

ORDINANCE NO. 827

**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 23, 2019 to consider the draft ordinance, heard the presentation of a staff report, and received public comment on the matter; and

WHEREAS, this ordinance is not intended nor shall it be construed to abrogate, annul, or impair any more restrictive easement, covenant, or other agreement between parties, including but not limited to homeowner's restrictions (such as CC&Rs), nor any conditions of approval for any adopted precise plan, parcels with open

space/conservation restrictions or easements, or parcels with specific development restrictions in the PDD zone;

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. A Maximum residential density shall be established based upon 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”

A density shall be further limited 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.

“(C) *Planning Commission determination.* The Planning Commission shall consider the following criteria in further limiting density.

- (1) Extent of lands which are hazardous to life and property due to soils, geological, seismic or hydrological factors unless the hazards can be mitigated by minor modifications to existing land forms and vegetation. These determinations must be based on the analysis of a licensed engineering geologist and/or civil engineer specializing in soils problems and hydrologist;
- (2) The number of safe building sites which exist on the property;
- (3) The cumulative impact of the development on existing circulation and drainage systems.

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. Effective Date. This Ordinance shall become 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 23rd day of January 2019, and duly adopted at the next regular meeting of the Town Council on the 6th day of February 2019, by the following vote, to wit:


AYES: ACKERMAN, GODDARD, LACQUES, REED

NOES: NONE

RECUSED: COLER


RENEE GODDARD, Vice Mayor

ATTEST:


Michele Gardner, Town Clerk