

Coalition for a Livable Marin

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TOWN OF FAIRFAX

To: Fairfax Town Council and Fairfax Planning Commission

The Coalition for a Livable Marin supports the Fairfax Housing Element and its accompanying zoning ordinance adopted by the Fairfax Town Council in October 2013 and March 2014 respectively. This is an excellent plan, locally grown, that came out of a consensus process 15 years in the making. We wish to submit this White Paper for your consideration as you deliberate the rescinding of zoning ordinance 778.

Highlights:

- The Housing Element was created locally, with public input and achieved through unanimous approval.
- The Housing Element conforms to the character of Fairfax
- The Housing Element integrates new development into the downtown area, near transit, shops and services
- The Housing Element includes a popular Senior Housing proposal that is in jeopardy of losing funding if the zoning is rescinded
- There is nothing "massive" being proposed in this Element – the only other housing development aside from the senior housing being proposed is a modest 21 small housing proposal near the library
- All other housing opportunities integrate with commercial buildings in the downtown and would be subject to the strict restrictions already incorporated into the town's housing codes.
- The Housing Element also identifies opportunities to make better use of existing resources through Second Units, home sharing and tenant matching, allowances for manufactured housing, co-housing and other non-traditional forms.
- Rescinding the Ordinance is not necessary to fix the issues with the zoning tables.
- Rescinding the Ordinance puts the town at risk by being out of compliance with its Housing Element and the General Plan

We urge the Town Council to either reconsider rescinding the ordinance altogether, or slow down the process to allow time for greater input. This Housing Element was created through years of thoughtful deliberation and public involvement. You owe it to the public to use a thorough and thoughtful process before backtracking and putting the town in legal jeopardy.

SUPPLEMENT TO
AGENDA ITEM # 21

All of these numbers are the upper limits and could well be reduced when planned for specific proposals. Massive development is not contemplated in the new general plan and housing element. New housing was planned to revitalize Fairfax's socioeconomic mix and to fit into the small village character of the town.

The Housing Element also identifies opportunities to make better use of existing resources through Second Units, home sharing and tenant matching, allowances for manufactured housing, co-housing and other non-traditional forms. It should be noted, however, that despite the Second Unit Amnesty Ordinance extended in 2010 and eliminating the sprinkler requirement for grandfathered existing units, only two applications were processed as of April 2013. In addition, while Second Units do not visually add any more development to Fairfax, they are not without consequences. Second Units will generate traffic. The farther they are from transit and the higher they are in the hillsides, the more they will preclude the choice for transit and biking.

The plan also looks at green opportunities with the identification of green building technologies, solar access and other resource-saving measures. It recommends water conservation, and MMWD has established that there is adequate capacity to serve the increase in housing.

While the zoning ordinance did have some typo errors in the tables, Town Legal Counsel has assured staff and Council members that the policy level text and the Zoning Map would override any table errors. Fixing these issues is a matter of amending the Housing Element, not approving or repealing ordinance 778. On the other hand, rescinding the Ordinance puts the town in legal jeopardy by putting it out of compliance with its Housing Element and General Plan. Furthermore, the senior housing project at the Lutheran Church would be threatened if the zoning is rescinded. This project, many years in the making, has a \$1 million grant that could be lost if the project is delayed.

The Fairfax Housing Element is a model of a locally grown process that protects the character of the community. It calls for a modest development on two properties that are not unlike other multi-family housing that already exists in Fairfax. It calls for infill in the commercial areas. It deserves to be embraced by even those who have opposed other larger housing proposals elsewhere in Marin County.

The Coalition for a Livable Marin applauds the Town Council members, planning commissioners, staff and countless volunteers who spent so much of their time to create a Housing Element they can be proud of. We believe that rescinding the Ordinance would have many adverse repercussions, diminishes the incentive for those who were willing to work together, and has no visible benefits. We urge the council to reverse course, and keep the Ordinance in place, with corrections. Then it can focus its energy on strengthening and improving the policies and provisions in the Housing Element to eliminate any real or perceived unintended consequences; and update the Town Zoning Code to align and support the adopted Housing Element.

The Coalition for a Livable Marin includes volunteer representatives of housing advocacy groups, Sustainable Marin, Marin County Bicycle Coalition, the League of Women Voters of Marin, the Marin Workforce Housing Trust, and more. (See: <http://www.LivableMarin.org>)

**The Fairfax Housing Element -
Home Grown Housing Solutions Work Best
White Paper by Coalition for a Livable Marin**

The Coalition for a Livable Marin supports the Fairfax Housing Element and its accompanying zoning ordinance adopted by the Fairfax Town Council in October 2013 and March 2014 respectively. This is an excellent plan, locally grown, that came out of a consensus process 15 years in the making.

In addition to many other progressive housing policies, this plan calls for a much needed senior housing complex with 40 low income units at the site of the Lutheran Church. The popular Bennett House senior housing has a long waiting list, and a new facility could accommodate many of those people.

The plan also identifies 10 Olema Road as another opportunity site for a modest housing complex. This is the site of the former Mandarin Gardens Restaurant and currently has an old Victorian house and two other buildings, all in disrepair. This would accommodate up to 22 modest units using the unique "small house" concept taken from "Katrina cottages" that emerged out of New Orleans - a concept that would fit very well into the character of Fairfax.

Finally, the plan allows infill in the commercial areas by rezoning "Highway Commercial" areas along Sir Frances Drake and Center Blvd. to "Central Commercial" and by allowing for up to 9 units at School Street Plaza. These housing opportunities will most likely be built, if at all, one unit at a time over a very long period. Existing development restrictions already in place, such as parking and height regulations, will remain intact which could slow down or even preclude development of these units. However, if they do get built, they would be close to transit, shops and services, and places of employment. Fairfax also has a comprehensive bicycle and pedestrian network which makes it very easy for people to get around without a car.

Since 1999, new development in Fairfax has been limited. The Town has processed and approved permits for 21 units of single family detached housing, one single family attached duplex and one new second unit. Yet, traffic has grown to gridlock during rush hour. Clearly it is not new housing that has worsened traffic in Fairfax. A generation ago 56% of households only had 1 car. Nowadays, it's 1 car per driver, where 60% have 2-3¹ vehicles per household. And, it is a well-documented fact that higher income households drive more than those of lower income. As income climbs, vehicle miles traveled climbs in direct proportion to the income². Simply put, higher cost housing, not more housing, produces more traffic. In addition, 60%³ of Marin's workforce commutes into Marin. This causes even more traffic. For Fairfax, this means more traffic from cars coming south from Sonoma County which use the back roads to avoid the freeway congestion.

Conversely, people who live near transit are much more likely to use it. Residents living near transit stations are around five times more likely to commute by transit as the average resident worker in the same city⁴. Many young people today have chosen to forgo the car altogether. From 2001 to 2009, the

¹ American Community Survey 2007

² Patricia Hu and Jennifer Young; Evaluating Transportation Equity FHWA Nov 1993

³ U.S. Census Bureau, Local Employment Dynamics, OnTheMap Origin-Destination Database, 2008

⁴ Lund, Cervero, and Willson Travel Characteristics of Transit-Oriented Development in California January 2004

average annual number of vehicle miles traveled by young people (16 - 34-year-olds) decreased from 10,300 miles to 7,900 miles per capita—a drop of 23 percent. Young people are driving less for a host of reasons—higher gas prices, new licensing laws, improvements in technology that support alternative transportation, and changes in Millennials' values and preferences—all factors that are likely to have an impact for years to come.⁵ Fairfax is a model of people choosing not to drive. It has created a comprehensive pedestrian and bicycle network, and every day you can see average people using their bicycles to do their local errands, walking and bicycling their kids to school and even commuting to work longer distances.

Fairfax is a small, yet dense town with very little opportunity for creating new housing. One of the few towns in Marin that once provided reasonably priced homes to buy and rent, it has fast been catching up with the rest of Marin in pushing up the median cost of housing. Affordable housing is both welcome and needed in this community so that it can retain its current income-diverse culture.

The Fairfax Town Council began updating its general plan and Housing Element in 1999. It started from the ground up in volunteer committees (Open Space, Affordable Housing, Volunteer and GPIC) with discussions taking place all in open public meetings. They went out to the public via surveys, design charettes, and interviews at Fairfax Festivals and other public events. The proposals were refined several times before the plan came to the Planning Commission for review Element by Element. The final draft was compiled 3 years ago by a super committee of representatives from all involved parties including the Planning Commission and the Town Council. The General Plan, with the first edition of the Housing Element, was approved unanimously by council in April 2012. The Housing Element was further revised, both to meet State regulations and to maintain an "Only-in-Fairfax" grassroots approach. For example the committee did not include the recommended 30 units per acre downtown infill as pushed by the State, but instead reduced that to 20 units per acre. The new Housing Element was approved unanimously by both Planning Commission and Council in Oct 2013.

The Housing Element identifies three sites that would allow for some new development by rezoning to the less restrictive Planned Development District:

- Christ Lutheran Church – 40 lower income senior housing units, to be operated by a non-profit.
- 10 Olema Road - 22 lower income housing units.
- School Street Plaza would also be rezoned PDD to allow for 9 units to mix with the commercial development.

In addition, rezoning commercial areas along Sir Frances Drake and Center from "Highway Commercial" to "Central Commercial" allows for second- floor housing opportunities.

- Commercial Westside - 17 units
- Fair Anselm - 22 units
- East Side - 14 units

⁵ Frontier Group U.S. PIRG Education Fund; Transportation and the New Generation; Why Young People Are Driving Less and What It Means for Transportation Policy April 2012

From: Martha Noble <mrosenoble@gmail.com>

Date: Mon, Jun 2, 2014 at 9:44 PM

Subject: Ordinance No. 778

To: bcoler@townoffairfax.org

Dear Ms. Coler,

I am writing to express my support for the Town's General Plan and existing Housing Element and voice concern over the possible repeal of Ordinance No. 778. It seems likely that the repeal of Ordinance No. 778 would cause significant delays to much needed affordable housing projects and could result in a complete loss of funding for the Lutheran Church senior housing project. We desperately need more affordable senior housing in Fairfax-and we need to do our part to reduce greenhouse gas emissions and make way for well-designed, transit-accessible housing.

The Town of Fairfax has invested a great deal of time, energy and resources into drafting our General Plan and I believe that any corrections that might need to be made can be done more effectively and efficiently in other ways. Furthermore, if environmental concerns or other problems arise once detailed plans have been submitted for the Lutheran Church site, or any of the other PPD properties, we will still have a chance to ask for changes at that time. Repealing Ordinance No. 778 at this point would only serve to derail the process. That would be a terrible waste of the Town's resources and effort--and it would be a big step in the wrong direction.

Multiple generations of my family have lived in this part of Marin and I love the communities and the landscape here deeply. We are incredibly fortunate to live in a place that has been protected from rampant, sprawling development. We still have our open spaces and our farmlands, and I want to see them protected for future generations. I believe that well-planned, sustainable infill development is what we need now. Too many of our teachers, tradespeople, caregivers and public servants have been forced out of the area as housing costs soar-only to have to spend hours on the freeway in traffic every day to return here to work. Too many of the artists, musicians, writers and craftspeople who have made Fairfax the vibrant, compelling community that it is have been forced out, or will be forced out soon, if we don't address the problem.

I graduated from Sir Francis Drake High School in 1984 and I've recently returned to Marin. Coming back, I have been struck by the effects of the high cost of housing here. Many of the people I went to school with have had to move to Sonoma or elsewhere to raise their families and things feel surprisingly uncertain for the people I know who are renters here. I've heard a number of people say that they are terrified they will have to move and pull their children out of schools they love.

I hope that you will take the recommendations of the Planning Commission into consideration and I hope that the Town of Fairfax will be able to honor its commitments and make room for positive change.

Thank you for all of your efforts on behalf of our community.
Sincerely,

Martha Noble
22 Pacheco Ave.
Fairfax, CA 94930

June 3, 2014

Andres Edwards
14 Azalea Ave.
Fairfax, CA 94930

The Honorable Barbara Coler
Fairfax Town Council
142 Bolinas Road
Fairfax, CA 94930

Dear Barbara Coler:

As a Cascade Canyon School (CCS) Board of Trustees member for the last seven years, and a parent at the school for the last 12 years, I've been aware of the plans for an affordable housing development on the school site at 2626 Sir Francis Drake Boulevard. I'm writing to express my concern about the potential impact on Cascade Canyon School of the proposed senior housing project. CCS offers a unique educational experience that I've found to be a great fit for my son there now, and I'm increasingly nervous about the prospect of a lengthy construction period that would surely cause significant disruption to the learning environment.

Beyond construction, it's difficult to imagine how the property can support 40 residential units in addition to the existing school and Church facilities, without drastically altering the setting that makes the school special. As a community we've heard for years that the Christ Lutheran Church was interested in pursuing this development, but details have been vague. Now it sounds like the project may be moving forward, but we still don't have the answers we would need to be confident that our school is not at risk.

Cascade Canyon School is a long-standing Fairfax institution that has been operating a progressive K-8 program at the Christ Lutheran Church site for 28 years. Cascade Canyon has deep roots in the Fairfax community and as a parent I feel strongly that the school's interests are no less important than those of any other stakeholders. I urge you to keep in mind the viability of Cascade Canyon School and make sure its needs are met and not become a casualty of this affordable housing project. Thank you.

Sincerely,

Andres Edwards
14 Azalea Ave.
Fairfax, CA 94930

From: Tom Asher <tomasher11@gmail.com>

Date: Tue, Jun 3, 2014 at 10:48 PM

Subject: Concern about potential impact on Cascade Canyon School of proposed senior housing project at 2626 Sir Francis Drake Blvd

To: bcoler@townoffairfax.org

The Honorable Barbara Coler

Fairfax Town Council

142 Bolinas Road

Fairfax, CA 94930

Barbara,

We're writing to express our concern about the potential impact on Cascade Canyon School of the proposed senior housing project at 2626 Sir Francis Drake Boulevard. CCS offers a unique educational experience that we've found to be a great fit for our son Skyler, and we're increasingly nervous about the prospect of a lengthy construction period that would surely cause significant disruption to the learning environment. Skyler has attended Cascade since Kindergarten and will be there through 8th grade.

Beyond construction, it's difficult to imagine how the property can support 40 residential units in addition to the existing school and Church facilities, without drastically altering the setting that makes the school special. As a community we've heard for years that the Christ Lutheran Church was interested in pursuing this development, but details have been vague. Now it sounds like the project may be moving forward, but we still don't have the answers we would need to be confident that our school is not at risk.

Cascade Canyon School is a long-standing Fairfax institution that has been operating a progressive K-8 program at the Christ Lutheran Church site for 28 years. Cascade Canyon has deep roots in the Fairfax community and we as parents and Fairfax homeowners for 17 years, we feel strongly that the school's interests are no less important than those of any other stakeholders.

Thank you,

Tom & Kirstin Asher

3 Rocca Drive

Fairfax, CA 94930

415-601-3553

tomasher11@gmail.com

From: Andrew Loft <aloft@accesslc.com>
Date: Wed, Jun 4, 2014 at 12:00 PM
Subject: Rezoning of Church Property in Fairfax
To: dweinsoff@townoffairfax.org, jreed@townoffairfax.org, lbragman@townoffairfax.org,
rgoddard@townoffairfax.org, bcoler@townoffairfax.org
Cc: "aloft@accesslc.com Loft" <aloft@accesslc.com>

Andrew Loft
111 Toyon Drive
Fairfax, CA 94930

The Honorable David Weinsoff
The Honorable Larry Bragman
The Honorable John Reed
The Honorable Renee Goddard
The Honorable Barbara Coler

Fairfax Town Council
142 Bolinas Road
Fairfax, CA 94930

I am concerned about the potential impact on Cascade Canyon School of the proposed senior housing project at 2626 Sir Francis Drake Boulevard. CCS has given the town of Fairfax an alternative and special educational experience that we've found to be a great fit for our two children currently attending it. It has been an important part of the community during its 34 year existence.

I don't see how a major construction project can co-exist with a school that is only 100' from it. Beyond construction, I am concerned that the developable land cannot support a 40 unit building, parking for a 40 unit building, the existing school and church and the parking required for both the church and the school. As a community we've heard for years that the Christ Lutheran Church was interested in pursuing this development, but details have been vague.

Cascade Canyon School is a long-standing Fairfax institution that has been operating a progressive K-8 program at the Christ Lutheran Church site for 28 years. Cascade Canyon has deep roots in the Fairfax community and we as parents feel strongly that the school's interests are no less important than those of any other stakeholders.

Thank you,

Andrew Loft
111 Toyon Drive
Fairfax, CA 94930

Andrew Loft
aloft@accesslc.com
t. 415.302.0761
f. 510.291.2927

From: Hannah Doress Events <hannah@wordoutconsulting.com>
Date: Wed, Jun 4, 2014 at 1:03 AM
Subject: re: ordinance 778 & the Wed Mtg
To: barbaracoler@gmail.com

Dear Barbara,

Thank you for your service for the Town of Fairfax.

I am writing to express my views on the potential repeal of ordinance 778.

I would urge you not to be intimidated by the legal maneuvering and threats and to stand up for the very reasonable zoning that ordinance 778 implements. I hope you have seen the letter submitted by Jennifer Hammond which calls into question the legality of the proposed referendum based on her review of case law.

The ordinance simply brings to life the measured and very Fairfax compatible housing element which was unanimously supported in the past because it is so reasonable.

The most important reason to support ordinance 778 is for the extensive population of Fairfax residents who are struggling to remain in Fairfax (renters, homeowners, adult children living with parents, etc.). This group spans a wide economic range. It is hard to imagine how anyone who works in a Fairfax-based business can manage to live in Fairfax - it is already challenging for people like me working for nonprofits, to our many treasured artists, childcare workers, families with young children [with rising childcare, insurance and other costs].

Right now Fairfax's affordable housing constituency is growing and diversifying rapidly and I believe will become a bigger voice over time as more of us are impacted and as more of us recognize our personal challenges as part of a larger trend which we can affect through sensible, compassionate policies.

There has been a mis-impression that the folks asking for repeal and those taking the unfortunate approach of threatening referendums and lawsuits represent a majority of the town - a misimpression that the Marin IJ has mostly failed to correct (most notably Dick Spotswood's absurd commentary that all of Fairfax agrees and opposes housing -- I can't think of someone less likely to know what's happening in Fairfax). It was very disturbing to me when Richard Halstead followed this up by covering a Fairfax Town Council meeting that had a majority of prohousing comments by quoting an anti-housing spokesperson who did not attend the meeting. It was clear to me that he did not attend the meeting, did not understand what the decision of the council meant or anything about the context of the decision and didn't hear any of the comments. They have made faulty assumptions that because things are playing out a certain way in other Marin communities that Fairfax will follow suit. But that's not really the pattern with Fairfax -- we typically go our own way (all you have to do is read the general plan to see this) and I think its clear that diversity is a very important value in Fairfax -- sadly much more so than in many other parts of Marin -- and many of us recognize our diversity - in the largest sense including race, class, profession, and many other factors - is threatened by the declining availability of affordable housing options.

Regarding the senior housing project - it is a wonderful labor of love coming from the Lutheran Church and it is well known how beneficial it is to age in place for seniors, to stay within their networks and in familiar surroundings. It is no easy task to line up the support for nonprofit housing and it would be tragic to see this very popular project stopped in its tracks.

On another subject, it is surprising to me the ignorance of many about the demonstrated and logical benefits of transit-oriented and downtown infill development (these would be great topics to include in the wisely proposed public workshops which I strongly support -- without repeal). I believe if the town offered workshops that allowed concerns to be aired and then provided education about the housing element and ordinance that both responds to the specific questions and concerns raised and is accessible to the general public, than I think we could make some progress. It is not optimal to have the only education coming from partisans residents in debate mode because they may not see the whole picture or have the benefit of experience that electeds and staff have in explaining all aspects of a policy. (I will volunteer to review materials to assist with making them accessible - this something I do for work for example assuring information about sea level rise is accessible to diverse Marin residents with different levels of awareness of the issue, different levels of education and assuring translation for Spanish-speakers).

Speaking of diverse Fairfax residents, I'm sure you will join me in warmly welcoming Spanish-speaking residents who plan to come forward to speak about their concerns at the meeting tomorrow. One way to do this would be to assure that they receive their full 3 minutes (if needed) and additional time be provided for an interpreter to deliver their comments in English. For this meeting participants will be bringing an interpreter with them. I hope the town will see the value in providing interpretation in the future with our growing Latino population (in the 6-7% range I believe in 2010, though the census tends to undercount Latinos and it has been 4 years since then and the California / national trend is growth of the Latino population).

Also I hope you will do what you can to move agenda item 21 up so that fewer concerned community members of all viewpoints need to leave before the item comes up. I would also like to thank you for your patience and dedication slogging through this long meetings to benefit our beloved town.

I had hoped to give you a call to be able to have a more personal and interactive discussion but I was not able to get your phone number in time and am now concerned about getting you my thoughts so you have time to consider them ahead of the meeting. I hope you will feel free to call me and I will certainly understand if you are not able to do so given the short time until the meeting.

Thank you very much for your consideration. Look forward to seeing you at the meeting.

Best wishes,
Hannah

Hannah Doress
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Follow @EarthDayMarin

From: Jennifer Hammond [mailto:sustainablejennifer@gmail.com]
Sent: Wednesday, June 04, 2014 1:10 PM
To: Michele Gardner
Subject: Hammond letter re: Agenda Item #21 - 06/04/14 Town Council Meeting

Fairfax Town Council:

I am writing regarding Item 21 (re: Ordinance No. 778) of the Agenda for the Town Council meeting today, June 4, 2014.

I reviewed the packet for the meeting tonight, including the supplemental documents added yesterday. The letter from Paul Davis, Esq, petitioner's counsel, to the Town attorney was both offensive and revealing. Mr. Davis accuses Town Clerk Michele Gardner and the Town of fraud for not certifying an invalid referendum. He threatens the Town with legal fees. And he admits that the Town's steps to repeal the ordinance are not good enough because there will not be a "one year moratorium" on enacting it again.

Clearly, it is not the intent of the petitioners to address specific issues with the ordinance or the general plan/housing element. It appears that the intent is to permanently reject both the ordinance and the housing element through strategic delays, which not only would put the Town out of compliance with state law, but more importantly would nullify the years of planning by community members and staff on a beautifully laid out plan. This is a plan that addresses affordable housing and growth while retaining the character of Fairfax and its values – values that support a diverse community and a healthy environment. This is not about the MTC funds. This is about planning for a future in an intelligent and thoughtful way.

I urge the council to not be reactive to the tactics exhibited in Mr. Davis's letter. At this point, there is no reason to repeal the ordinance or put the repeal on a fast track. Many of the concerns that have been raised by citizens in public comment can still be considered by opening up discussion in the housing element workshops proposed by staff. Many more people that are directly affected by these issues have not weighed in, and should be given a voice.

Declaratory Relief. I also urge the Town to consider a declaratory relief action to determine if the referendum is legal based on substantive, not technical, issues. This would take the decision out of the Town's hands and place it with the Court. I submitted case law in prior letters in which the Court concluded that a referendum on zoning ordinances cannot go on the ballot when it conflicts with the general plan (my letters are attached here without their attachments).

If the decision to submit a declaratory relief action is taken, I urge this to be done prior to the election. While courts prefer to hear certain matters regarding referendum and initiative after the election results to avoid having to address issues that become moot, this referendum is different. If voters decided to reject the zoning ordinance, it would place the Town out of compliance with state law since the ordinance would not be aligned with the general plan.

Thank you for considering these issues and for your tireless service on this matter.

Jennifer Hammond



Hammond Letter re: Ordinance 778

Jennifer Hammond <sustainablejennifer@gmail.com>
To: "mgardner@townoffairfax.org" <mgardner@townoffairfax.org>

Thu, May 29, 2014 at 2:45 PM

Michele,

Please forward this email to the members of the Planning Commission. I will also bring copies for the meeting tonight.

Greetings Planning Commissioners:

I have attached a letter I submitted to the Fairfax Town Council on April 2, 2014-regarding Ordinance 778.

I urge you to recommend that the Fairfax Town Council not rescind Ordinance 778. Doing so would leave the Town with an ordinance that is not compliant with state law, because it would not reflect the zoning already adopted by Town Council in the Housing Element.

I understand that the community would like more input on the General Plan/Housing Element. This can happen without rescinding the ordinance. After feedback from the community, the Council can make revisions to the Housing Element/General Plan if it chooses to. At that point, changes can be made to the zoning ordinance if necessary. Rescinding the ordinance now is premature and will result in unnecessary and costly proceedings.

If there is concern about the planned development district (PDD) lots, a moratorium can be issued until input from the community is complete and any revisions to the Housing Element are made.

As for the Referendum submitted by petitioners on Ordinance 778, there is strong case law that indicates it is invalid based on substantive issues. Essentially, policy in the General Plan cannot be revised by changing an ordinance. The General Plan / Housing Element would need to be amended first (see my attached 4/2/14 letter).




I have added another case that has similar facts (see Attachment D). The Superior Court of Orange County determined that "the proposed referendum is invalid because, if adopted, the zoning change would be inconsistent with Irvine's general plan, since Irvine has adopted an ordinance requiring consistency between its general plan and zoning." (In our case, it is the State of California that requires consistency between the zoning and the general plan.)

Thank you for considering the above points, and those attached in my 4/2/14 letter.

I appreciate your service!

Jennifer Hammond
9 Iron Springs Road
Fairfax, CA 94930

5 attachments

-  04_02_14_Hammond_Letter_Ordinance 778 (1).pdf
281K
-  ATTACHMENT A_deBottari (1).pdf
87K
-  ATTACHMENT B_Initiative and Referenda (1).pdf
117K

April 2, 2014

Fairfax Town Council:

I am writing regarding Item 18 (re: Ordinance No. 778) of the Agenda for the Town Council meeting today, April 2, 2014.

I am aware of the petition being circulated for a referendum to put Ordinance 778 on the ballot. After researching this issue and consulting attorneys, I have learned that allowing this ordinance on the ballot by referendum would be illegal and most likely would not hold up in court. Allowing this to happen would create liability for the Town and possible lawsuits by the State or by Fairfax citizens.

Why would it be illegal?

- 1) **Legally invalid zoning scheme.** If voters overturned the ordinance, it would create a "legally invalid zoning scheme," as determined by the California Appellate Court in *deBottari v. City Council* (1985) 171 Cal.App.3d 1204 ("*deBottari*"). (See Attachment A). The zoning ordinance on the books would not reflect the zoning outlined in the Housing and Land Use elements of the General Plan, and the Town would be out of compliance with State law.

The facts in *deBottari* closely reflect the facts the Town is currently facing. See excerpt below from a section of a report prepared for the California League of Cities in 2008 entitled "**Matters Beyond the Power of the Electorate to Enact Through the Initiative Process**" (Attachment B):

In *deBottari*, the Norco City Council amended its general plan to change the land use designation on a particular parcel from "residential/agricultural" (allowing only 0-2 units per acre) to "residential low density" (allowing 3-4 units per acre). Two weeks later, the council adopted ordinances approving zone from "R-1-18" to "R-1-10," allowing homes to be built on 10,000 square foot lots (about 4 per acre) instead of 18,000 square foot lots. The zone change brought the property into compliance with the general plan. A group of residents challenged the council's action to change the zoning, **but not the action to change the general plan.** The city council refused to act on the petition, recognizing that repealing the ordinance would result in a zoning limit of 2 units per acre, while the general plan allowed 3-4 units per acre, in violation of Government Code section 65860(a). The referendum proponents sued to compel the city council to repeal the zone change or submit the matter to the voters. The court held the referendum could not be voted upon because, if passed, it would result in a "legally invalid zoning scheme," and the decision was upheld on appeal.

- 2) **General Plan overrides Ordinances.** Rejecting the zoning ordinance does not change the zoning laid out in the General Plan which is considered the "Constitution" of the Town. According to the California Supreme Court, "[t]he Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. **The tail does not wag the dog.** The general plan is the charter to which the ordinance must conform." See Attachment B *Leshar Communications v. Walnut Creek*, 52 Cal. 3d 531, 540 ("*Leshar*"). If the Town decides to amend the zoning, the revisions would first need to be made to the General Plan.

I strongly urge the Town Council to refrain from repealing zoning Ordinance No. 778. The ordinance is required to sync the General Plan and Town Code, and if the petition is filed, may cause lengthy delays in moving forward with our zoning map, and create obstruction for new business in Fairfax. The corrections that need to be made to the PDD density requirements can be done by revising the General Plan and the Planned Development District Zone code. The zoning ordinance need not be revised to make those changes.

Finally, I support the policies laid out in the Housing Element of the General Plan. The fact is, the population in California is growing and Fairfax like all other towns, cities and counties should accommodate the growth. The Housing Element of our General Plan was carefully crafted to plan for housing that would provide more options for seniors and workforce, while also considering the environment by choosing sites close to bike paths and bus routes.

Thanks, as always, for your service.



Jennifer Hammond
9 Iron Springs Road
Fairfax, CA 94930

From: efsohn@gmail.com

To: dweinsoff@townoffairfax.org; lbragman@townoffairfax.org; jreed@townoffairfax.org; rgoddard@townoffairfax.org; bcoler@townoffairfax.org

Subject: comments from Cascade Canyon School, 2626 SFD Blvd., Fairfax

Date: Tue, 3 Jun 2014 22:23:08 -0700

June 3, 2014

Cascade Canyon School
2626 Sir Francis Drake Blvd.
Fairfax, CA 94930

The Honorable David Weinsoff
The Honorable Larry Bragman
The Honorable John Reed
The Honorable Renee Goddard
The Honorable Barbara Coler

Fairfax Town Council
142 Bolinas Road
Fairfax, CA 94930

I'm writing on behalf of the Trustees of Cascade Canyon School (CCS), which for 28 years has been a tenant of Christ Lutheran Church (CLC) at 2626 Sir Francis Drake Boulevard. The CCS Board has been closely following the debate over the proposed senior housing project on the CLC property, and we've been in discussions with stakeholders since before the developer proposed to buy part of the property from CLC. As a community member with so much at stake, we'd like to take this opportunity to share our perspective on the project.

Cascade Canyon School recognizes the benefits to Fairfax of adding affordable senior housing, but our responsibility is to ensure that those benefits don't come at the expense of the children currently using the property on a daily basis at CCS. It is a remarkable location where they are able to learn and play in a beautiful environment. We're open to collaboration that could achieve the goals of Church, school, and developer, but only with strong assurances that our operations and our students won't be unreasonably impacted by the planning, construction, and operation of the housing development. Unfortunately we haven't received those assurances to date.

As a school, CCS obviously has unique needs in the context of a shared use property, particularly relating to the safety of our students and the sustainability of our community. We've requested, to no avail, drawings that delineate the footprint of the proposed development and show how the property would accommodate 40 residential units, the Church, the school, and adequate parking for all. The lack of forthcoming detail (we've yet to see the Concept Plan that we're told is required for rezoning) heightens our concerns about the project's impact on CCS during and beyond the 9 years left on our lease (we are one year into a five year lease, renewable at our option for another five). Ultimately our position - and, we think, that of our community members - will be determined by our confidence that the interests of our students will be protected.

We understand that as a Town Council you have to accommodate the interests of multiple community members. We respectfully ask that the children and parent community of Cascade Canyon School be included in your considerations.

Thank you,

Eric F. Sohn
Chair, Board of Trustees, Cascade Canyon School