referred to as the Housing Accountability Act and Senate Bill 35) intended to ensure greater predictability in local jurisdictional review of housing developments.
- 2) The State law severely limits the ability of local jurisdictions to regulate the density of, or to deny applications for, housing development absent reliance on specific, objective development standards.
- 3) The purpose of this Ordinance is to update the Town's Municipal Code to apply objective development standards to the review of housing development projects in the PDD zone.
- 4) The Town's current regulations governing development in the Planned Development District Zone Chapter 17.112 have not been amended in several decades and lack objective development standards.
- 5) The Town wishes to continue to effectively govern the density of housing development and determine whether or not housing development is consistent with the Fairfax General Plan and local regulations; and

WHEREAS, adoption of this Ordinance is consistent with the Town's General Plan, which provides goals, policies, and programs to preserve the environment, protect against hazards, and retain protect Fairfax's small-Town character, aesthetics and environmental characteristics while also allowing for residential development; and

WHEREAS, the Planning Commission conducted a duly-noticed public hearing on December 20, 2018 to consider the draft ordinance; and

WHEREAS, the Town Council has conducted a duly-noticed public hearing on January 16, 2019 to consider the draft ordinance, heard the presentation of a staff report, and received public comment on the matter;

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

Section 1. Section 17.112.040 of the Fairfax Municipal Code is hereby amended to read as follows:

“(B) Residential Density. Maximum residential density shall be a function of average slope, as set forth in the following table:

Average Slope	Maximum Residential Density
30% and greater	1 dwelling unit / 10 acres
20 to 29.9%	1 dwelling unit / 5 acres
10 to 19.9%	1 dwelling unit / 2 acres”

Section 2. Adoption of the proposed Ordinance is exempt from the California Environmental Quality Act (“CEQA”). Adoption of this Ordinance will enact only minor changes in land use regulations, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for housing development at densities that exceed what was previously allowed in the PDD regulations, and the proposed Ordinance does not constitute a “project” within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) and 15061(b)(3) because there is no potential that the regulations result in a direct or reasonably foreseeable indirect physical change in the environment, and CEQA Guidelines Section 15378 because they have no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, the regulations are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations; and

Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is, for any reason, deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or preempted by legislative enactment, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The Town Council of the Town of Fairfax hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or word thereof, regardless of the fact that any one or more sections, subsections, clauses, phrases, or word might subsequently be declared invalid or unconstitutional or preempted by subsequent legislation; and

Section 4. Moratorium on Development in PDD Zones. Urgency Zoning Ordinance No. 821, as extended by Ordinance No. 824, establishing a temporary moratorium on housing development projects in the Planned Development District (PDD) Zone, Chapter 17.112 of the Fairfax Municipal Code, shall expire with the effective date of this Ordinance; and

Section 5. Effective Date. This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the

Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Fairfax on the 16th day of January 2019, and duly adopted at the next regular meeting of the Town Council on the _ day of _____, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Barbara Coler, Mayor

ATTEST:

Michele Gardner, Town Clerk

RESOLUTION NO. 2018-24

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX
RECOMMENDING THE TOWN COUNCIL ADOPT ORDINANCE NO. ____ ENTITLED
“AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING CHAPTER 17.112 PDD PLANNED DEVELOPMENT DISTRICT ZONE
OF THE FAIRFAX MUNICIPAL CODE” AND MAKING CEQA FINDINGS OF
EXEMPTION**

WHEREAS, the State of California has recently passed legislation (collectively referred to as the Housing Accountability Act and Senate Bill 35) intended to ensure greater predictability in local jurisdictional review of housing developments; and

WHEREAS, the new State law severely limits the ability of local jurisdictions to deny or reduce the density of housing developments where objective development standards are lacking; and

WHEREAS, the purpose of this resolution is to make a recommendation to the Town Council to adopt an Ordinance update the Town's Municipal Code to apply objective development standards to the review of housing development projects in the PDD zone in accordance with State law; and

WHEREAS, the Town's current regulations governing development in the Planned Development District Zone Chapter 17.112 have not been amended in several decades and lack objective development standards, and

WHEREAS, the Town wishes to continue to effectively govern the density of housing development and determine whether or not housing development is consistent with the Fairfax General Plan and local regulations; and

WHEREAS, adoption of the proposed Ordinance is consistent with the Town's General Plan, which provides goals, policies, and programs to preserve the environment, protect against hazards, and retain protect Fairfax's small-Town character, aesthetics and environmental characteristics while also allowing for residential development; and

WHEREAS, the adoption of the proposed Ordinance is exempt from the California Environmental Quality Act (“CEQA”). Adoption of this Ordinance will enact only minor changes in land use regulations, will not authorize any new development, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for housing development at densities that exceed what was previously allowed in the PDD regulations, and the proposed Ordinance does not constitute a “project” within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) and 15061(b)(3) because there is no potential that the regulations result in a direct or reasonably foreseeable indirect physical change in the environment, and CEQA Guidelines Section 15378 because they have no

potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, the regulations are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations; and

WHEREAS, the Planning Commission has conducted a duly-noticed public hearing to consider the draft ordinance, heard the presentation of a staff report, and received public comment on the matter.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the Town of Fairfax as follows:

SECTION 1. The recitals set forth above are adopted as further findings of the Planning Commission.

SECTION 2. The Planning Commission has reviewed the draft ordinance attached hereto as Attachment 1 and finds that it is consistent with the Town General Plan, as set forth above.

SECTION 3. The Planning Commission hereby recommends that the Town Council adopt Attachment 1 amending Chapter 17.112 PDD Planned Development District Zone

The forgoing Resolution was duly passed and adopted at a regular meeting of the Planning Commission of the Town of Fairfax held in said Town on the 20th day of December 2018 by the following vote, to wit:

- AYES: Fragoso, Gonzalez Parber, Kehrlein, Rodriguez, Swift, Chair Newton
- NOES:
- ABSENT: Green
- ABSTAIN:

Mimi Newton, Chair

Attest:

Ben Berto, Secretary